

## His Honour Judge Brian Donovan QC

The strong connections between Judge Brian Donovan QC, music, the law and the Catholic Church of which he was a devoted member were evident at his funeral on 12 May 2008. There was standing room only in St Mary's Cathedral with a congregation of well in excess of 1,000 in attendance. In addition to the celebrant of the mass, there were ten concelebrating priests, as well as former solicitor Bishop Anthony Fisher, present in full choir dress, representing the archbishop of Sydney, Cardinal George Pell. Two choirs with legal connections provided the music: the Bar Choir (comprising judges, counsel, solicitors, legal academics and court staff) conducted by Justice Peter Hidden and Cappella Sublima conducted by barrister Richard Perrignon, who had also written one of the motets which that choir sang in honour of the late judge. The cathedral cantor, Francois Kunc SC, also took part. The eulogy, an edited version of which appears below, was delivered by Judge Donovan's close friend Judge Christopher Geraghty of the Compensation Court.



Despite the inconvenience of celebrating the life of Brian in a building under renovation, we have gathered here in St Mary's Cathedral because this is Donovan territory. For over thirty years Brian has acted as a lector of the cathedral. There are four Donovan family stained-glass windows in the northwest corner, at the back of the altar. Unfortunately, for the moment, the building is somewhat untidy. But then so is life – our lives – your lives and mine. And Brian's life too was like this cathedral – a work in progress; a thing of beauty, but lived out in the midst of noise and dust – with sections barricaded off and protected.

Some months ago, in a cramped antiseptic room at Royal North Shore, a prison cell for a judge on death row, I was carefully feeling my way toward discussing something important with Brian. I looked at him straight in the eye, full face, and whispered –

'Brian, what's it been like?'

'What's what been like?'

'You know. Life. Your life.'

He looked over his glasses, straight at me, fixing me with his deep brown eyes :

'It's been great. It's been great.'

It was an answer I did not expect.

Brian Harrie Kevin Donovan began his life in Middleton-on-Sea in Sussex, England, during the war. His father Kevin, a doctor, had left Sydney in 1939 with his wife Phillis so he could obtain his fellowship. Enlisting in the Royal Air Force when World War II broke out, his father had become a squadron leader and was there as a medical officer in the middle of the evacuation of allied forces from France.

After the war, in August 1945, the Donovan family returned to Australia. Brian had just turned two. His father worked as a general medical practitioner at Cowra, and later in Balmain, while his mother acted as his receptionist. Brian attended Riverview Preparatory School (Campion Hall) at Point Piper and later boarded at Riverview from 1954 to 1960.

Brian studied arts/law at Sydney University. He resided at St John's College where he was elected president of the student body, and later in life, a member, and then chairman of the College Council. Initially he hesitated about whether to pursue a legal or an acting career. Having developed a burning passion for the theatre, opera and art, he was involved with the Genesian Theatre while at university, and later became the director of the theatre.

In 1967 he graduated and took up his articles of clerkship with L Rundle & Co solicitors, working in general practice. He practised criminal law under the tutorship of Barrie Perriman. Although he had developed a

love for the law, he continued his association with the theatre. He was a member of the board of the Australian Opera from 1968 to 1975, leaving the law for a time to work with the Australian Opera Company as a trainee stage director. He returned to the law in 1974, went to the Bar on 8 November 1974, took silk in July 1988, serving as a member of the Bar Council and for three years as its treasurer. After several periods as an acting justice on the Supreme Court of New South Wales, Brian joined the District Court Bench on 11 April 2005 – a career move which gave him more time to enjoy his other interests, including theatre, acting, directing, painting, visiting art galleries at home and abroad, and sewing tapestries. Though the cross-stitching was blighted sometimes by small mistakes, he was a master of long-stitch needlework. His framed handiworks decorated the walls of his chambers.

For fifteen years he was a member of the faculty of the Australian Advocacy Institute, teaching the art of advocacy in Australia and overseas. He was a consultant at the Centre of Continuing Legal Education, and in later life became a member of the advisory board on the Faculty of Law at the University of Notre Dame.

One of Brian's consuming interests focused on his church life. He was awarded a degree in theology from the Theological Institute of Sydney. He was a knight of the Order of St Lazarus; a knight of Grand Cross of the Equestrian Order of the Holy Sepulchre of Jerusalem; a member of the Sovereign Military Hospitaller Order of St John of Jerusalem, of Rhodes and of Malta.

Under all his activities, Brian battled constantly against dark dreams, struggling in hand-to-hand conflict with phantoms of the night. Since 1992, his wife Brenda has

been a redemptive presence in his life. He loved and cherished her – but he was never purged, never liberated.

Brian was a man of faith – He believed his world had meaning – He did not give it meaning – He discovered its significance. He shared in the meaning of the world in some tiny, humble manner. When he listened to Wagner, when he experienced the thrill of Puccini, when he laughed at Beckett or Wilde, or wept for Hamlet or Othello, when he wandered out into the night and gazed up at the Milky sky in all its immensity, he glimpsed eternity in the mysterious depths of space. He saw the face of God in a grain of sand. For Brian, the heavens were not a soundless, silent empty void of nothingness. The forest and the stars were never robbed of meaning when he was not thinking of them, when he was not present for them. He was a man of God – a fathomless, mysterious, ever present, ethereal being. He was part of creation, an ant-sized part of God's plan, full of mystery for us.

Brian believed. He believed he was special. He believed he was blessed. He believed he was loved. Not in any super-exalted way. He was like everyone else – like the lilies of the field. The sparrows in the streets. Even the hairs of his head were strangely, unimaginably numbered by some prodigal, untouchable, intimate being.

When some of us look forward into the distance, we see nothing. We peer into the shadows, and see a yawning void. When we search for meaning, that meaning, for some of us at least, is extinguished when the coffin lid drops closed, or continues only in others' memories or our genes. Some of us look ahead and see everything in clear radiant detail – the seraphim and ineffable cherubim – the torment of the bad, the medieval Gregorian peace of the blessed, all singing or groaning in some Dantesque world.

Brian was a man who peered ahead into the shadows and glimpsed sacred phantoms just out of reach, precious jewels hidden in the earth, figures as in a glass darkly. Brian was a man of faith – and his faith gave him much strength and comfort. He trusted in the Lord. He would often cast his cares and anguishes into his cosmic lap.

He was a courageous man – in overcoming his chronic asthma; in bravely prosecuting the claims of little litigants; in keeping those who disliked one another apart. In 1980 when Brian found his drinking had increased, he turned to a great spiritual movement, the Alcoholics Anonymous, where he found strength, acceptance, and many friends – they are here with us together to celebrate his life. His dying wish was to pay tribute to these, his brothers and sisters. Brian would attend four or five meetings every week and could be sometimes seen sitting quietly, knitting.

For a man so challenged by his health from childhood, so weakened by chronic ill-health, living in a body so tortured with a daily fight for oxygen, often facing insoluble family tensions, answering to constant demands, and an overpowering craving to cloud his mind, it is indeed humbling to know what Brian achieved in the course of his life. His life is a commentary on the lives of many of us who appear to live so easily, so presumptively.

Brian loved to dress up – on stage as Henry VIII or the grumbling gravedigger; as a knight of the Holy Sepulchre in a flowing white cape and a blood red cross; as a pulchritudinous senior barrister with a Louis XIV style wig; as acting Supreme Court judge in cardinal red and soft feminine ermine; as a citizen of the world in a flashy multicoloured vest, fluorescent green braces supporting purple bloomers, a spivvy bow tie. On one occasion he attended a pre-Christmas dinner at his associate's home, wearing yellow gumboots.

He loved dressing up, and had a wide collection of baubles – icons, statues, relics, paintings, a collection of cuff links and expensive pens, antiques, every opera recording known to man, and books of every description – theology, law, music, history. He was a serious hoarder of things, but with an angelic detachment from money, wealth and the good life. He used to insist on driving me home to McMahon's Point most afternoons after we had finished at the Chelmsford Commission – in his blue Rolls Royce. He would attach himself to his nebuliser and we would breeze down Elizabeth Street, into Macquarie Street and over the bridge. Then one day the Roller was repossessed, and overnight Brian was driving a Mini-Moke. He continued to drive

me home, with the canvas sides flapping in the wind, still on his nebuliser, the profession agog as we swept by. Brian was not the least phased or self conscious. Sometimes he would shave as we drove along. Not a minute to waste. And no aristocratic, superficial false sense of dignity. He was a dignified man – but he was not reliant on artificial support to bulk out his status. His was a natural dignity which overflowed from the richness and depth of his soul.

Brian was not weakened or weighed down with any huge complicated and pretentious ego often associated with luminaries of the law. Paradoxically, however, he had hanging at home and in chambers a series of self-portraits and photographs. But there was no sense of grandeur, no vacuous self-importance, no pomposity, no pretensions. He was a deeply humble man, proud of his church; proud of his profession; proud of his family – modest, gentle in himself.

Donovan earned the reputation of being the only judge in Australian history, perhaps the first in the world, to write to the Court of Appeal confessing a sentence he had imposed was too harsh and asking the judges to make it more lenient. The judges were rattled. There was no precedent. They pretended he had not written, although they did reduce the sentence.

And on the bench Brian proved a soft, compassionate judge of his fellow brothers and sisters. All his justice was tempered with mercy and tenderness. A rare judge who was not judgmental – accepting and understanding of human weakness, able to let even those close to him be free to find their way and make their mistakes.

He had an enriching sense of his common humanity, balanced against a warm acceptance of the uniqueness of the individual. He was of course himself an individual – a one-off, a multilayered character. But he accepted and welcomed others just as they were. He was inclusive, forgiving, accepting of faults and foibles, without criticism.

Brian lived his life on a vast stage, amid a cast of thousands – many dressed in colourful, extravagant robes and vestments, with much to-ing and fro-ing, loud heroic music, solemn

pronouncements, drama and pageantry. The law in all its solemnity, with ermine, crazy horsehair big wigs, colourful sashes, arcane language and honorific titles; the church with its colourful processions, the embroidered cloaks, the floating incense, the Gregorian chants and polyphonic hymns, the whispered prayers in celestial Gothic buildings, plaster saints on pedestals, oils, candles, indulgences, intrigue; and the theatre where his heart thrilled and fluttered with the athletic music of Wagner, the echo of drums, the shrill of horns, marches, bloody battles, and tragic deaths. He loved the world of the stage, the universe created by Shakespeare, Puccini, Verdi. His life was full of art and music, of comedy and tragedy, full of colour and characters from the streets and from every age, full of the mystery and fascination, of grandiose religion and of exclusive

brotherhoods. Not a minute to waste; not a moment of boredom; not a bit of regret; not a tear of bitterness.

A life full of pleasant smiles and laughter; honest, trustworthy, polite, generous. A man for all seasons. A Byzantine man. A Renaissance man. A truly Christian man.

He wanted to please everyone – and it proved impossible. Some needy people actively pursued him, cruelly playing on his innate generosity and good nature, exploiting his overpowering desire to be loved. He was never his own man – he belonged to everyone. The Genesians had a claim on him – as did St John’s University College, and the knights of Malta, the knights of St Lazarus, and the knights of St John. And many members of the AA. He belonged to his two daughters, Philippa and Johanne, children of his first

wife, Noelene Bell. He shared his busy life with his beloved Brenda – with Bridie his ever-attentive step-daughter and her husband Gavan. Many people loved him and had a claim on him. Even his canine companion, Fergus, demanded his attention.

But above all, he was possessed by his generous, ever forgiving God. He was God’s child. He knew he was treasured inside God’s jewellery box. He was God’s little creation. And he belonged to God. Finally, his admiring friends and loving family entrusted Brian into the warm arms of his smiling, prodigal father. Life is short. We are here for almost no time at all. For Brian, it was indeed a good life – many are proud to have shared part of it with him. He was a good man. His friends are comforted that he found his life satisfying. All are so pleased that his life was ‘great’. Now, he rests in peace.

## Mark Gerard McFadden (1957-2008)



Mark McFadden, a barrister since 2004 and member of Frederick Jordan chambers, died on Thursday, 5 June 2008. Mark’s sudden death came as a terrible shock to his friends and colleagues at the Bar. He was 51 years old and fondly regarded as a very engaging,

grounded and thoughtful person. We will sadly miss him.

Conversation with Mark quickly revealed his deep affection for his family – his beloved wife Cath; his four young adult children Matthew, Naomi, Cushla and Jack, who seemed tirelessly to generate achievements for their father to recount; and his mother Colleen. He loved the outdoors, especially a holiday on the coast or a camping trip, and a good run or a surf down at Cronulla.

Mark’s first career was in education. He held a Grad Dip Ed (Syd Tchrs Coll), BA and MEd (Syd) and PhD (CSturt). During the 1980s he was a high school English teacher. In the 1990s he was a teacher and academic at Charles Sturt University. His doctorate concerned techniques for re-engaging and educating disadvantaged and alienated young people. From 1998 to 2001 he was professor and head of that university’s School of Education. He later became a director of

St Stanislaus College, the high school his sons had attended.

In 2003 Mark graduated in law from the University of Sydney, with first class honours. His adventurous decision to come to the Bar almost immediately was well executed. He was a meticulous, dedicated and reliable barrister. His developing practice included regular work in professional negligence, property law and charitable trusts. He often spent long days at hospitals around Sydney, appointed to represent patients whose mental health was being assessed, a brief both demanding and rewarding for a man of his patience and humanity.

A requiem mass for Mark was held on 12 June 2008 at St Aloysius in Cronulla, followed by a huge farewell from his family and friends from the Shire and beyond.

**Richard Lancaster**