

**FRANK COSTIGAN ORATION: "A LIFE AND THE LAW: AN
APPRECIATION OF FRANK COSTIGAN QC"**

MELBOURNE, 20 NOVEMBER 2014

Susan Crennan

It is an honour and a personal pleasure to be here and I thank Roger Gyles for the opportunity to speak. We are all here tonight to pay tribute to Frank Costigan. My task is a privilege because I have been asked to recollect the man and his work. Then it will fall to Robin Brett to reflect on the continuing need to address the issues in public life and public policy with which Frank Costigan is most identified.

Frank Costigan was a close personal friend of mine, and of my husband, Michael, as all three of us were in chambers together for 20 years and shared a secretary for five years. For many years we began the day with coffee in the company of Frank, his great friend Douglas Meagher, and often Paul Lacava. That familiarity prompted in me a deep admiration and respect and gave me a glimpse of the influential roles Frank played in many aspects of the public life of the nation.

Let me put before you some dates and events which note some milestones in Frank's life and help to explain how he came to

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the forefront of our consciousness as a person concerned to combat corruption. Frank's firm view was that corruption spoils any polity and interferes immensely with the maintenance of a fair and just society.

It is five and a half years since Frank died at Easter time in 2009 at the age of 78 and last month saw the 30th anniversary of the delivery of the final report of the Royal Commission on the Activities of the Federated Ship Painters and Dockers Union which had taken up four years of his life.

When Frank died he was a well-recognised and distinguished leader of the Victorian Bar and of the national profession. He had signed the Roll of Counsel on 13 May 1957 and maintained chambers until shortly before his death, which gave him over a half century living, and working, in a profession which he loved, and of which he was an outstanding exemplar and preceptor.

Frank was a man of intellect, principle, courage and great warmth. The qualities which made him an outstanding barrister and a successful Royal Commissioner exposed him to criticism as well as admiration, the latter far outweighing the former. On Frank's death, Douglas Meagher, Senior Counsel assisting the Royal Commission, made an ample remark about Frank: "one of the finest men I have ever known". A lesson I have learned in the last decade or so is that concurrence with the view of another can take some time — but not

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so with concurrence with Douglas Meagher about Frank. I would add that the affection and regard in which Frank was held at the Bar were in large measure a result of his deeply ingrained honesty and decency, and his calm and generous spirit.

Frank never lost the common touch and his wise counsel was sought by many from all walks of life and about all manner of topics. His wisdom had a paradoxical element. He utterly lacked censoriousness when it came to trivial human failings — peccadilloes — but he was relentlessly critical of those who distorted the social fabric through greed, lies or secrecy, whatever their motives or allegiances. That reflected his strong sense of commitment to what mattered and the "big picture", as it is sometimes put, and a correlative ability to yield or compromise on details of less importance.

That brief sketch of the man leads me into more detail about Frank's life at the Bar and as a Royal Commissioner. Then I will say something more about his abiding interest in public policy and social justice.

When Frank's practice at the Bar commenced, he largely worked in the field of worker's compensation. As time went on, this developed more widely and Frank finished up being a much sought-after arbitrator, and a member of and contributor to relevant professional institutes.

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Frank was chairman of the Victorian Bar Council from June 1977 to September 1979, having been a member since 1968. His time as Chairman coincided with a patch in relations between the Bar and the Law Society which was less than harmonious. Frank's ability to empathise genuinely with different points of view and his gentle good humour made him the perfect person to pour oil on those troubled waters.

Frank served on many of the Bar's professional committees. Worthy of particular mention are the Ethics Committee and the Human Rights Committee. He was also a conciliator when claims of sexual harassment arose and was again valued highly for his ability to see a problem from differing vantage points.

Frank served on other committees drawing on his professional skills: the Chief Justice's Law Reform Committee, the Victorian Law Reform Committee and the Board of Examiners of the Victorian Supreme Court. He also served on committees which drew on his legal skills and his capacity for compassion. One of those which remained close to his heart was a committee which came to be called the Jesuit Social Services Committee and in which he played a leading role for over a decade.

Frank's interest in public affairs and public policy had deep roots. He had been educated by the Jesuits at St Patrick's East Melbourne before he went on to the University of Melbourne to

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study law. He was a Foundation Member of the Centre for Philosophy and Public Issues at the University of Melbourne and a member of the Newman Society. The early 1950s are remembered by many as a time when idealism was valued highly. Many struggled not only to recover from the effects of the Second World War but also to reshape society so that its horrors could not be repeated. Frank was at the forefront of those developments in the world of ideas. This led him to be drawn to the Australian Labor Party, in which he played an active role — being one of the Participants who engineered the restructuring which was a sine qua non of Gough Whitlam's victory in 1972. Those with whom he worked — John Cain, the late John Button, and Michael Duffy — entered political life while the late Richard McGarvie and the late Xavier Connor served the community as judges, and in Richard McGarvie's case as Governor of Victoria. Frank's loyalty to the friends of his youth was deep. However, Frank was a person who renewed the well of friendship throughout his life by continually making new friends, and he was never one to "toe" any party line — deeper principle always came first.

Frank's political skills and efforts were not what brought him sharply into public prominence, at least for people under a certain age, but I tender Exhibit 1, being a flyer for the By-Election for Chisholm. For those who are at too great a distance I'll read from the Exhibit.

VOTE 1 **COSTIGAN**

**YOUR RESIDENT
A.L.P. CANDIDATE**

Dear Elector,

Frank Costigan has my wholehearted support in the forthcoming campaign for Chisholm. He loyally upholds the principles of the Labor Party as contained in the Federal Platform.

He is typical of the many highly qualified and vigorous professional men who are coming forward in increasing numbers as Labor candidates throughout the nation.

Yours sincerely,

Gough Whitlam

*Leader, Federal Parliamentary
Labor Party*

It is probably fair to remark that Frank emerged as a public figure during his role as Royal Commissioner. Reflecting on the Royal Commission some 20 years later, Frank explained its genesis as an *ad hoc* Royal Commission into suspected criminal activities — a familiar beast in Australian society. He explained that, in its early

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days, the Royal Commission was concerned with recognisably criminal activity: murder, armed robbery and fraud.

He said of the people being investigated: "They were hard men, but they never pretended that they were innocent. They merely made it difficult for the police to prove they were guilty." He contrasted those ship painters and dockers with persons to whom the Commission's attentions later turned — those involved with white collar crime and tax evasion. He discerned in the latter group of miscreants a great deal of anger, some directed towards him personally, at having their private activities made public.

As a natural development Frank came to believe there was the need for standing commissions, whether at the federal or state level, to deal with institutional corruption — especially problems associated with the global links between organised criminal activity, illegal drugs and money laundering.

He urged continual alertness because the realist in him recognised that there was no perfect combination of institutional and constitutional structures to ensure that corruption will not arise. In this context he held the belief at once wise and realistic that corruption does not usually happen overnight.

He was immensely proud to be Chair in Australia of Transparency International for some 13 years, and of Australia's

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place in those times in the Index of Transparency's Global Corruption Report (which showed Australia was not a seriously corrupt society). I have no doubt Frank would have had a keen interest in the current insights of Robin Brett to follow and would have had thoughtful insights of his own to offer.

Frank was known to many present tonight, so his gentle smile and steely integrity remain present in the minds of those who knew him. This is particularly fitting because Frank loved the "here and now" — he never tired of discussing what was in the newspapers, who said what to whom just yesterday, what was likely to happen tomorrow, who was going to win the upcoming election and so on. After he died I said to one of his longstanding friends that every now and then I wished I could speak with him just once more because I know he would love to discuss some current affair.

As Frank loved to travel, Frank, Michael and I, together with two of Frank's daughters, Justine and Genevieve, and our younger daughter, Kathleen, celebrated his 60th birthday in Rome on a beautiful warm winter's day. I had bought a present for him in Dublin — a linocut depicting a famous Irishman, Robert Emmett — and as we toasted his health in the afternoon light I thought of his complexities: he was forgiving and unforgiving, each when it mattered.

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It is good to treasure his memory as a friend and to renew pride in his accomplishments as a visionary public man. It was our privilege to have known him and spent so much time in his inimitable company. It is now the task of all of us to ensure that the influence of his work, and the values which drove it, resound even more widely in our society and its institutions.