

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

JUDGE IRWIN, Chief Magistrate

IN THE MATTER OF THE SWEARING-IN OF
MR BRIAN PATRICK KILMARTIN AS A
MAGISTRATE OF QUEENSLAND

BRISBANE

..DATE 15/12/2006

WARNING: The publication of information or details likely to lead to the identification of persons in some proceedings is a criminal offence. This is so particularly in relation to the identification of children who are involved in criminal proceedings or proceedings for their protection under the *Child Protection Act 1999*, and complainants in criminal sexual offences, but is not limited to those categories. You may wish to seek legal advice before giving others access to the details of any person named in these proceedings.

HON KERRY SHINE, Attorney-General

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MR M DAUBNEY, President of the Bar Association

MR P EARDLEY on behalf of the Queensland Law Society

CHIEF JUSTICE P DE JERSEY

JUDGE RACKEMANN and JUDGE TUTT of the District Court

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MR KOPPENOL, President of the Land and Resources Tribunal

SENATOR JOHN HOGG, Deputy President of Senate

HIS HONOUR: Good morning. On behalf of the Magistrates, I

welcome you all to this ceremony for the swearing in of Brian

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Patrick Kilmartin as a Magistrate of this Court. I would

firstly like to acknowledge the traditional owners of the land

on which we gather for this occasion this morning. I

especially welcome the Attorney-General and Minister for

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Justice, the Honourable Kerry Shine, MP; Mr Daubney, Senior

Counsel, the President of the Queensland Bar Association; Mr

Peter Eardley, representing the President of the Queensland

Law Society who is regrettably unable to be with us this

morning because of commitments in Cairns. I also welcome the

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Chief Justice of Queensland; Judge Rackemann of the District

Court; President Koppenol of the Land and Resources Tribunal,

and all other judicial officers who are present this morning.

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I also wish to acknowledge the presence here today of

Magistrate Kilmartin's family, his wife, Ela, and her parents,

Mr and Mrs Klej, and his children Zosia, Alinka and Karolinka,

and his special guest, the Honourable Con Sciacca, and Senator
John Hogg, the Deputy President of the Senate.

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I would like to thank you for your patience in waiting for the
slightly delayed start of this ceremony to allow a number of
us to participate in the swearing-in of Judge Rafter to the
District Court of Queensland this morning.

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Without taking away from Brian's occasion, I hope that you
will forgive me if I record my personal pleasure and
congratulations to Judge Rafter on his appointment.

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We particularly welcome you, Attorney, on your first
attendance in that capacity at a Magistrates Court sitting
and, also, on the first occasion that you have appointed a
Magistrate to this Court. We also congratulate you on your
appointment.

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Although, Attorney, you may have heard these words before this
morning from the Chief Judge of the District Court, I assure
you that quite independently, I would like to echo the words
of the Chief Justice at another ceremony this week in saying
that your support for the Courts and that of your immediate
predecessor, the Honourable Linda Lavarch, is much valued as
has been the support of the Directors-General of the

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department, now Mr Jim McGowan, and previously, Ms Rachel Hunter, and I am pleased that Mr McGowan can be with us today.

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Your support for this Court has already been demonstrated by ensuring that both Magistrate Kilmartin's appointment yesterday and Acting Magistrate Skuse's appointment last week have been made in what can be described as record time. In fact, Magistrate Kilmartin's appointment has taken effect four weeks earlier than I requested. This is unprecedented, in my experience, but most welcome because it ensures that our Court enters the New Year with our full complement of Magistrates, and that is greatly appreciated.

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I would ask Magistrate Kilmartin to stand and to take the oath of office.

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MR KILMARTIN: I, Brian Patrick Kilmartin swear that I will properly serve Her Majesty, Queen Elizabeth the Second, her heirs and successors in the office of Magistrate and that I will treat everyone fairly and without bias according to law, so help me God.

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HIS HONOUR: If you inscribe the oath of office. Magistrate Kilmartin, welcome to our Court. I congratulate you on your appointment and I would ask you to accept this bible as a memento of this occasion.

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As I have said, your Honour, welcome to the Bench of
Queensland Magistrates. I say this on behalf of each of your
new colleagues from whom I know you will receive great support
and assistance just as I do. You have been appointed
initially for two years to Southport which was accurately
described by the Attorney-General in announcing your
appointment as one of Queensland's busiest Courts.

You, in fact, replace Magistrate Rose who retired from Dalby
on the 7th of July 2006. Since that time, in a sense of
collegiality, there have been seven transfers of Magistrates
within the Court which concluded with Magistrate Brassington
moving from Southport to Innisfail, that move taking place in
mid January and now it concludes with your appointment, and as
I say, we now have our full complement of Magistrates.

I also want to take the opportunity to publicly thank all
Magistrates who have been involved in that transfer process.

Your Honour, you bring to this Court a balance of life and
legal experience. Having commenced your career as a signal
technician with Queensland Railways, it cannot be said of you,
that you are out of touch with the community, just as this
cannot be genuinely said of any of the members of our Court.

You bring to our Court a breadth of legal and administrative experience having been a partner in Sciacca's Lawyers and Consultants for many years; having been on the Law Society Council; having served as Consul for the Republic of Poland and also as a past chairman of the Legal Aid Commission, having succeeded Federal Magistrate Baumann to that position. Magistrate Baumann is presiding on the Gold Coast this morning and he has specifically asked me to convey his best wishes to you.

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Since your appointment has been announced, I have heard nothing but praise for it, with reference to your capacity to respect the views of others, your legal experience, and your intellectual stamina.

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In conclusion, please accept the best wishes of all of your new colleagues and their hope that you will have a long satisfying and fulfilling judicial career as a member of this Bench.

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Mr Attorney, I invite you to address the Court

ATTORNEY-GENERAL: Thank you. May it please the Court. Chief Magistrate; Acting Deputy Chief Magistrate; other Magistrates; the Honourable, the Chief Justice, the Honourable Paul De Jersey; District Court Judges Rackemann and Tutt; the Director-General, the Department of Justice and Attorney-

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General, Mr Jim McGowan; President of the Bar Association of Queensland, Mr Martin Daubney; Member of the Queensland Law Society, Mr Peter Eardley who is representing the Society. I, too, would like to acknowledge the traditional owners of the land on which we meet today.

Magistrate Kilmartin, may I be the second, I think, to congratulate you on your appointment today. Can I acknowledge, also, your family, your wife, Ela and your three daughters here and other members of your family? Can I also acknowledge the presence of your partner at Sciacca's Lawyers and Consultants, the Honourable Con Sciacca and Senator John Hogg.

I note this ceremony is held a day short of your 23rd anniversary of your admission as a solicitor. You were admitted, as I understand it, on the 16th of December 1983.

Chief Magistrate, you have described the Magistrates Court of Queensland as the coal face of the Queensland judicial system. It is the Court that the greatest majority of people who come before the Courts in Queensland will have contact with. It is a Court that deals with a great volume of matters every day.

Therefore, I acknowledge a Magistrate's responsibility is to competently and efficiently attend to the demands of the

position. To discharge these responsibilities, the Magistrate should possess the qualities of integrity, honesty, fairness and a strong intellect. A Magistrate should boast sufficient legal experience whether in private practice, at the Bar or as a solicitor, or in the Government service or in academia.

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Magistrate Kilmartin, you possess the qualities and qualifications to discharge the duties of a Magistrate.

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Again, I refer to the comments of the Chief Magistrate when he said:

"Frequently, Magistrates are dealing with hundreds of matters during the course of a busy list. They deal with a great variety of legal issues from the most basic to the most complex."

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As a partner of Sciacca's Lawyers and Consultants in Brisbane, you have been involved in a wide variety of matters before the High Court, the Federal Court, the Australian Industrial Relations Commission and the Queensland Industrial Relations Commission and, indeed, the Magistrates Court itself. You have served on the council of the Law Society for many years following your appointment in 1992 as the Attorney-General's representative.

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I thank you for your valuable service to the Government and people of Queensland in that position.

As a former chair of the Board of Legal Aid of Queensland, you have a thorough understanding and appreciation of the issue of access to justice for disadvantaged members of our community.

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I thank you, on their behalf, for your considerable accomplishments here as well.

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Magistrate Kilmartin, you have also served as Consul for the Republic of Poland in Queensland as was mentioned by the Chief Magistrate.

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Indeed, in that role, you have served as Dean and as Secretary of the Consular Corps.

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You were, of course, educated at Saint Laurence's College and you obtained your Bachelor of Arts with Honours and Bachelor of Law from the University of Queensland. You also obtained a Graduate Diploma of Legal Practice from the Queensland University of Technology.

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I also record your qualifications as a licensed electrical fitter and electrical mechanic from your previous employment with Queensland Railways in the 1970's.

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Your Honour, Magistrates Courts in Queensland are busy and very effective Courts. The Southport Magistrates Court to

which, I understand, you will be assigned, is a clear demonstration of the depth and volume of matters before the Magistrate.

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Your Honour, your wealth of experience and your reputation within the profession clearly confirm the suitability of your appointment. I offer my best wishes to you in the performance of these onerous duties you have now accepted with the Oath of Allegiance and of Office.

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Allow me to conclude my relaying the eloquent words of another Queensland born and Queensland educated judicial officer, former Chief Justice of the High Court of Australia, Sir Gerard Brennan. His advice to judicial officers was this:

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"You have joined an elite of service, not of social grandeur and your membership of it can be a source of great personal satisfaction and no little pride. You will not grow affluent on the remuneration that you receive. You will work harder and longer than most of your non-judicial friends. Your every judicial word and action and some other words and actions as well will be open to public criticism and the public esteem of the judiciary may be eroded by attacks that are both unjustified and unanswered. But if at the end of the day you share with colleagues whom you highly esteem a sense of service to the community by administering justice according to law, you will have a life of enormous satisfaction."

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I hope, trust and pray that that will be your experience as well.

HIS HONOUR: Thank you, Mr Attorney. May I just also welcome Judge Tutt who I have just spied in the back of the Court and just make the observation that the esteem in which you are held, your Honour, is well demonstrated by the fact that there is standing room only today despite the necessarily short notice of these proceedings.

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Mr Daubney, I invite you to address the Court.

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MR DAUBNEY: May it please the Court, I have the pleasure of appearing today to extend to your Honour the Bar's congratulations on your appointment. It is a matter not only of professional pleasure but also one of significant personal pleasure. Whilst our respective practices never quite coincided, our involvement in our respective professional bodies over many years has resulted in me having the privilege to coming to know your Honour well and I am very glad that I have the privilege of appearing at your ceremony today.

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Your Honour's achievements and personal history have been well covered by his Honour, the Chief Magistrate and by the Honourable, the Attorney-General and I expect my colleague, Mr Eardley, will shortly remind us of the very significant service you have rendered to the profession and to the people of Queensland through the Queensland Law Society.

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It is abundantly clear that you bring to your new role a depth of experience both as a practitioner of long standing and a person who has had an active involvement and held positions of leadership in the wider community which will enable you to discharge the important duties that lie ahead.

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Your Honour has extensive courtroom and similar experience. The Court you join, is, as I have said on previous occasions and has already been adverted to by the Honourable, the Attorney, the powerhouse of dispute resolution in this State. It is the Court with which the majority of litigants in both civil and criminal matters will have contact.

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The proper discharge of this Court's adjudicative function requires Magistrates who are not merely learned in the law but have a practical and commonsense approach to the law's application and extensive practical experience in litigation and dispute resolution. Your Honour's professional and life experience well equips you for that role.

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Today marks the commencement of what we hope will be a long and satisfying chapter in your Honour's life of service of and for the people of Queensland, and an achievement of which and your family can be justifiably proud.

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Your Honour, may I indicate that in carrying out your new and important role, you, like every other judicial officer in this State, will have the support and assistance of the Queensland Bar. On behalf of the Bar Council and members of the Queensland Bar may I extend to your Honour our best wishes for a fulfilling, challenging and happy time on the Bench. May it please the Court.

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HIS HONOUR: Thank you, Mr Daubney, and may I also thank the Bar Association for their support and assistance by broadcasting to all of their members, immediately, the announcement of this ceremony and the appointment. It is very much appreciated.

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Yes, Mr Eardley, I invite you to address the Court.

MR EARDLEY: Thank you, your Honour. Your Honour, I will take the opportunity to join in and adopt all the remarks that have been made about your Honour. It is a pleasure for me to be here today. Mr Pinder apologises for his absence but it gives me a great opportunity to give my personal appreciation of the time that I have worked with you on the Law Society Council and to say that there are very many people that you have worked with on committees and on the council who are delighted with your appointment.

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Judge Irwin, I should say that his Honour does have a very
broad range of qualities. At a recent council meeting, about
four or five of the councillors couldn't make their computers
work. His Honour jumped the bench and went around the floor
plugging in the computers with great skill. The meeting was
able to start.

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Your Honour, the role you have played on the council of the
Society has been of enormous benefit. Again, at a recent
discussion within the council as to the actual role of an
Attorney's representative on the council, there was debate.
One of our fellow councillors, inquisitively said, "But isn't
Brian just like one of us?"

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Your Honour, your actions on the council have been that you
have been one of us and we are very grateful for your
contributions. So, on behalf of the solicitors of Queensland,
we very much welcome your appointment.

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HIS HONOUR: Thank you, Mr Eardley, and thank you for
reminding us all of the other qualifications that Magistrate
Kilmartin brings to the Court. I expect that in the age of
technology which this Court is embracing that things will work
a lot better around the Southport Magistrates Court in future.

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I now give you the opportunity to respond, your Honour.

HIS HONOUR: Your Honour, thank you, you are very kind, and multi-skilling seems to be more and more part of our society. But I begin by acknowledging other judicial people that are here this morning, particularly the Chief Justice and other Judges and so many of you who have come over at such short notice. It is just absolutely wonderful that you could all find the time for me. I really do appreciate it and I say that most sincerely.

I want to acknowledge in particular my family. I will not read them all out. Unfortunately, Mum cannot be here because of illness but that is the way it is. I have always been, since my time at the law school, most interested in the Magistrates Court and that is because I have always had an interest in life in the ordinary, pedestrian person off the street. It is something that has always bothered me, to think that person must have the opportunity to have a go in society, whether that person is part of a union, or some organisation, it can be a club or it can be some other part of society, something or someone that does something to show interest in a person's concerns.

It troubles me that in society sometimes, people are becoming alienated because they feel that no one is interested in them; not interested in their little problems, little problems for individual can be easily magnified out of all proportion and really amount to a lot in his/her mind, but not amount to much really when it is boiled down. But in the minds of those

people, they are very serious issues that require, often,
nothing more than someone to listen to them.

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Now, as we have heard from the speeches today, the Magistrates
Court is so important and that is why I consider it a great
honour to be appointed to this Court, because it is the part
of and the workings of the judicial system which concerns
itself with the ordinary person off the street. And I think
those of us who wish to live in a cohesive society, those who
are concerned that we can all live together, in a community,
would strive always to see that the individual is given an
opportunity to have his or her say and to be represented and
to be given assistance, whether it is medical or legal or any
other form of assistance and we should not forget the
structures, in society, as playing a very important role in
achieving those goals.

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I mentioned my family earlier, of course, which is most
important to me, and I thank my wife Ela and children and in-
laws for all their support. I also want to thank the firm
Sciacca's Lawyers and Consultants. I have only ever been in
one law firm, Sciacca's Lawyers and Consultants and as was
mentioned to me, a few minutes ago, tomorrow I celebrate by
twenty-third year as a solicitor.

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Sciacca's Lawyers to me epitomise those goals and objectives
that I referred to a minute ago, under the leadership of the
Honourable Con Sciacca. Con was always a pioneer, even when I

was a law student, in worrying about delivery of legal services, perhaps to the less well-off, to many of the people who had to come to the Magistrates Court.

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In fact, the firm pioneered the idea of first free consultations and just trying to give access to justice. And it is that spirit which has permeated the firm for many years that has made the firm such a wonderful place to be in.

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I am very, very happy that so many personages from our firm have been able to come down this morning and be part of the ceremony. I thank them so much for all of their help and encouragement and I wish them well for the future. There are a number of them are much younger than I am and there are a number of law students, work experience students as part of the group. I know they have a wonderful future in the law and I wish them all the best for that.

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To the council of the Law Society, I would have to acknowledge the tremendous work of the Law Society. I know it is easy - and I tried to touch on this before - to condemn structures, without understanding what is not there if you take the structure away. The Law Society, if you like, is the union of solicitors; it represents the solicitors and it also plays a very important part in the life of the community and the life of the legal world in particular.

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I would, without any hesitation, record the fact that being a council member of the Law Society is the heaviest workload of any voluntary organisation I have ever been associated with.

It is an enormous task in the council of the Law Society and I thank my colleagues. It is just not me but all of the solicitors over the years who have been on the council. I think they have worked terribly hard.

For the Bar Association too, the members there deserve adequate praise, tremendous praise for the work they do, all done on a voluntary basis. I thank Mr Attorney and I thank the representatives of the Bar Association and the Law Society for coming here this morning and speaking of me in such gracious, perhaps undeserved terms, but it was all very nice of you to come.

It is the Christmas season. Christmas has long been a time of thanksgiving. So, again, I thank you all for coming. I wish you all a happy Christmas and I look forward to seeing you all again in a professional capacity when we get down to work in the New Year. Thank you.

HIS HONOUR: Thank you, your Honour. Another attribute, the ability to give an ex tempore decision, spoken from the heart, without notes.

I would like to join with his Honour in extending to each and every one of you who is with us this morning, the best wishes of our Court for a safe and a happy festive season and a happy 2007, in which we will all again discharge our respective roles in the public interest.

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I invite all of you who are present, who are able to do so, to join the Court, his Honour Magistrate Kilmartin and his family, for morning tea on level 9. I direct that the proceedings be recorded and that Joel McCrae be the recorder and I adjourn the Court.

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THE COURT ADJOURNED

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