



Eulogy

Sir Francis Theodore Page Burt
AC KCMG QC LL.M Hon LLD

By

The Hon David K Malcolm AC
Chief Justice of Western Australia

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The Hon Francis Theodore Page Burt AC KCMG LLM Hon LLD was born on 14 June 1918 at Perth, the son of A F G Burt and educated at Guildford Grammar School and the University of Western Australia. He was an outstanding student at Law School, winning a Hackett scholarship. He graduated with first class honours in 1940 and was admitted to practice in March 1941. He had then completed a thesis, later accredited as the "industrial bible" entitled *Annotated Provisions of the Industrial Arbitration Act*. This earned him a Masters' degree in Law, but he had to survive war service before the degree was awarded in 1945.

In the meantime, "Red", as he was affectionately and universally known, served in the RAN and then the RAAF from 1940-1945. He served in Europe for a significant part of his war service in Sunderland flying boats, as they were called. It was in this period that he formed a lifelong friendship with Tom Hughes QC, the former Commonwealth Attorney General and a leader still of the Australian Bar, who was his co-pilot.

In 1945, after a short period with Northmore Hale Davy & Leake, Sir Francis became a partner in Joseph Muir & Williams, now Freehills. He quickly established a large practice in the common law and industrial fields. From 1945 to 1965 he was a visiting lecturer at the UWA Law School. Students of my generation were privileged to have been lectured by him on the Law of Contract. He also lectured in Administrative Law.



The first major case in which Sir Francis was involved was *The Panamanian* which ran for three weeks in 1949 before Dwyer CJ. In January 1945 the ship caught fire while loading at Fremantle. A piece of hessian on the deck caught fire and was thrown overboard by a lumper employed by stevedores. Oil floating on the water ignited and the ship was badly damaged by fire. Sir Francis was one of the junior counsel with Seaton QC for the Commonwealth and successfully defended the action.

My professional association with Sir Francis began in December 1955 when, on leaving school, I was employed by Joseph Muir & Williams as a summer clerk prior to commencing my studies at UWA in 1956.

In March 1961, Sir Francis founded the Independent Bar in Western Australia and was the first President of the Western Australian Bar Association. He was also President of the Law Society from 1960-1962. Throughout the 1960s he was the acknowledged leader of the Western Australian Bar. The breadth of his knowledge and experience was remarkable. From the very first time I went with him to court in 1955 when he was counsel for the defence in a criminal trial, I never failed to be enormously impressed. His capacity for analysis of a case was already legendary. After I was admitted to practice in 1964, I was privileged to appear as his junior on a number of occasions. One case in 1965 was one in which a young articled clerk named Robert Meadows was called as a witness to give evidence relevant to the conversion of a partnership into a proprietary company without informing creditors and which became insolvent. It was typical of Red's eagerness to teach and encourage that



he gave me the opportunity to give the final address in reply to counsel for the defence. In his usual laconic fashion, he said as we walked back from the Supreme Court at the end of the second-last day, "It's time to put the spinnaker up for the run home. How would you like to do the reply?" I spent the night on it and went through it with him in the morning. It was an unforgettable experience. He passed on so much as a teacher and mentor to so many young lawyers. I was able to make use of the experience when first appearing against him in the High Court in 1966, yet another case that he won.

In 1967, Sir Francis was appointed counsel assisting the second Royal Commission which inquired into the sinking of the HMAS Voyager after a collision with the HMAS Melbourne. His work on the inquiry propelled Sir Francis into national prominence and contributed very substantially to the success of the inquiry. Shortly afterwards, he was appointed by the State Government as a Royal Commissioner to inquire into the affairs of Wool Exporters Ltd. His report was completed not long after his appointment as a Judge of the Supreme Court on 19 February 1969. Sir Francis had a remarkable capacity to assess and analyse the issues involved in a controversy in such a way that the answer to the problem created became very clear. The level of his factual analysis, economy and clarity of expression, combined with scholarship in what he wrote over the years is extraordinary. He was clearly propelled by "the instinct to verify" as Sir Owen Dixon called it. It was achieved by Sir Francis handwriting his judgments rather than dictating them. As Justice Wallace remarked at Sir Francis' farewell sitting of the Supreme Court on 25 May 1988:



"The clarity and precision of his judgments are an inspiration to all privileged to read them and have had a profound influence of lasting measure. His Honour's humble approach to the solving of problems, his hesitation against ready acceptance of an early answer, his continual posing of the right question involved, has on countless occasions disarmed advocates and made light the work of his fellow members on the appeal court bench."

The combination of intellectual scholarship, analytical skills, economy of expression, learning and knowledge of the law, common sense, humour, decency and humanity which marked Sir Francis' legal career all served to qualify him for high office. Earlier in his career, in addition he had served as Chairman of the Institution of Radiotherapy 1960-1962; Chairman of the Queen Elizabeth II Medical Centre Trust 1966-1985; and member of the Senate of the University of Western Australia 1965-1976. Sir Francis was appointed Chief Justice of Western Australia in 1977 and served in that capacity until 25 May 1988. He was appointed Lieutenant Governor in 1977. I was privileged to take his oath of office upon his appointment as Governor in 1990.

Supported by Lady Burt, Sir Francis carried out his duties as Chief Justice and later his Vice-Regal duties as Governor with great humanity, humour, compassion and understanding of the constitutional duties of the offices he held and, in particular, that of Governor until his retirement from that position in 1993. Very few Western Australians have achieved such a level of admiration from the community as this great Australian.



Sir Francis was an inspiration to successive generations of lawyers who had been taught by him or worked with him. He was without pretention. His humanity was deep and sensitive. His knowledge of the law and understanding of human nature was extensive. He had a great amount of common sense. While an intellectual giant, he could relate to persons of almost any background.

He was the acknowledged leader of the Bar when in practice. He remained the leading lawyer in the State in his capacity as Chief Justice. His judicial work and leadership on the Court were recognised throughout Australia. Above all, he earned the great respect and affection of those who worked with him or came into contact with him. He was the first Chief Justice to make an attempt to communicate about the law and the work of the Courts to the community at large, a task which he urged me to continue.

Throughout his illustrious career he had the great benefit of the love and support of Lady Margaret Burt and his children, Sally, Mark, Janine and Jim and their families. Above all, Sir Francis was his own man who commanded the admiration, love and respect of all of those privileged to know him. While we mourn his passing, we also celebrate the life and work of a truly great Australian.