

TRANSCRIPT OF PROCEEDINGS

MAGISTRATES COURT

JUDGE IRWIN, Chief Magistrate

BLACK, Magistrate

PREVITERA, Magistrate

KLUCK, Magistrate

IN THE MATTER OF THE SWEARING IN OF
MAGISTRATE THOMAS JOHN BRAES

CAIRNS

..DATE 11/10/2004

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.

Also present:

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On behalf of the Bar Association of Queensland and the Far North Queensland Barristers' Association:

Mr A Philp SC

On behalf of the Queensland Law Society:

Mr G Ferguson, President

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CRISTINA HARRIS APPOINTED AS RECORDER

HIS HONOUR: Good morning. I would like to welcome you to this ceremony to mark the occasion of the swearing in of Thomas John Braes as a Magistrate of Queensland.

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I would firstly like to acknowledge the traditional owners of this land on which this Court is situated.

I would like to acknowledge the presence of Justice Jones and Judge Bradley and the other distinguished guests here this morning, including Mr Fitzsimons who is sitting with them in the jury box this morning. Mr Fitzsimons, as many of you will know, is a former Magistrate of this Court.

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Justice Jones and Judge Bradley and also Judge White, who cannot be here today and extends his apologies, have both asked that they be joined to my congratulatory remarks this morning and to say that they welcome the appointment of Tom Braes to the Magistrates Court Bench.

I would particularly like to thank his Honour Justice Jones once again for making this Court available to us for an important ceremonial occasion. This is the third time that he has done so in the past 12 months and it is yet another outstanding example of the collegiality that exists across all levels of the Court in this State.

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I also welcome Mr Philp, Senior Counsel, who represents the Bar Association here this morning, and it is very pleasing also to see that Mr Ferguson, the President of the Law Society, has joined us from Brisbane to participate in the ceremony this morning.

I also welcome the other members of the legal profession who are in this courtroom this morning and also the very many relatives and friends of Magistrate Braes who have joined us.

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I particularly wish to acknowledge Tom's wife, Karen, and two of his four daughters, Amy and Michelle, who are able to be with us this morning.

It is also pleasing to have with us the Mayor of Mareeba, Mr Borzi, and Mrs Borzi. I have already welcomed Mr Fitzsimons. There are other retired Magistrates with us this morning. It is somewhat difficult to make out everybody from where I am sitting, but I welcome Mr Lynn, whose position Tom is filling; also Messrs Spicer and Christensen, who were for many years at Mareeba and Herberton respectively and in whose Court Tom has appeared. Also Mr Scanlan is unable to be with us this morning, another well known Magistrate from this area, but he sends his regards and wishes to join in the comments that I am making this morning.

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The Townsville Magistrates have also sent their congratulations to you, as have Magistrates Spencer, Lock and Sarra, who are all appointed to Cairns and the surrounding areas but who are on circuit and working away from Cairns this morning and are unable to be here.

The Attorney-General is unfortunately not in the State today and he, as does the Director-General of the Department of Justice, sends his good wishes and his apologies.

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The Attorney-General has said publicly that he appoints Magistrates having regard to their legal experience and also their character as demonstrated by a broad life experience and community involvement.

Magistrate Braes clearly manifests all of these qualities. Although it can't be said that he worked his way up from sweeping the floors, he was at one stage a telegram boy. His life experience has seen him, amongst things, working as a tyre fitter, doing bar work and even being a process server. At a young age he camped on river banks with his father who could truly be described as a crocodile hunter.

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It was in 1970 that he first became involved in the Queensland legal system as a clerk with the Magistrates Court at Mount Isa. He was 15 years of age. Like many of our current Magistrates, he honed his typing skills as a depositions clerk in that era.

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He transferred to Townsville where in 1978 he joined the Crown Prosecutor's office as a clerk. He remained there until shortly after he was admitted as a solicitor in 1982. It was during this period, when I was appointed as the northern Crown Prosecutor in Townsville, that I first met Tom. Gary Davey, who now heads the Commonwealth Director of Public Prosecutions in north Queensland, was also a clerk in the office on that occasion and it is very pleasing to see that Gary has been able to join us this morning to share in this occasion.

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Although Tom and I have had relatively fleeting contact over the last two decades, I look forward to the opportunity that this appointment brings to renew that contact and to work closely with him.

As a solicitor he has engaged in general practice across the broad range of the jurisdiction which confronts Magistrates daily in these Courts.

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He will be able to put his talents as an accredited Queensland Law Society mediator to good use in his new position.

He has been a partner in firms in Charters Towers and since 1988 in Mareeba. His first partner in the Mareeba firm was his brother Barry, who also has a connection with the Magistrates Court having been a clerk of the Court and at times an acting Magistrate.

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Throughout all of this time Tom has been a significant contributor to the community. Without purporting to be exhaustive, his list of achievements include being the secretary and the president of the Mareeba Chamber of Commerce, being an honorary solicitor for many community organisations, being a chair of the Red Shield Appeal, and being a member of many community Mareeba institutions such as the Wetland Foundation Board, the Mareeba Ambulance Committee and the Heritage Museum Building Committee.

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Prior to his appointment, he had been the chairman of the steering committee to establish a community bank branch in Mareeba and Dimbulah and he also has experience as a deputy chair of the Parole Board for the Lotus Glen Correctional Facility.

Not surprisingly as a result of this catalogue of community service, he has received a Mareeba Shire Community Service Award and he has been nominated for a Citizen of the Year Award.

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In private practice, in keeping with his new peripatetic existence as a Magistrate, he has worked in Hughenden, Richmond, Julia Creek, Georgetown and Weipa.

The regional experience that I refer to makes him an ideal appointment under legislation which expects Magistrates to serve in regional areas. Magistrate Braes will spend his first year in Cairns before returning to constitute the Court at Mareeba. This is consistent with the aim of ensuring a just and equitable transfer system through the appointment to regional areas of persons with an interest in regional service wherever this is possible.

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The appointment, as I have indicated, fills the vacancy which was created by the retirement of Ken Lynn in August. In two weeks Magistrate Wendy Cull will be moving from Ipswich to take up the position of Relieving Magistrate, Northern Region, based in Cairns. From this time there will again be a full permanent Bench of Magistrates in Cairns and the surrounding areas.

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From what I have told you about Magistrate Braes it can be readily seen that the unwarranted criticism that is often

levelled at members of the judiciary that they are out of touch with the community could not legitimately apply to him.

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In addition to what I have already mentioned, he has worked in the mining industry, both above and below ground, on a drilling rig with his father. He, Karen and their family have participated with Dr Alex Cook and his team from the Queensland Museum in digging up Dave the Dinosaur at Chillagoe and he has also been involved in the Elliot dig at Winton.

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This will obviously equip him with the ability to drill down and dig to find the buried facts which are often necessary to make properly informed judicial decisions.

So on behalf of the Queensland Magistracy I have much pleasure in welcoming you. I know, given the vast amount of experience that you bring to the Bench, that you will hit the ground running. You have already shown dedication in using the time since your appointment was announced to prepare yourself for your new judicial role and some of you may have seen Tom about the Courts sitting on the Bench with his new colleagues last week absorbing the atmosphere and learning about the operation and the practicalities of operating a Magistrates Court.

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You should also know that you will receive, as I have done, a great deal of support and advice from your new colleagues.

So, Magistrate Braes, it gives me much pleasure to welcome you back to where you started your legal career in the Magistrates Court. I'd like you to please stand and to take the Bible and I'd ask you to read the oath of office.

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OATH OF OFFICE ADMINISTERED

HIS HONOUR: Congratulations. I'd ask that you keep and accept this Bible as a memento of your appointment and swearing in ceremony today. I'd also ask that you sign these documents to complete the formalities.

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Mr Philp, I call on you to address the Court.

MR PHILP: Your Honour, your Worships, it's my very great pleasure to speak on behalf of the Bar Association of Queensland and the Far North Queensland Barristers' Association on this truly wonderful appointment.

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The president of the association, Glen Martin SC, has asked me to convey that he endorses the comments I'm about to make, which is brave of him because he doesn't know what I'm about to say.

Tom is a noted local practitioner with many years of experience in many, many areas of the law. His knowledge of

the law, his integrity and his deep understanding of human nature will hold him in great stead in his new position.

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Tom's community involvement is legendary. His Honour has already pointed out some of the affairs that Tom has involved himself with - I'll just point out a couple more. He has continuously been involved in the Lions Club, Mareeba. He actually restarted the Mareeba and District Chamber of Commerce and served as president and on the executive. He's a foundation member of the Mareeba Heritage Centre and Museum Committee. He's a member of the District Ambulance Committee and he's a congregational leader at St George's Anglican Church in Mareeba.

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And on a personal level, these two attributes should hold him in great stead as a Magistrate in his position: he is a camp oven cook of great repute and he has actually recited bush poetry at this year Gympie Country Music Festival. Now, many of your brethren will not have done anything like that.

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The Bar welcomes your appointment and we all look forward to appearing before your Worship for many years to come. Congratulations.

HIS HONOUR: Thank you, Mr Philp. Mr Ferguson, I invite you to address the Court.

MR FERGUSON: May it please the Court. Thank you for your invitation to be here today to represent the Queensland Law Society and the solicitors of Queensland as we farewell from our ranks a solicitor who represents the very soul of our profession and who we welcome to his new and responsible position as a Magistrate.

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I come here with mixed feelings. When I read Thomas Braes' resume I could only wonder at his extraordinary community commitment, his selfless and myriad public roles and his apparent boundless energy. That he is a solicitor of impeccable standard, unshakable integrity and truly representative of everything our profession should strive for is beyond question, so I regret his departure from our ranks.

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However, it would be remiss of me not to say that our loss is a tremendous gain for the Magistracy. The Attorney-General, when announcing Mr Braes' appointment in late August, described him as an outstanding member of the Far North Queensland community and noted that his broad community experience, coupled with his skill as a legal practitioner, will make him a great asset to the Bench. I could not agree more.

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Not yet 50, Thomas Braes is truly a son of his north Queensland community having been born in Mossman, educated at primary and secondary schools in Mareeba, married in Townsville, serving as a Magistrates Court clerk in Mount Isa and Townsville, and since 1983, the year after being admitted, a prominent solicitor and citizen of his old home town Mareeba.

In an age when specialisation is becoming the vogue, the crucial role and responsibility of general practice solicitors in country towns is sometimes forgotten. Perhaps sadly too few practitioners nowadays fail to appreciate the extraordinary professional satisfaction that can be derived from being so central and so important to a small community. The genuine respect and appreciation received by a practitioner serving and being part of a local community is certainly professionally satisfying.

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When you are a member, and usually an office bearer, and honorary solicitor of organisations as diverse as the Charters Towers Country Music Association, the Mareeba Salvation Army Red Shield Appeal, the Mareeba Police Community Consultative Committee, the Mareeba Ambulance Committee and many others as Mr Braes is, then you are certainly a part of your community.

When your practice covers everything from contracts, leases, family law, criminal law, GST and dispute resolution and you are a Commissioner for Declarations and a Notary Public as Mr Braes is, then you are certainly well equipped to serve as a Magistrate.

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In congratulating our newest Magistrate might I also say that you are joining a Bench which is enjoying a renewed and enduring public respect under the leadership of his Honour Judge Irwin. I can assure you that his Honour's leadership, support and understanding will always be there for you as will be the wide community support and friendships that you have so honourably earned.

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My best wishes and those of your many friends and colleagues of the Queensland Law Society are truly and sincerely expressed, and long may you serve your community and be such a shining example of all that is good for the law.

It is a privilege to be here to address the Court today. May it please the Court.

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HIS HONOUR: Thank you, Mr Ferguson. Thank you for those kind words. Magistrate Braes, would you like to respond?

MAGISTRATE BRAES: Thank you. Your Honours, fellow Magistrates, members of the legal profession, distinguished guests, friends, thank you for making this ceremony special for me today. When I was admitted as a solicitor in 1982 I had to travel abroad, to Brisbane, to be admitted. Although that was an important milestone in my life, my wife and family were unable to attend. To take this oath in this Court in north Queensland is very significant to me.

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I am very proud to accept my appointment as a Magistrate for the Magistrates Court of Queensland. It is a goal that I had always yearned for but had thought that, with my resignation from the public service, was lost to me.

I wish to thank the Minister for recommending my appointment, notwithstanding our previous exchange when he had a different portfolio and I was agitating for the construction of a water storage facility near Mareeba.

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I would like to thank Judge Irwin for supporting me in my application, notwithstanding my toddler's indiscretion on his office carpet when I was his clerk in the early eighties.

I wish to thank those of you who have spoken this morning in such glowing terms, notwithstanding that I have not yet delivered the fee on brief.

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I hope that I am able to confirm your faith in me by honouring the position with of dedicated professional service. I have been completely surprised by the support that I have received from the public and members of the legal profession. I have no illusions that I'm entering into a role that is different to any other that I have been engaged in, and I am bound to have some hiccoughs, but I am confident that my association with the Courts over the last 30 years will help me to settle down quickly and hopefully, I'll not clog up the higher Court appeal books with my decisions.

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I am certainly fortunate to be able to start a new career at my age and not have to worry about moving to a new location.

As I said, I am very proud to accept my appointment, not just because it is a significant judicial appointment, but for me it is an achievement that at the age of 15 would have been a million to one of happening.

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Occasionally I have the opportunity to speak to school-aged young adults. I tell my story to students reluctantly to encourage them to try hard and not to give up hope because of a failure in their initial exposure to the education system. As has been said, I completed my formal education at Mareeba State High School year 10 at age 15. My parents were not professional people, they were not doctors or lawyers, there were six of us children.

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My appointment to the Magistrates Court in Mount Isa in 1970 was obviously an opportunity that I was offered and obviously, thankfully, I recognised and took advantage of.

Some of you here today may be aware of and even studied for and qualified as a clerk of the Court and Mining Registrar, which is what I did. If you did not have a senior grade qualification, this qualification entitled you to sit the Queensland Solicitors Board. This all sounds easy when you say it quick, but getting married, having twins, working sometimes at several jobs and studying is not something that one would do if there was an alternative.

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I missed the opportunity of completing a formal secondary school education and it concerns me today that in an age when we should be achieving so much, many of our young adults are unable to read and write. This is a critical issue which

leads to low self-esteem, unemployment and often bad behaviour. I may not be able to do much about the education standards of young adults, but I certainly will try to encourage those I may have to deal with to shake off their cloak of indifference and to set a goal of personal achievement.

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I am confident that my commitment to my early study and the growth of my legal practice remains with me and will help me now, especially as I start off as a greenhorn Magistrate.

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As has been said today, I have had an association with many community groups for many years. I trust that my association with various organisations gives me a sound appreciation of community expectations in sentencing and that my appointment does not isolate me from those expectations.

Finally, I wish to thank my wife of 28 years for sticking it out when the workload was such as to make one distant and unsociable. Certainly, but for her support, I would not be here today. Thank you.

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HIS HONOUR: Thank you, Magistrate Braes. I would like to observe in closing what a pleasure it is to see such a wide cross-section of people in this Court this morning from the community, from the legal profession and from the justice profession in general.

That cross-section of support is also eloquent testimony to the great deal of pleasure that your appointment has given to many people and you're entitled to move forward in the confident belief that that support which has been demonstrated here this morning will be fulfilled.

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I know that some of you may have to go off to meet other work commitments in Court and elsewhere but for those of you who are able, particularly those retired former Magistrates who are beaming at us this morning, I would like to invite you to join us for morning tea in the jury assembly area on the third floor of this building.

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THE COURT ADJOURNED AT 9.43 A.M.

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