



Douglas Shaw QC photographed in 2008 during a family holiday in the South of France. It is a very typical pose and the red waistcoat will be familiar to all who knew him.

In memoriam

SA's last QC – a tribute to Douglas Shaw*

Tribute by **Malcolm Wallis**, judge of the Supreme Court of Appeal

been approved by Douglas' father, Frank Shaw KC.³ Seven years later Douglas completed the family symmetry by approving David Friedman's application for silk. Elected as the chair of the Natal Bar in the early sixties he went on to serve two spells as chair of the GCB, from 1964 to 1967 and again from 1977 to 1981.

Robin Marais, who was his vice-chair during the latter period, recalls that sitting alongside him at meetings, he was well placed to hear the caustic remarks made *sotto voce* from time to time. Once a silk, I will call him X, complained that he had been treated in a cavalier and undignified manner in the way in which he was told of the extension of his appointment as an acting judge in Windhoek. He had been en route to the airport in Windhoek returning home, when he was overtaken and flagged down by police and told that he was required to return as his appointment had been extended. At the meeting X worked himself up to a great state of indignation and concluded his impassioned address with the words 'Mr Chairman, I would not deal with even my gardener like that!' Douglas, instantly and under his breath, said: 'I don't think my gardener would accept an acting appointment.'

He was probably as well known for his spontaneous and acerbic wit as he was for his brilliance as an advocate. When leaving a hotel where he had spent an unsatisfactory night he was approached and asked what had brought him there. The response, without breaking step, was 'Misfortune'. In court the same wit served him well. Who else would have announced that he appeared without medical assistance, after his opponent said that he appeared with Doctor A? Many an opponent's argument was punctured or destroyed by his wit. As Louis Harms reached his bull point in *Hicklin v Commissioner of Inland Revenue*⁴ there was a sudden loud clap of thunder. Douglas rose immediately and said: 'Someone is clearly not impressed with the submission.' Needless to say that was an end to Harms' argument. David Gordon and I argued in a shipping case that, by bringing a claim against the ship's agent,⁵ the claim against the ship and its owner was extinguished. We relied on a statement by Corbett JA that by suing the agent the claim of a cargo owner against the carrier and the ship was converted into a claim against the vessel's agent. Shaw's retort was that when a Presbyterian converts to Anglicanism he ceases to be a Presbyterian, but when a rugby team kicks a conversion they would be disappointed if they lost the try.⁶

But advocacy at the highest level is far more than occasional witty sallies and Douglas was an advocate of the very highest calibre. His qualities were clarity of thought in analysing legal problems; an encyclopaedic knowledge of the law: a mastery of the English language and its uses, based on wide reading and, according to him, the necessity of a proper grounding in the King James Bible and Shakespeare; a prodigious memory and a broad understanding of human beings and their strengths and weaknesses. That was allied to

ON 11 NOVEMBER 2013 at 10 am all of the superior courts in KwaZulu-Natal observed a minute's silence in memory of Douglas Shaw QC, who died on 6 November 2013. This remarkable tribute – one with few parallels in South Africa's legal history¹ – was appropriate for one of South Africa's finest advocates and one who contributed greatly to the legal profession and the law, particularly through the infant he nurtured through its initial birth pangs to maturity, the Admiralty Jurisdiction Regulation Act 105 of 1983, our maritime law.²

The outlines of Douglas' life and career are easily limned. Born on 18 April 1926 and schooled at Michaelhouse, on his matriculation he went directly from school into the army and service with the South African forces as they rolled back the fascist forces through Italy. On returning to South Africa he won an Elsie Ballot scholarship and proceeded to read law at St John's College, Cambridge. He travelled to England by ship in a group of ex-servicemen that included Mick Corbett, Sydney Kentridge, Gus Hoexter, Douglas Shearer and Simon Roberts. He commented wryly that they showed a lack of judgment by electing him together with Mick and Sydney as the ship's entertainment committee. The law trip complete, he read in chambers with Gilbert Paull KC and was admitted to the English Bar, wondering in his later years if he was now the most senior junior barrister in the world. Whilst at Cambridge he started to develop his formidable culinary skills. On returning to South Africa he was admitted to the Bar in 1949. Two years later came the first of his 134 reported appearances in the then Appellate Division, as junior to Neville Holmes KC.

Ten years later, on 24 February 1959, at the age of 32 he took silk. The chair of the Natal Bar who approved his application was Joe Friedman KC, whose own application for silk had

* Author's note: I knew Douglas Shaw from 1973 when I joined the Natal Bar, as it then was, but these recollections are not all my own. I wrote to many lawyers, here and overseas, who knew him well and this tribute is an amalgam, sometimes referenced, sometimes not, to their responses for which I am extremely grateful.

meticulous preparation and flexibility in presentation that enabled him to conduct cases and present argument with no or minimal notes to the bewilderment of juniors and opponents.

Juniors were told to prepare a short note and have the books on his desk in the morning. If one enquired from a senior colleague what was meant by a 'short note' the answer was 'not more than a page'. Brevity of exposition combined with lucidity and precision of expression made him extraordinarily persuasive, with the ability, as Peet Nienaber recalls, to make even a weak point sound attractive. If there was judicial complaint it may have been that at times he was too cryptic, 'perhaps assuming, but wrongly so, that the bench was as sharp and fine-tuned as he'.⁷ Identifying a flaw in the argument was difficult. And his skills were not confined to oral argument and the applications and appeals that feature so prominently in the reported cases in which he appeared. He was a formidable trial lawyer and 'most able and competent' cross-examiner.⁸ Overall he was an all-round advocate of the highest order.

BUT LIFE is not confined to legal practice and Douglas was in many ways a renaissance man. Able to speak a number of languages and retaining until his death the facility in Latin and Greek that he had acquired as a young man,⁹ he was well read and knowledgeable about the world and its affairs. A conversation with him was always full of surprising nuggets of information. He could discourse as knowledgeably on Wagner's music, as on the art of slow left-arm spin bowling. It was typical of his breadth of knowledge that in one shipping matter involving the National Iranian Oil Company he was able to express a view on an aspect of Islamic law, including quoting the relevant sura of the Qur'an.¹⁰

Douglas relished life and was always curious about the world around him. He enjoyed travel, music, art, good food and good wine. For some years he ensured a supply of the latter by engaging in an importation business with his good friend Roy Fenhalls, the senior partner of Goodrickes.¹¹ The combination of his varied interests is captured in the fact that when for a while he had a farm in the Midlands his prize bull was called Horace, which became the subject of a difference of opinion with SARS. The difference was resolved when Douglas demanded that the examiner read the Income Tax Act and received the response: 'Ag no, Mr Shaw. I'm using it to stop my desk wobbling.' After moving on in life he was inclined to muse that the way in which to earn a small fortune farming was to start with a large one.

All this paints a picture of a formidable individual, though some fearful juniors might say no more so than the three secretaries, Dorothy Lester, Sandra Hembling and Tilda Tearle, who, with fierce devotion, acted as Cerberus at the gate of his chambers for some 45 odd years. The devotion was earned. When Sandy Hembling had to bring one of her babies into chambers, one might find Douglas undertaking the child minding, while she made progress with the typing or administration. One morning she arrived in my chambers in fits of laughter and told me the following story. A Johannesburg attorney had arranged to consult with Douglas. He arrived, with his jacket slung over his shoulder, took out a packet of cigarettes, and, disregarding the large 'No Smoking' sign on the door, lit one and settled down with the newspaper. Before

Sandy could do anything the door to the inner sanctum opened and Douglas looked out in his shirtsleeves. The door closed and he re-emerged with his jacket on. He looked down and said: 'You must be X. There is no point in consulting me if you are illiterate, because you won't understand my advice. You must be illiterate, because you are smoking notwithstanding the "No Smoking" sign. And, as you are illiterate; "What are you doing with my newspaper?"' The door then closed behind him.

When Tilda Tearle, a past winner of the Comrades Marathon joined him, he said to her 'Until you came to work for me I thought I might be famous.' His relationship with his secretaries was always formal and proper, but there was a humorous atmosphere and their fondness for him was obvious. One had only to see him arrive at chambers in Tilda Tearle's car in the last few months, to be met at the entrance and helped from the car by Frans Mvuni, his messenger for over 35 years, to see the solicitude and devotion he inspired. Any enquiry as to his health would be turned aside lightly. His response to one such enquiry, after a Christmas when he had broken a bone for the third time in as many years, was that he had been on his annual break.

Formidable he may have been. His manner may have seemed imperious to some, but that façade hid a modest person who shunned the limelight. But Douglas was always generous with his time and his encouragement. Peter Combrinck decided after the catastrophic floods in 1987 that the Bar should make a contribution to those rendered homeless by the floods. He drew up a list of members of the Bar and started by asking Douglas for a contribution. The response was to get out his chequebook, write a cheque for R1000 – equivalent, I would guess, to at least R15 000 or R20 000 today – and say: 'That will stop the rest from being mean.' So it proved, and that response led to the establishment of the KZN Bar's charitable fund, which over the years has given substantial amounts to help those less fortunate than most advocates.

ADVICE WAS also given to those who asked. Successive chairs of the Bar, both locally and nationally, could turn to him for advice and background in addressing the problems of leadership in a fiercely independent profession. On ethical issues he demanded the highest standards. No-one ever accused him of any departure from the path of integrity. If Douglas said that he would do something that is what he did. In court he was a model of courtesy towards the bench, although when free from that constraint his comments could be pungent. Perhaps the nearest he ever came to departing from that path was when he told the court that if a judgment by Sir John Wessels had been submitted as an examination script it would not have passed. The copy of his book on admiralty jurisdiction that he gave to Peet Nienaber contains the inscription 'With apologies for footnote 1 on p 86. Kind regards, Douglas.' The footnote read: 'This does not accord with the views of Nienaber J in *The Fidias* 1986 (1) SA 714 (D) 717I.'

To young practitioners he could be immensely helpful. Kevin Swain wrote as follows:

'I was a very junior member of the PMB Bar in 1978, when I was briefed by Simon Roberts as junior to Douglas. We travelled to Durban to consult concerning a request for further particulars. Being in awe of the great man,

I nevertheless did my best, but probably contributed very little! However, a few days later, a hand-written note in his very distinctive style arrived from Douglas at my chambers. In it, he advised me on various aspects relating to pleading, and ended the note as follows: "Finally, to members of the Bar, I am known as Douglas, or Shaw, but not Mr. Shaw." It was a lesson in etiquette that I needed to learn, but was immensely touched that he had taken the trouble to pen such a note to a lowly junior.'

Chris Marnewick tells a similar story. When he was doing the rounds of the Bar and introducing himself he arrived in the chambers of one leading silk and was told summarily to depart (the language was more robust) and return when convenient. Douglas was his next port of call, but there his reception was very different. He was invited in for a chat at the end of which he was told to call anytime for advice on a difficult problem, but warned 'do your homework first.'

ON OCCASIONS he could be scathing about, or to, attorneys who irked him, but he could also be extremely helpful. Alistair Hay wrote to me that Douglas was unfailingly courteous to him and taught him a rule of thumb, that he still uses, that no case has a worse than 30% chance of success and no case a better than 70% chance of success. When Johnny Caldwell was sent to Durban to open an office engaged in maritime law for Deneys Reitz, he received encouragement and assistance. On a weekly basis he was invited to Douglas' chambers to talk about shipping matters in general and discuss any problems he was experiencing.

Not all was sweetness and light. Douglas was, after all, the person who told John Milne that if one is going to be difficult one had better be right. He did not suffer fools gladly, or at all. But he could be forgiving of missteps. On one occasion in those early days Johnny Caldwell says he made the mistake of writing next to a paragraph in one of Douglas' opinions the word 'B.....t'. Some time later when the time came to draw pleadings his clerk included the opinion, with the comment, in the brief sent to Shaw. Half an hour later he was summoned to Douglas' chambers, asked if he had written the offending remark and told that he had either not understood the opinion or not understood the statute or possibly both.¹² Then followed an invitation to a memorable meal for Johnny and Trish at the Shaw beach cottage, to which Douglas and Rachel repaired virtually every weekend and which was the centre of much family life.

Some will ask why he never ascended the Bench. It was not for want of offers, about which he commented that after saying 'No' once, it became easier to do so again, in the same way as saying 'Yes' once facilitated future falls from grace. His public answer to enquiries about his reasons for not taking an appointment was always 'Greed', but his private assessment was that it would not have suited him. His personality and temperament were ill-suited to the constraints the Bench would

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impose, and the drudgery entailed in much of its work would have been so frustrating that his enjoyment of his life in law would have been severely curtailed. A great pity. The law reports would undoubtedly have been enlivened by his pungent choice of language and have preserved for posterity his great jurisprudential erudition.¹³

The last few years were a struggle with the burdens of age and declining health. But he did what he wanted to do and practised to the very end. He never wanted to retire from the profession he served for so long and so well. Even when constrained to do so at the very end he left us lessons.

MANY HAVE contributed to this recollection of one of the finest advocates to grace the South African Bar and a man whom many felt privileged to count as a colleague, a mentor and a friend. It is appropriate that it ends with a memory from someone who knew him as leader, opponent, colleague and friend for over 50 years.

When asked for a contribution, David Gordon did not add to the weight of anecdotes about Douglas the lawyer, but wrote of Douglas the man.

This is what he wrote:

'What I would like to tell you is that I had the privilege and honour to spend about an hour and a half with Douglas about 10 days ago when I went to visit him in hospital. The impact of Douglas even in the hospital was such that the nursing staff allowed me into his ward some 20 minutes before "visiting hour" started and then afterwards for about 10 to 15 minutes.

Fortunately he was not hooked up to any drips or other machines and so I was able to sit close to him while we spoke.

He had a good colour, his opening words were to apologise for being unshaven because he had been told that he was not to shave. This related to the radium treatment he was receiving and he was in good spirits and told me that he doesn't understand why so many people make such a fuss of cancer treatments and he described the mask he had to wear and said that it wasn't bad at all. I had the most marvellous discussion with him and we talked about his family, the children, step-children and their pursuits. He said to me that he regarded himself as blessed for meeting and thereafter living with the most wonderful person in the world and he was agonised at the fact that his condition had put such a considerable burden on Rachel. He was absolutely clear minded funny and inquisitive about the goings on at the Bar and on the Bench. We laughed about the time some years ago when we went to the United States to take commission evidence in Washington DC, New Orleans and Houston. He told me a wonderful story about Leopold Greenberg and remembered with good humour the time he had to nurse me in a hotel room when I experienced a violent reaction to some sort of fish conglomerate,

which Sharkey King had recommended to us. He was courageous and bearing the situation in which he found himself with great fortitude and his worries were the burden that had been placed upon Tilda (his secretary) and Rachel and Amanda, who had come to Durban to help them with their move to Cape Town to the flat which they had bought and which was not to be. If it is possible to say so, we had a very happy time. He knew he was going to die and was facing it with an incredible calm and I was able to thank him, on behalf of all of us for the marvellous contribution he had made to each of us.

It was sad touching his shrivelled arm as I left. As I walked out of the oncology ward it occurred to me that of all the lessons he had taught me ... at the end he had given me a lesson in dying.

Many years ago he gave me a book by Sir Ernest Gowers *The Complete Plain Words* which he inscribed "with compliments, thanks and high hopes".

It is to him now that we give our compliments and our thanks and in plain words state that he was simply the best.' 

Endnotes

- ¹ Similar tributes were paid to Beauclerk Upington KC ((1938) 55 SALJ 401) and Graham Mackeurtan KC ((1943) 60 SALJ 4).
- ² Of this particular child he was wont to say, with Voet, that a parent is not responsible for the child.
- ³ In 1947 Frank Shaw was elected as the inaugural vice-chair of the GCB and in 1951 he became a judge.
- ⁴ *Hicklin v Secretary for Inland Revenue* 1980 (1) SA 481 (A).
- ⁵ Under the old s 311 of the Merchant Shipping Act 51 of 1950.
- ⁶ *Goodclaims v Globus-Reederei GmbH and Others* 1981 (3) SA 485 (D) at 489.
- ⁷ From a note sent to me by Mr Justice Nienaber.
- ⁸ *Ward v Sulzer* 1973 (3) SA 701 (A) at 703H.
- ⁹ I once consulted him over lunch about the accuracy of Roughton's translation (1829) of a passage in Clerke's *Praxis Supremae Curiae Admiralitatis*. He picked up the Latin text and translated it, fluently and without a moment's hesitation, into English. He could also negotiate the Dutch writers. Ian Cochrane, then a partner in the Durban firm of Cox Yeats, tells of consulting him one afternoon about the

effect of an attachment *ad fundandam et confirmandam jurisdictionem* on a repairer's lien. Douglas plucked Pieter Bort's *De Arresten* from the shelf, flipped through it to the relevant passage, read it and said 'Arrest is detention not possession' and told him to go ahead and attach the ship.

- ¹⁰ I am indebted to Andrew Pike, the instructing attorney, for this information.
- ¹¹ Nick Theunissen, later the president of the Law Society of South Africa, recalls that one of his earliest tasks as Roy Fenhalls clerk was to collect a case of wine from the bonded warehouse and deliver it to Douglas.
- ¹² However, he was always prepared to reconsider his view if another possibility was presented to him. Nick Theunissen told me that when a very junior attorney he thought that an opinion Douglas had given him on a matter of construction was incorrect and tentatively explained this. After a while Douglas agreed, but instead of amending the original opinion insisted on writing a memorandum in which he acknowledged his earlier error.
- ¹³ I am indebted to Mr Justice Robin Marais for this insight taken from a private communication.

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