



## Transcript of Proceedings

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Date: 21 March, 2005

SUPREME COURT OF QUEENSLAND

de JERSEY CJ AC  
McMURDO P  
McPHERSON JA CBE  
WILLIAMS JA  
JERRARD JA  
MOYNIHAN J AO  
MACKENZIE J  
BYRNE J RFD  
WHITE J  
FRYBERG J  
HELMAN J  
MUIR J  
CHESTERMAN J RFD  
WILSON J  
ATKINSON J  
MULLINS J  
HOLMES J  
PHILIPPIDES J  
McMURDO J  
DOUGLAS J

IN THE MATTER OF A SWEARING-IN CEREMONY FOR THE HONOURABLE  
JUSTICE KEANE AS A JUDGE OF APPEAL OF THE SUPREME COURT OF  
QUEENSLAND

BRISBANE

..DATE 21/02/2005

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On behalf of the Government of Queensland:

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The Honourable Rod Welford, Attorney-General and  
Minister for Justice, with Mr W Sofronoff QC,  
Solicitor-General

On behalf of the Bar Association of Queensland:

Mr G Martin SC, President

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On behalf of the Queensland Law Society:

Mr R Davis

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KEANE JA: Chief Justice, I present a commission appointing me  
a Judge of the Supreme Court of Queensland and a Judge of  
Appeal.

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THE CHIEF JUSTICE: Let the commission be read.

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COMMISSION READ

THE CHIEF JUSTICE: I now ask Justice Keane to take the oaths  
of allegiance and of office.

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OATHS OF ALLEGIANCE AND OF OFFICE ADMINISTERED

THE CHIEF JUSTICE: In welcoming all present here this  
morning, I acknowledge with thanks the presence of the Chief  
Judge and Judges of the District Court, Judges of the Federal  
Court, Magistrates, Tribunal members, and retired Judges.  
Some of our colleagues cannot be here: all would wish to be  
associated with what I am about to say.

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I should not however develop the celebratory aspect of this morning's ceremony without first acknowledging, with profound regret, the inexpressibly tragic circumstance which has befallen our Federal Court colleague and friend, Justice Richard Cooper. I speak for all the Judges of this Court in confirming our heartfelt concern for the Judge, and for Mrs Penny Cooper and their children, and our anxiety to seek to provide any support which may be desired.

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I warmly welcome Justice Keane to the Supreme Court and its Court of Appeal division. His Honour becomes one of the 24 Judges of our State's highest court and the eighth appointee to the Court of Appeal division in its 14-year history. For those who enjoy lists and data, I mention that Justice Keane is in fact, on my additions, the 99th appointee to the Supreme Court in its 143-year history. As another point of interest, more than a third of those appointments have occurred over the last 25 years, consistently with the recent development of the State with increasing need for legal, including judicial, facilities.

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All members of the Supreme Court must be lawyers of indisputable learning, wisdom, experience and common sense, with all of those qualities evident in very high measure. Judges of Appeal must additionally exhibit talent for appellate determination. In those contexts, Justice Keane brings impressive credentials to the court.

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I am obviously very pleased to acknowledge the government has risen well to the challenge of finding a highly qualified replacement for Justice Davies, who resigned from the court on 11 February. It is of the utmost importance to maintain the conspicuously high quality of the Supreme Court bench. The strength of a State's judiciary has many serious impacts, including economic. Those inclined to invest in the State, for example, expect an utterly reliable high level dispute resolution mechanism. The People's Republic of China in recent decades is coming to an acute appreciation of that. Fortunately we do in this State boast a Supreme Court of high quality. I am reassured by the government's apparent dedication to the maintenance of that standard.

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We are all gratified by our former colleague, Justice Davies's presence here with us this morning. He eschewed a valedictory ceremony, but acquiesces in my saying six short sentences about him this morning, although I should make clear that he has left their content to my entire discretion. Justice Davies served on the Court of Appeal from its inception in 1991, and with great distinction. Our much respected former colleague, and continuing friend, exemplified the qualities characteristic of judicial pre-eminence, and my saying that has nothing to do with elitism or judicial pretension. It bears on the real needs of our community which, as I have said, presuppose appointments of the highest order to this, the State's highest court. Justice Davies's contribution to the Court was substantial. With others, I look forward very much to his continuing contribution to legal debate and reform

within the State and nation. I am confident it will be well-informed, inspired, and challenging.

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Our new colleague Justice Keane comes to the court from a distinguished 27-year career at the Bar. Admitted in 1977, his flourishing practice led to his appointment as Queen's Counsel in 1988 and he has since 1992 held office as the State's Solicitor-General. He has, through all of this, exhibited distinctive expertise, as an astute lawyer, especially in commercial and constitutional matters, and as a compelling advocate.

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He earlier attained the highest echelons of academic achievement with an Open Scholarship in 1969, first-class honours and a university medal upon his graduation in law in 1976 and a Vinerian Scholarship from Oxford in 1977 - among other qualifications and honours.

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In welcoming Justice Keane to the court, we welcome also, into the court community, his wife Mrs Shelley Keane, and their three sons. Mr Attorney.

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THE ATTORNEY-GENERAL: May it please the Court, Chief Justice, President of the Court of Appeal and Judges of Appeal, Judges of the Supreme Court, Chief Judge and Judges of the District Court, Judges of the Federal Court, Chief Magistrate and Magistrates, members of Tribunals.

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May I also take this opportunity to acknowledge and welcome my new Solicitor-General Mr Walter Sofronoff QC and may I acknowledge and pay respects to the traditional owners.

This morning is a significant occasion for me as Attorney as indeed it is for the Supreme Court. The appointment of Justice Keane to the Supreme Court as a Judge of Appeal is a very significant moment in the history of our State as indeed it was when the previous Solicitor-General was appointed to the Court of Appeal and may I join with the Chief Justice in acknowledging the long and distinguished service of Justice Davies on the Court of Appeal and his outstanding contribution to our State in that role over 13 years.

In an audience like those here this morning not much needs to be said in support of Justice Keane's appointment. He is, indeed, an outstanding member of the Queensland legal community.

Admitted to the Bar in 1977 and appointed Queen's counsel in 1988, he succeeded Justice Davies as Solicitor-General of Queensland in 1992 up until last week.

As Attorney-General I can vouch unequivocally for the fact that Justice Keane was an outstanding Solicitor-General more so for the fact not just that he appeared for our State in the High Court on many significant matters but, particularly, because of the regard and respect with which he was held by other Solicitors-General throughout Australia.

He was seen by the High Court and other Solicitors-General as one of the nation's leading Queen's Counsel. His support for executive government and, in particular, for me in my role as Attorney-General since 2001 has been exemplary and it will be a difficult act for anyone to follow.

The role of Solicitor-General is a very important one for executive government. It assists executive government not only in appellate advocacy before the High Court on significant constitutional matters and matters relevant to upholding State law but also in advising government on issues of State significance spanning many, many departments of government.

The advice that the Solicitor-General provides them is fundamental to the stability of the institutions of State and, in that role, I am pleased to say Justice Keane has served this State superbly and I will forever be grateful to him for that.

In his new role I have no doubt, as the Chief Justice has mentioned, that Justice Keane will play a significant part in the development of the law of Queensland which is a part of the role of the Court of Appeal.

The Court of Appeal in Queensland is becoming increasingly the subject of public and media scrutiny. Its judgments and decisions are more carefully considered in the public forum than perhaps in past years.

I have full confidence in our Court of Appeal and all members of our Supreme Court in delivering justice according to law and notwithstanding the occasional comment from the fourth estate, I am pleased to say our Courts serve our State well.

May I wish Justice Keane every success for a long and distinguished career on the Court of Appeal and I am sure that he will proceed to serve our State in that role with as much distinction as he has served our State in his previous role as Solicitor-General, may it please the Court.

THE CHIEF JUSTICE: Thank you, Mr Attorney. Mr Solicitor, in inviting you to speak I express the congratulations of the Court on your appointment as Solicitor-General.

THE SOLICITOR-GENERAL: Thank you, your Honour. Your Honour, Justice Keane, I have not had a greater pleasure in my life at the Bar than to rise and address the Court today on the occasion of your appointment and it gives me particular pleasure to do so as my first task as Solicitor-General, the office that you formerly held. The Attorney-General is right when he says that it will not be any easy task to follow the model that you have set.

Together with past and present Bractonians I wish you all the best upon your appointment and for your future on the Bench. I loved having you as a Chamber mate. I hated appearing against you. You set a standard of professionalism that was impossible to match and like everyone else I tried very hard



to keep up with you. You are thorough beyond belief in your preparation and there just was not any point in appearing against you unless one was prepared to drill right down to the bedrock of the case and to understand the case as well as you. You were merciless in detecting and ruthless in exploiting the slightest weakness in your opponent's argument and then you would roll your intellectual panzer division right over your opponent. All of that was merely a part of your complete thoroughness.

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Twenty-one years ago I remember your Honour told me that your aim for your life at the Bar was to be regarded as a mean and cerebral medium-paced bowler. I think - to pursue the metaphor - you have succeeded in taking many, many wickets at the highest level and you have sent many a baffled batsman back to the pavilion wondering what had happened. But to me you have always been a tiny, distant figure on the horizon, loping along steadily, inexorably, never ceasing and I have had to run as fast as I could just to keep you in sight. And now, exhausted, I am looking forward to a brief rest.

I offer your Honour my own warmest congratulations and those of your past and present Chambers colleagues. May it please the Court.

THE CHIEF JUSTICE: Thank you, Mr Solicitor. Mr Martin.

MR MARTIN: The Irish, your Honour, have always played an important part in the development of the law, not least in

Australia. You are a part of that tradition. More particularly, you join a long list of judicial Keanes who, as part of the Irish diaspora, have spread around the world. I need only mention a few.

At the point of origin, the recently retired Chief Justice of Ireland, Ronan Keane; in the High Court of New Zealand another Patrick Keane; Kevin Keane in the Superior Court of New York and, of course, the well-known tournament Judge, John Keane, of the World Boxing Federation.

The first mention of a Keane being involved in the law in Australia concerns a case heard in 1831 before Mr Justice Dowling sitting with a jury in the Supreme Court of New South Wales. In that case, a Reverend Keane described as being of the Church Militant was sued for damages for assault. A man who had become lost at night entered Keane's property to seek directions. The clergyman, apparently fearful of bushrangers, attacked him with a sword cane and inflicted four severe wounds.

At the trial, evidence was given that Keane had placed his pistol near the intruder's head and told him that if he did not retreat without looking either to the right or the left he would blow out the intruder's brains and send his soul to the devil. The report of the case notes that, at that point, a general buzz of surprise and disgust ran through the crowded Court. Those who have appeared against you know the feeling of that intruder.

Let me come to the present. When your Honour returned from Oxford and commenced practice you also lectured on a part-time basis at the University of Queensland. I was fortunate to be in one of the years in which you lectured on conflict of laws. You made a difficult subject interesting and your style of lecturing was refreshingly different from others in the faculty. Unfortunately, I'm still waiting for the brief in which I might consider the incidental question or a case where I might witness a double renvoi in all its glory.

Upon entering practice you were immediately successful and have continued to be so. You have often been involved in cases which have effected a change in the law. Just as the content of law has evolved, the practice of law has not been resistant to the inroads of technology. But your Honour is not one given to adopting what you see as only a passing fad or fancy.

Concerned that the current global interest might only be ephemeral, you have disdained the use of computers; placing them in the same category as Rubik cubes, domestic yoghurt makers and mobile telephones. You have, though, accepted the metric system with grudging reluctance although you still pine for the days when opinions went out on foolscap and fee notes on quarto.

After taking silk, your practice continued to blossom and you were a master of the many areas in which you were briefed. You were able to generate a true interest in all these matters

except, perhaps, engineering or construction briefs which you described as "cases about bits of things".

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Your appointment as Solicitor-General was applauded by all and since that time you have appeared in the High Court on more than 50 occasions and in the Court of Appeal in over 150 matters.

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As Solicitor-General, you appeared for the State many times in the High Court and in many cases in which all the States were represented. On one such occasion when the States were gathered in Canberra to valiantly resist another Commonwealth incursion, a State of Origin match took place on the evening on one of the hearing days. All States had finished their submissions and you issued a general invitation for anyone who wanted to see New South Wales being beaten to watch the match in your room. Not surprisingly, there was a large group. But goodness is not always rewarded and on that night Queensland lost. As the pizzas went cold and the conversation stopped, you were philosophical, "Well," you said, "it wasn't as bad as the Boyne, but only just."

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I am happy to join with the Attorney-General and the Chief Justice in congratulating your successor as Solicitor-General. There will, no doubt, be changes in style, emphasis and approach exemplified, perhaps, by the fact that your surname is bereft of the letters "o" and "f" whereas my learned friend's name has surfeit of them.

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Much has been said today and in days past about your undoubted capability and how well you suit this appointment. There can be no doubt that you have been Queensland's premier barrister for many years, but one does not have to be parochial in order to make this observation about the standing which you had at the Bar.

In 2003 the High Court of Australia marked its centenary with a conference. Speakers included the Chief Justices of Canada and New Zealand, the senior Law Lord and a number of internationally renowned academics. It was a fitting recognition of your Honour's place among practitioners that, of the almost 5,000 barristers in Australia, you were the only one asked to speak.

Your Honour goes to the Bench with the complete confidence of the Bar. Seldom has an appointment been so well received. We congratulate you and wish you well. May it please the Court.

MR DAVIS: May it please the Court, I trust that it is not too demeaning to admit that members of the profession - or at least my branch of it - are inveterate gossips and that there is no subject of more consuming interest and speculation than who might be elevated to the Bench. The higher the Court, the higher the level of interest of course and sometimes the speculation can become quite bizarre. Thus, in recent weeks, there has been quite a frenzy of discussion - in the best possible taste naturally - about who might be the new Judge of the Court of Appeal and fuelled by media speculation also

there was no doubt among the chattering classes that our popular and highly esteemed Solicitor-General would be appointed. An extraordinarily unanimous consensus of all of this discussion was that this appointment would be sincerely welcomed, universally applauded, considered wholly justified et cetera.

His Honour was marked for high office early. It is now almost 30 years since his graduation from the University of Queensland in 1976 with a Bachelor of Arts and a Bachelor of Laws with first-class honours and a university medal not to mention the Walter Harrison prize, the Virgil Power prize and the John Hughes Wilkinson prize.

In 1977 his Honour was admitted as a barrister and the following year was awarded a Bachelor of Civil Laws from Oxford with first-class honours, again scooping the Vinerian scholarship and the J H C Morris prize. From 1978 to 1992 his Honour practised as a barrister appearing principally in commercial and constitutional cases and those in my branch of the profession who had the privilege of briefing him and working with him speak in awe of his incisive grasp of the most complex briefs, his acute skills in debate and argument and his prodigious memory and attention to detail. Not surprisingly, his Honour became one of Her Majesty's Counsel in 1988 after a comparatively short 10 years at the Bar.

In February 1992 came his appointment as Solicitor-General, which was rightly considered a coup for the then Labor

Government. He was reappointed in February 1997 by the then  
Coalition Government which was rightly regarded as sound  
commonsense and reappointed again by the current Government in  
February 2002, which was rightly viewed as the natural thing  
to do. Successive Governments, Attorneys-General and people  
of Queensland have been well served, professionally, ethically  
and indeed enthusiastically by his Honour in his previous  
position. There is no doubt that his Honour's remarkable  
record of service and commitment to the rule of law and the  
interests of justice will continue on the Court of Appeal.

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On behalf of the President of the Queensland Law Society,  
Glenn Ferguson, who regrettably cannot be here today, and  
every solicitor in Queensland, it is my very great honour to  
extend to his Honour the warmest congratulations and welcome.  
And I should also say for Mr Justice Davies, congratulations  
on a period of exceptional service to Queensland and may you  
enjoy your retirement. May it please the Court.

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THE CHIEF JUSTICE: Thank you, Mr Davis. Justice Keane.

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KEANE JA: Chief Justice, colleagues of the Supreme Court and  
of the Federal and Family Courts, of the District Court and  
Magistrates Court, members of the profession, ladies and  
gentlemen. Chief Justice, thank you for your expressions of  
confidence this morning, and for the warm welcome which you  
have already extended me on joining the Court. It is very  
satisfying to join the Court with so many friends who have  
been my mentors since my earliest days in the profession, and

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others who have been my close friends for three decades, since our time at university together.

I am acutely conscious of the value of their support as I set about the daunting task of trying, once again, to follow in the footsteps of my illustrious predecessor, Justice Davies, who I succeeded as Solicitor General and who I now to seek to try to succeed as a Judge.

Mr Attorney, thank you for the very kind things you have said. May I say, what a pleasure it has been to work with you, and how much I have admired the energy and diligence with which you discharge your office.

It has been a great privilege to serve as Solicitor General; to carry Queensland's colours in the high councils of the nation for 13 years has been a very special honour. I have served under four Attorneys. Mr Dean Wells, Mr Denver Beanland, Mr Matt Foley of counsel, and yourself.

Each of these gentlemen put into practice high ideals of public service, and worked long and arduous hours in pursuit of the public interest. Each of those gentlemen can point to significant legislative achievements. But from my perspective, the most remarkable of their tenure has been the Olympian calm which they have displayed in putting up with my unerring ability to lose important cases for the State in the High Court. And Mr Solicitor, it is just as well that you



have taken over while there is still something left of  
Queensland to defend.

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Mr Solicitor, may I particularly thank you for what you said  
and congratulate you on your appointment. You will, I have no  
doubt, thrive on the challenges ahead, especially when you are  
called to sally forth from the sacred soil of Queensland to  
resist the incursions of the Federals. Sometimes the omens  
for these contests will be less than encouraging. The odds  
against you may be of the order of six to one. You may often  
return from the fray, bloodied, but I have no doubt at all you  
will never return bowed. You will also, at those times, have  
a very eerie sensation that you know for certain just how it  
felt to serve in the Army of Northern Virginia.

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In relation to my services, Solicitor General, I must record  
my gratitude to my comrades in arms, Barry Dunphy, Robert  
Campbell, Greg Cooper, Steve Martin, Conrad Lowe, and the late  
Mr Ken O'Shea. No-one could have stauncher comrades. Mr  
Martin, thank you for what you have said. Through you, I wish  
to thank the members of the Bar, past and present, for their  
friendship, and for what they have taught me about the law and  
about life.

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Most especially in this regard, I want to acknowledge my close  
friends and the members, past and present of Bracton Chambers.  
It is difficult to imagine a better or happier place to work  
over the last 26 years. The easy going, but warm camaraderie  
of Bracton is simply irreplaceable and will be much missed.

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In very large part, the atmosphere in Bracton, as in any other set of Chambers, has been determined by our secretaries, and I want to thank them for making it such a pleasant place to work. And especially, I wish to thank Liz Cottle, who has, for so many years, driven lightly, but with an exhaustible good brace, to preserve order where otherwise chaos would have reigned.

Mr Davis, thank you for what you have said on behalf of the members of the Law Society. It is very pleasing to see here today so many of the solicitors with whom I have worked over the last three decades, and with whom I have become close friends.

Occasions like this sometimes take on a valedictory tone, as if the newly appointed Judge is leaving the world to join an enclosed monastic order. I certainly want to dispel any such suggestion on this occasion, because, as I look around the Courtroom I see many faces of solicitors who I will be seeing frequently, solely for non-legal reasons.

To all the members of the profession, I want to pause to say one sober thing, and that is that you are the heart and soul of the adversarial system of justice. This system depends on the willingness and ability of lawyers to fight their client's cases as well as they can be fought, and though, easy to say, this is no easy task to accomplish. The adversarial system, as has been noted, is under increasing scrutiny and criticism. The extent to which it survives that criticism is dependent

upon the ability of the profession and the Courts together to  
justify public confidence by ensuring the juridical decisions  
always reflect the great values of our common law inheritance:  
the values of openness, fairness, equality and rationality.

These goals cannot be easily achieved. The process demands  
much of the participants in the great endeavour which is the  
administration of justice. It is hard on those participants;  
not the least of all, it is hard on the Judges. The process  
generates considerable tensions. It sometimes produces strong  
differences of judicial opinion. Sometimes those differences  
are expressed less than felicitously, and sometimes they are  
simply inaccurate. That is not, I suggest, a matter for  
dismay or despair. It is simply a by-product of a great human  
institution grappling with the complex controversies of  
democratic self-government - controversies which cannot be  
stilled by the single voice of one wise individual. And as  
Saint Augustine said, in relation to the discussion of great  
issues, uniformity of opinion is the privilege only of angels.

Before I conclude, I must say something to my family, from  
whom you have already heard this morning. To my sister,  
Marlene, I want to acknowledge our parents, who endured so  
much and sacrificed so much to shower us with advantages and  
opportunities, with never a thought for themselves. To  
Patrick, David and Michael, you must have thought, when you  
were young, on those occasions when I was not at work, that I  
was in heavy training for the Australian Olympic sleeping and  
recumbency team. And in more recent years, you have relieved

me of the tiresome burden of having an opinion about anything at all. Thank you for your tolerance, cheerfulness, support, and love.

Shelley, as most of you here probably know, is strong, brave, capable and long suffering, though not necessarily in silence. In a life which has been filled with much more than my fair share of good fortune, it has been my greatest good fortune that she has been, and is, the love and light of my life.

In conclusion, may I say that, following as I am, in the footsteps of Justice Davies, I am under no illusion as to the size of the boots I must try to fill. I will do my best, and I thank you all for your support.

THE CHIEF JUSTICE: Thank you, Justice Keane. Let the proceedings be recorded. Adjourn the Court.

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