

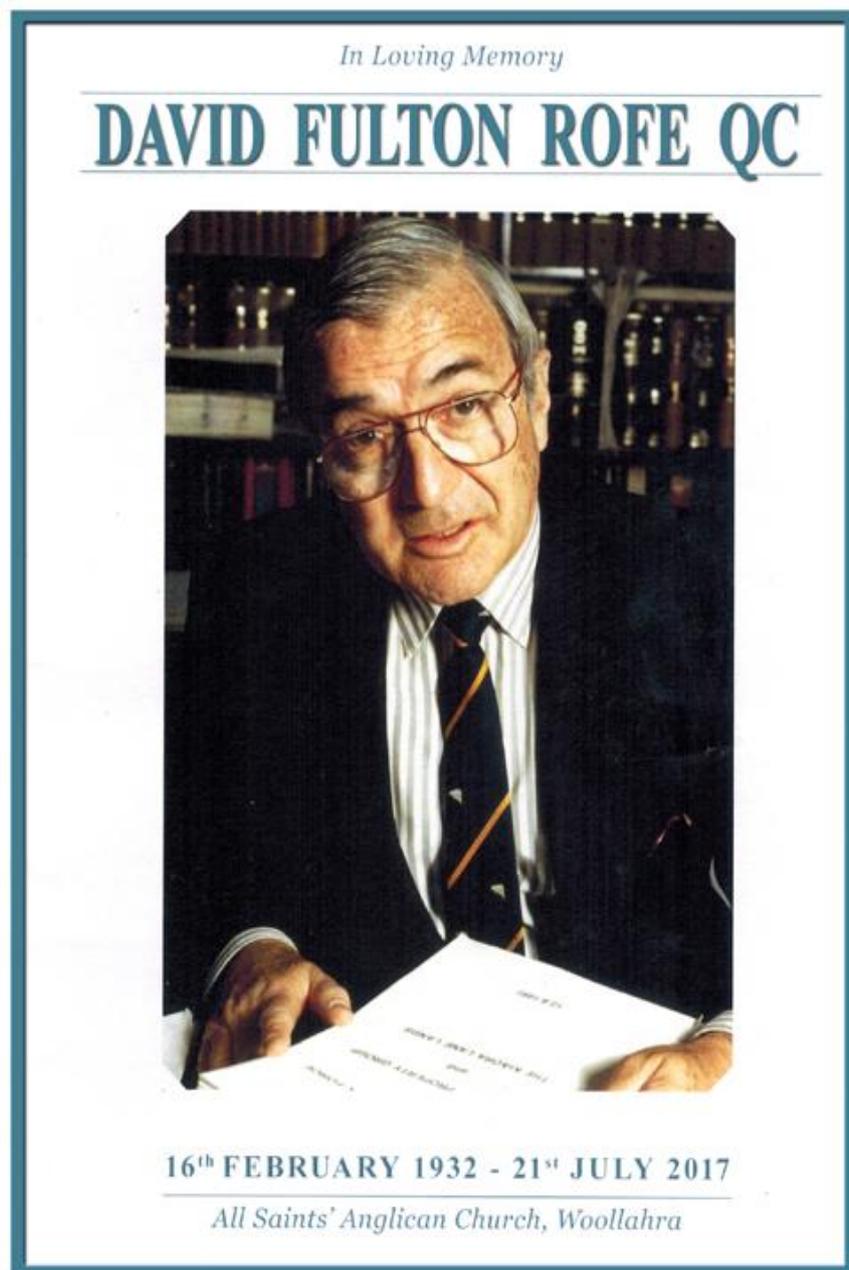
KEVIN LINDEBERG'S EULOGY

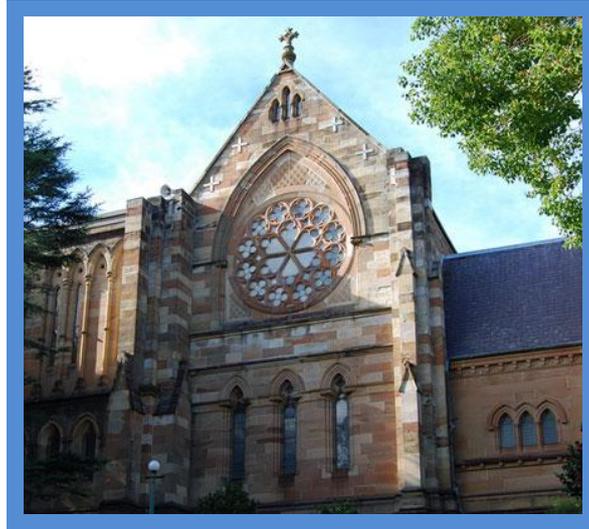
to

DAVID FULTON ROFE QC

All Saints' Anglican Church Woollahra, Sydney

Tuesday 1 August 2017





All Saints' Anglican Church Woollahra, Sydney

David's family, loyal carers, Honourable Members of the Judiciary past and present, members of the legal fraternity and follow mourners: While this is a time of great sadness for us all, it is a great honour for me to deliver a brief eulogy today.

David was, and remains, my champion and hero. Today, I am sure that David would love me to very briefly recount a little of our professional relationship from when we first came together in mid-2005, some 12 years ago. It became the stuff of high constitutional/legal moment and of great importance to the rule of law.

But first, allow me to introduce myself. My name is Kevin Lindeberg from Queensland. Some of you have heard of me, some know me personally, while some do not know anything about me I suspect. I am a recognised whistleblower. My public interest disclosure is commonly known as "*the Heiner affair*".

After being represented by Mr Ian Callinan QC before his elevation to the High Court and then Mr Robert F Greenwood QC before his untimely death, I was introduced to David by his late relative Mr Philip Gibson of **Australians for Constitutional Monarchy** in mid-2005. I had earlier delivered a key note speech to **The Samuel Griffith Society** on this matter in 2005. Philip thought David might help, and was proved right. Philip's wife Annie is with us today.

After recounting my story, David blasted down the phone to me that "Justice must be done!" and most memorably declared, "Be ye never so high, the law is above you!"

So, in mid-2005, David joined this great pursuit of justice, most generously on a *pro bono* basis.

The first thing David ordered was an up-to-date audit from 1990 to 2005. He wanted nothing but the cold hard facts based on all available relevant evidence. David was determined that the law must run its proper unimpeded course, no matter how high it went. So, with David setting the format, supervising and settling its 68 "*may be open to conclude*" opinions, this epic work of 9 volumes and 3000 pages took two years to complete. It is now commonly known as Rofe QC Audit of the Heiner affair. <http://www.gwb.com.au/gwb/news/goss/rofeaudit.pdf> (Password: Tsisrep2012)

In my opinion, it's David's great lasting legacy. Its purpose was to be a roadmap for any future tribunal to investigate and substantiate his conclusions one way or the other.

Whistleblowers Australia categorise my case to be one of this nation's five most important whistleblower cases. It's documented on the internet, in the parliamentary record, taught about in Queensland Education's curriculum for senior students, and lectured about in universities across Australia and around the world.

Very briefly, it concerns the 5 March 1990 Queensland Cabinet knowingly ordering the destruction of public records - the Heiner Inquiry documents - to prevent their anticipated use as evidence in foreshadowed judicial proceedings.

I was a Queensland public sector trade union organiser at the time. This allowed me to legitimately enter the corridors of power. My duties required me to preserve these public records from being destroyed so that a known legal right of access to their contents by my union members was rightly enjoyed by them.

The Heiner inquiry looked into the running of a youth detention centre where child abuse was also occurring. My efforts upset the newly elected Queensland Government and my union after the relevant Minister complained to my boss. I told my union that a potential crime of destroying evidence may have occurred involving the Queensland Cabinet. I was sacked. I blew the whistle to the new Criminal Justice Commission in 1990.

In January 1993, the CJC declared the shredding perfectly legal. Under section 129 of the *Criminal Code*, the CJC claimed that all known and foreseeable evidence could be deliberately destroyed providing the foreshadowed judicial proceedings had not commenced in which the evidence would or may be required. I strenuously objected. I told the CJC that the law did not permit such obstructionist conduct otherwise we would end up with complete chaos and a world without evidence.

The CJC ridiculed me.

But, on the other hand though, Messrs Callinan, Greenwood and David Rofe agreed with me.

The case thus became and remains a *cause célèbre* in its many elements.

They are:

- sound governance under the rule of law;
- the right to a fair trial;
- the importance of the separation of powers;
- the role of reserve powers of the Crown;
- public trust in public office; and
- best practice public recordkeeping.

The stakes were always immensely high – and remain so.



In all my dealings with David over the years, he was a complete gentleman. He demanded probity, detail and high standards. He was a true and loyal officer of the Court. But, might I say and perhaps none of you knew this, David could also be a tad gruff on occasions, but what the heck, that was David in full flight.

In 2012, the Rofe audit was tendered into evidence before the **Queensland Child Protection Commission of Inquiry** by my solicitor. It was accepted without challenge as relevant. It was numbered and published unredacted to the world by order of the commissioner. The Inquiry confirmed David's base finding that the shredding was a serious *prima facie* crime under section 129 of the *Criminal Code*, but left untouched the related alleged systemic cover-up over many years of that offence against the administration of justice.

I can only publicly say today that certain relevant processes are now on foot in Queensland.

Finally in 2012, **Whistleblowers Action Group Queensland** proudly awarded David a citation as **Whistleblower Supporter for 2012** for his work. David delighted in the award. It's on display at the front of the church. With your kind indulgence, I would like to finish my eulogy by reading a key passage about David:

"...He has emphatically declared that government is not about the arbitrary exercise of power by men and women in position of authority but it is about the law being obeyed and the rights of the individual being respected".

So my personal final entreaty to David is this:

Sheath your sword of justice, lay down your shield of fearlessness, take off your breast plate of courage and now rest in peace, my friend. You have fought the good fight and never been bowed in battle.

May Almighty God bless and keep you in His eternal care.



Citation

WHISTLEBLOWER SUPPORTER

FOR
2012

DAVID FULTON ROFE QC

Be it known that

Her Majesty's senior counsel, David Fulton Rofe QC, is awarded Whistleblower Supporter for 2012 for his unstinting work in supervising and settling the 9-Volume Rofe QC Audit of the Heiner Affair on behalf of his client, Mr Kevin Lindeberg - being one of this nation's five most important whistleblower cases - in his struggle for justice against abuse of power by many public officials in high places. Mr Rofe centred his audit on the universal rule-of-law principle that any document or thing known to be "evidence" in a pending or realistically possible future judicial proceeding may not be destroyed by any person to prevent its use as evidence in such a proceeding, most especially not by any government in the name of the Crown - "the model litigant" and "Fountain of Justice". In settling the audit, he applied the law dispassionately and courageously on the basis that no matter how high a position of power any person may hold, the law is above us all. In the Heiner affair, the democratic principle of equality before the law for all has encompassed not just "the governed" but "the governors" to its highest levels in our system of government. Mr Rofe has honoured his sworn duty to the court, dedication to his profession and pro bono service to the community at large, but in the particular, to a disadvantaged whistleblower. He has made the law work towards the ends of justice. He has better secured public confidence in the principle of government by the rule of law, and has greatly assisted in reversing the debilitating cynical view that serious wrongdoing in government is too often beyond scrutiny. He has emphatically declared that government is not about the arbitrary exercise of power by men and women in positions of authority but is about the law being obeyed and the rights of the individual being respected. Consequently, in the political and jurisprudential history of the Commonwealth of Australia, the Rofe QC Audit of the Heiner Affair, published under the full protection of the *Commissions of Inquiry Act 1950*, shall be forever a seminal public work of great dedication to the law and to the triumph and will of one against the many.

Gordon Harris
President

Gregory McMahon
Secretary

WHISTLEBLOWERS ACTION GROUP (QLD) Inc