

## OBITUARY

Frank Xavier Costigan QC

14-1-1931 – 13-4-2007.

Frank Costigan, Queens Counsel, died on Easter Monday after 52 years at the Victorian Bar. He was acknowledged as a leader of the Bar throughout Australia. He was highly principled yet also a man of great compassion. He was influential in many areas of public life.

Upon meeting one found in Frank a gentle, courteous and mildly spoken man, attentive and responsive to what was being said. On closer acquaintance, it was clear that under that amiable countenance there was great strength of character. He did not hesitate to express his disapproval, saying it was 'unacceptable'. This was done without rancour, or emotion, causing no rift in association between he and his interlocutor, with the result that Frank ended his life with a wide society of friends around the world.

After education at St Patrick's College, he graduated at the Law School of Melbourne University and practised as a solicitor becoming a partner at Gillott, Moir & Ahern. Called to the Victorian Bar on 13 May 1957, he became a Queens Counsel on 7 November 1973, and was admitted to practice throughout Australia and in Ireland.

The Bar was much loved by Frank. He accepted, lived by and espoused its principles of independence and fearless advocacy. He gave unremitting service to it, being elected to its governing body between 1968 – 1979. In the last two years he was Chairman with its heavy demands and consequent difficulty in maintaining a practice. It was a difficult time with disagreements between the two branches of the profession, but in consequence of his skills those difficulties dissipated by the end of his chairmanship.

He was appointed Treasurer of the Law Council of Australia in 1978-1979, and Chairman of the Australian Bar Association in 1979. He served on many professional committees – the Ethics Committee, the Applications Review Committee, the Human Rights Committee – and was a conciliator where sexual harassment was alleged. The Victorian Bar is greatly indebted.

He applied himself to other professional committees – the Chief Justices Law Reform Committee, the Victorian Law Reform Committee, the Board of Examiners of the Supreme Court. There were others, such as the La Trobe University Proctorial Board on which he served over the past 13 years. He assisted in the development of the laws in other countries, one case being a law of property in Uganda.

Frank's early practice focussed upon workers compensation, where he and another, Howard Fox, dominated the field in the late 1950's and 1960's. At first, perhaps on account of his compassion, he acted for claimants; but later, in accord with the independence demanded by the Bar, he acted for insurers. It was rewarded by two trips to the Privy Council, and that whetted his appetite for international travel of which he later became so fond. His practice moved to industrial accidents and

personal injury, which work bourgeoned in the 1970's. For the last twenty years he has acted as an arbitrator – a Grade 1 Arbitrator of the Australian Institute of Arbitrators, and memberships of the Panel of International Committee of Arbitrators, the Australian Centre for International Commercial Arbitration, the Singapore International Arbitration Panel, the ACICA Arbitration Panel, and a Fellow of the Chartered Institute of Arbitrators in London.

Frank read widely, assembling a considerable library. He was interested in history, with a great interest in public policy, the events of the financial and commercial worlds, and media ownership and policy. At University, he was a foundation member of a Centre for Philosophy and Public Issues, and secretary of the Newman Society, the latter being an intellectual society of Jesuits concerned with issues of social justice. This developed an interest and disgust in the holocaust, and his library contains much written on how that appalling event came to pass.

Perhaps inevitably, this led to Frank joining the Australian Labour Party. His early years of membership were a time of great dissension. The ALP split in 1955, with the formation of the Democratic Labour Party to which many of the catholic faith migrated. It was a disaster for the ALP, destined to keep it out of power for many years. Frank, of catholic upbringing, may have been expected to migrate too, but he did not. He stayed within the Party, and together with others such as John Cain (later Premier), Richard McGarvie (later Judge and Governor), John Button (later Federal minister), Xavier Connor (later Judge), Michael Duffy and others, set about mending its divisions. It demanded political skill. In the end it was successful, with the elections of the Whitlam government and the Cain government in Victoria.

Frank held several offices in the ALP, chairing electorate committees, and its Foreign Affairs Committee. He demonstrated in opposition to the hanging of Ronald Ryan, marched in moratoriums opposed to the Vietnam War, protested at apartheid. Later he abandoned his membership of the Party, believing it had lost its way, but remained committed to principles of social justice.

Frank's social conscience resulted in more endeavours. In 1987 he was a member of the Brosnan Centre Management Committed, now Jesuit Social Services. He became Deputy Chairman for 12 years, until hospitalisation compelled retirement in October 2008. He was popular and decisive with an infectious sense of humour, contributing insight, intellect and wise counsel.

At the Bar Frank often appeared without fee for the impoverished. At times he was in the Northern Territory providing assistance to Aborigines, and later found, to his delight, that he had been retained (remuneratively) by Janet Holmes á Court to negotiate, amicably, land rights for aboriginal tribes. He was appointed to the Victorian Government Sentencing Task Force in 1989, was Chairman of the Victorian Government Drug Rehabilitation Fund between 1986 - 1992, and became a director of the Youth Substance Abuse Services in 1998.

Frank freely proffered assistance to other barristers. He was a member of the Barristers' Benevolent Association, attending to the welfare of barristers who had fallen into difficulties. He was counsel of choice for those accused of misconduct;

and often chosen to deal with problems arising between counsel which required counselling.

Frank is publicly known as Royal Commissioner into the activities of the Ship Painters & Dockers. There is not the space to deal exhaustively with this topic, but a few things should be said. As the inquiry was into criminal activities, Frank was adamant that the proper place for trial and punishment was the criminal court, not the commission of inquiry. Accordingly, where criminal activities were detected, they were quietly transferred to ordinary law enforcement agencies and prosecuted without reference to the Commission (so quietly that one Attorney general complained that the Commission had achieved no convictions). So too with the confidential volumes of the final report which contained recommendations not made public. Frank did regret the disclosure of current investigations which took place notwithstanding his fear it might happen, and his precautions to prevent it. Unlike the final reports, that which was disclosed contained no recommendations for prosecution, being confined to identification of matters for continued investigation.

The Commission was a success. It revealed and explained the pernicious effect of organised crime, and recommended the National Crime Authority, now the Commonwealth Crime Commission. It recommended laws for the recovery of profits of crime, the reporting of international financial transactions, and better enforcement of laws suppressing taxation fraud. There were a large number of successful prosecutions, and many millions of dollars recovered by the Taxation Office as well as confiscation of criminal profits. There is not the space to canvass all that was achieved.

Frank was much sought as a speaker on crime, especially corruption. He gave the John Barry Memorial Lecture in 1983 and the South Australian Justice Foundation Orator in 1991, and many others in Australia. He lectured in other countries, an example being Papua New Guinea, on fraud and corruption. He was consulted by law enforcement agencies.

Frank became Australian Chairman of Transparency International in 1995, an organisation devoted to combatting corruption. He was its champion, fighting against corruption, both in Australia and internationally. He spared no one, including the ALP, as was demonstrated by his public attack on the secret agreement made between Premier Bracks and Secretary Mullet of the Victorian Police Association. He enhanced Transparency's reputation across the community, amongst his legal colleagues in the judiciary, at the Bar and elsewhere. He promoted the 'whistleblower' legislation and the National Integrity System, seeking strengthening of oversight of those holding public office and of law enforcers.

Franks' commitment to integrity and independence was not a recent development. It started in his formative years, was enhanced by his experiences in the Centre for Philosophy and Public Issues, and secretary of the Newman Society, developed at the Bar and in the many committees and associations on which he served.

There is a little known story of an incident during the Royal Commission which demonstrates the strength of his principles. During its latter years, both Federal and State Governments offered Frank judicial appointments. Frank politely, but firmly declined, and counselled those who made the offers that it was 'unacceptable' for a Royal Commissioner to be made such an offer in circumstances where he was charged with writing reports which might be critical of Government. The offers were withdrawn, with apology! Frank eschewed any such appointment thereafter.

Frank is survived by his beloved family – Joseph & Felicity and their children Millie and Gus; Justine & Simon and their children, Shirley and Sophie; Phillipa & Stephen, and their children Cordelia and Madeline; Timothy & Lan, and their children Lucy and Anna; and Genevieve and her children Olivia and Max.