

*Honourable and Learned Members*

*The Right Honourable Frank O'Flynn QC*

*Minister of Defence*

*Deputy Minister of Foreign Affairs*

*Minister of State*

*1984 - 1987*

*Derek Round*



## PREFACE

*Frank O'Flynn's failure to become Attorney-General in the 1984 Lange Labour Government was a deep disappointment to him and many of his friends.*

*It thrust him into the controversial Defence portfolio at a time when Labour was under fire for its anti-nuclear policies. He was never happy in the job but, in his own words, soldiered on and did his best with the brief he was given.*

*I first met Frank O'Flynn when, as the Hong Kong based Asia correspondent of the New Zealand Press Association, I accompanied a New Zealand Parliamentary Delegation of which he was a member. Over several bottles of good claret flying from Singapore to Osaka he spoke reflectively of his career at the Bar and his interest in politics and international affairs, which I shared. That began a friendship which has lasted over 25 years.*

*As a journalist I found him unfailingly helpful, courteous and forthright. His personal handwritten notes of thanks, congratulations or sympathy to his friends - and opponents - were typical of his thoughtfulness.*

*I am grateful to Frank and Sylvia O'Flynn for their help and hospitality at Raumati while I was working on this profile.*

*The New Zealand Law Foundation, through a grant, has made possible this series of profiles of members of the Bar who became prominent in politics and I am grateful to it.*

*Tanglin Lodge  
Masterton*

*Derek Round  
June, 1999*

# The Right Honourable Francis Duncan O'Flynn QC

1918 -

Minister of Defence  
Deputy Minister of Foreign Affairs  
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1984 - 1987

## *Making the Best of a Brief*

Frank O'Flynn QC was pipped for the post of Attorney-General in the 1984 Lange Labour Government by his former law clerk, Geoffrey Palmer - later to become briefly Prime Minister.

O'Flynn, as the senior member of the Bar in the Parliamentary Labour Party, wanted and expected to be Attorney-General, had the support of senior colleagues and was said to be Lange's first choice.

But Palmer, later knighted, insisted on the Labour Deputy Leader's privilege of choosing his own portfolio - and he wanted to be Attorney-General.

He was said to have threatened to resign if he did not get the position and one Labour minister privately described him as being in tears as embarrassed colleagues waited for Lange to resolve the impasse.

Lange eventually made Palmer Attorney-General and Minister of Justice and O'Flynn Minister of Defence, Deputy Minister of Foreign Affairs and Minister of State.

In his 1987 valedictory speech to Parliament (read by colleague Mike Moore because he was recovering from a stroke) O'Flynn, without naming Palmer, said his insistence on being Attorney-General was "an act of political selfishness from a quarter from which I least expected it and, I think, least deserved it."

O'Flynn added: "I said nothing at the time except that, as I have always done, I would endeavour to carry out the task I had been given as well as I could for the benefit of the Labour Party and the Labour Government. Any barrister with years of day-to-day court experience learns that he must make the best he can of the brief he has each day and, if I may use a somewhat inappropriate metaphor, I have simply soldiered on from day to day in that spirit."

But O'Flynn, who in retirement was to describe Palmer as the best law clerk he ever had, paid tribute in his valedictory speech to Palmer's work on parliamentary reform, particularly the abolition of "absurd" all-night sittings.

Frank O'Flynn was born in Greymouth in 1918 when his father, Francis Edward O'Flynn, was headmaster at Runanga School where his mother, Margaret Helen Valentine Duncan, also taught.

His father, whose parents came from Cork in Ireland, was a foundation member of the Labour Party and before that a member of early socialist groups and closely associated with the first Federation of Labour ("Red Feds"). Writing under the pen name "Ballot Box" because he feared his job as a teacher might be jeopardised, O'Flynn senior was co-author of *The Tragic Story of the Waihi Strike* with Harry Holland and Lloyd Ross. He had been in Waihi assisting the miners during the strike which followed the miners union's decision to join the Federation of Labour. Miners were savagely beaten by strike-breakers and one miner was killed.

O'Flynn's father was the author of other pamphlets and wrote articles for the *Grey River Argus*. He was friendly with union leaders Bob Semple and Paddy Webb who were to become members of the first Labour Government, Webb was best man at O'Flynn senior's wedding and was also at his son's.

In 1922 O'Flynn's father was transferred to Christchurch as headmaster of Heathcote School where O'Flynn went as a five-year-old. His father put his Model T Ford on the train to Otira from Greymouth then drove it over Arthur's Pass while Frank and his mother and sister made the journey over the pass by stage coach. His father was headmaster at Heathcote from 1922 to 1928 when he was appointed headmaster at Hornby near Christchurch.

With the election of the Labour Government, O'Flynn senior was appointed to the Legislative Council in 1937 and remained there until his death in 1942. Sitting beside him on their red plush bench was Michael Connelly whose son "Mick" was to share a bench with Frank O'Flynn in the House of Representatives.

O'Flynn describes his mother as a woman of considerable strength of character who was not really interested in Politics. "I remember her telling me she had once voted for Guinness (Sir Arthur Guinness, Speaker in the Liberal Government) against Paddy Webb".

O'Flynn went to Christchurch Boys' High School after attending Christchurch Normal School before it closed in 1931. Although his mother was not a Catholic there was a feeling he should go to a Catholic school. St Bede's was the obvious choice but its distance from Hornby meant he would have had to be a weekly boarder. So he went off to secondary school in the blue and black colours of Christchurch Boys' High School. "The headmaster asked my mother if she wanted me excused from prayers but she said 'Good heavens, no.' " O'Flynn's father was a practising Catholic and his mother strictly observed the no-meat rule on Fridays. Frank walked to Catechism classes on Saturdays. O'Flynn senior, whose mother had run a pub on the West Coast, gave up drinking after his marriage. "I'm two barrels ahead of the rest of New Zealand" he would say.

Frank was best at English and history at school and, in his own words, terrible at maths. He remembers ruefully that he was beaten for the school oratory prize by Bill Thornton, later Lieutenant-General Sir Leonard Thornton, Chief of Defence Staff, but managed to win it himself the following year.

He had always wanted to be a lawyer and in 1935 replied to an advertisement for a law clerk with the Christchurch firm Harper, Pascoe, Buchanan and Upham (later Harper, Pascoe, Buchanan and Penlington). But the wage was only 10 shillings a week and O'Flynn, possibly conscious of his school motto, *Altiora Peto* (I seek higher things), turned it down.

There was a shortage of sole-charge teachers at the time and, on his father's advice, he applied and got the job. In March 1936, at the age of 17 and a half, he packed his bag and headed for Tinawai, 15 miles from Fairlie and 30 miles from Timaru. He had nine pupils and was paid £15 a year for each pupil. His father sent him model lessons to use. In his spare time, he audited the books of the Country Women's Institute.

Not long after that, he moved to Wellington where the Government was advertising for clerical cadets at £115 a year (£125 with a boarding allowance). The salary went up by £15 or £20 a year but the boarding allowance was cut back. O'Flynn first stayed with Harry Parsonage, later to become Secretary of Labour, whose family had lived next door to the O'Flynn's in Runanga, and worked for the Education Department in the old wooden Government Building, now the Victoria University Law School.

O'Flynn recalls being appalled when he arrived in Wellington that the newspapers were so anti-Labour, particularly *The Dominion*. "Some Catholic priests were anti-Labour, too, and Archbishop McKeefry was a bloody conservative."

Enrolling at Victoria University College in 1936, O'Flynn passed History 1 and psychology his first year. J.C. Beaglehole was his lecturer in History II the following year when he sat next to Sylvia, who was to become his wife. "We were reproved by Beaglehole, not exactly for holding hands, but for talking or something."

O'Flynn was active in cross-country running and he and Sylvia were in the 1937 Victoria swimming team at tournament. He completed his B.A. in 1939, a year after Sylvia, and by 1940 was doing a law degree.

In 1942 he was the only student in Torts lectures given by James Williams three mornings a week for two hours at a time. "I knew more about torts than I knew about anything," O'Flynn recalls, "That's probably why it was the basis of my future law career." He used the 10th edition of Salmond on Torts which was the last edition "vetted" by Salmond himself.

Frank and Sylvia married in 1942 after a long courtship. He was 24 and she was a year older. O'Flynn had slightly less than half a law degree when World War II broke out.

The day after the declaration of war he tried to join the Navy but was told, he says, "Don't call us, we'll call you." Three months later a scheme of cadetships for the navy was started and he was interviewed by a board of captains. "They were horror-stricken that someone who had been to Christchurch Boys' High School and not Christ's College wanted to join the Navy so I said bugger them."

O'Flynn joined the Aerodrome Defence Unit at New Plymouth and after about a fortnight was learning to fly Tiger Moths. "I staggered through a flying course somehow or other. I had good flying instructors but I wasn't a born flyer." He got his wings in March, 1943 and was appointed a flying instructor at Wigram. He had done a navigational course at New Plymouth and a flying course at Woodbourne. O'Flynn served on Catalina flying boats in the Pacific, losing a finger to a propeller, and was demobilised in 1946.

His work at the Education Department before the war had been followed by a stint at the Wellington Trades Hall as assistant to Peter Butler, Secretary of the Labourers' Union. O'Flynn collected subscriptions travelled in Wairarapa and represented the union on various committees connected with the building industry. He also attended Wellington Trades Council and Labour Representation Committee meetings.

"I dearly wanted to get a law clerk's job," O'Flynn recalled later. "I knew Tim (later Sir Timothy) Cleary so I went to him and he put me on to Con (Cornelius James) O'Regan." O'Flynn had persuaded Butler to brief Cleary in an Arbitration Court case. He said: "Cleary was a nervous starter but when he got started he was a brilliant man. He was the only person appointed to the Court of Appeal who wasn't already a judge. He was a marvellous man and rightly described as a lawyer's lawyer."

O'Flynn worked half a day for O'Regan supplemented by a 5 guineas a week Rehab bursary while he was completing his degree. He finished his L.L.B. in 1947 and completed his L.L.M. the following year. In 1949 he was called to the Bar before the Chief Justice, Sir Humphrey O'Leary on O'Regan's motion. "It was a great day for the Irish," O'Flynn observed.

He stayed with O'Regan until 1953, handling a lot of trade union work. O'Regan's father Patrick (Paddy) had an extensive union practice throughout the country. O'Flynn appeared in some Supreme Court cases on his own or as junior to Con O'Regan or his partner Harry Arndt.

In 1953 when Wellington Solicitor P.C.P. McGavin was struck off, O'Flynn saw a chance to go on his own and bought McGavin's practice for £50.

O'Flynn specialised in criminal work but eventually decided to drop it. "Witnesses you deal with can't be relied on," he explained. "They tell you all sorts of bloody things which may turn out to be untrue. Now, that's alright when you're a knockabout, but when you cease to be a knockabout and get a bit of a reputation and a bit of standing you don't want to do that so I stuck to civil matters."

One of O'Flynn's more publicised criminal cases was the 1961 trial in Wellington of Edward Macmillan Sweeney, a 38-year-old freezing worker, charged with murdering 39-year-old Isabella Black Taylor.

Sweeney, the last man sentenced to death in New Zealand, denied killing Taylor, sometimes known as Mrs Sweeney, with a series of knife wounds.

A Sydney Street West resident, 70-year-old Prudence Reynolds, said Taylor had been living with her at the time. Sweeney had gone into the house "with a few beers in him" and had started to "get funny". He wanted Taylor to go back home with him but she refused. Some weeks later Sweeney went to the house with two bottles of sherry and unsuccessfully tried to persuade Taylor to go to a place in Tinakori Road. Mrs Reynolds told Crown Prosecutor W.R. Birks Sweeney returned again with another two bottles of sherry. She said she and Taylor went to sleep in the bedroom. Sweeney went in and asked Taylor to go with him but again she refused. Mrs Reynolds said Sweeney must have had a knife behind his back and he struck Taylor with it twice.

Mrs Reynolds told the court: "Isabella screamed after he struck her and I just put on the lights to see what had happened and she said 'he's killing me.'" Mrs Reynolds said she told Sweeney if he was going to do that sort of thing she didn't want him in her house. A housekeeper at the presbytery of the Sacred Heart Basilica in nearby Hill Street said she saw a man who said he was looking for a priest. She asked him to come back later but he said: "No missus, I can't I've murdered by wife." The man then pulled a carving knife out of his pocket. The housekeeper thought he was very drunk or very shocked.

The court was told Sweeney drank with friends at the Brunswick Hotel the following day and then moved on to St George Hotel where he was picked up by detectives.

Pathologist Dr P.P. Lynch said there were 11 knife wounds in Isabella Taylor's body. Two wounds had perforated the heart and three had penetrated the right lung. Considerable force had been used in inflicting the injuries. A blood analysis indicated the dead woman had a good deal to drink.

Chief Detective Angus McDougall, in charge of the police investigation, said Sweeney asked him at the police station: "How did Isabella die?" McDougall told him one of the stab wounds had gone right through the heart and Sweeney allegedly replied. "I must have got it in far enough then."

O'Flynn did not call Sweeney to give evidence and was left to argue that his client had wanted Isabella Taylor to come back to him and his attack was the result of his drinking.

The jury found Sweeney guilty and Mr Justice Hutchison sentenced him to death, although he did not put on the traditional black cap.

By then there was a widespread expectation that the National Government would move to abolish the death penalty.

"I still recall the death sentence with absolute horror," O'Flynn, who opposed capital punishment, was to recall.

The day after the death sentence on Sweeney was passed, Prime Minister Keith Holyoake was asked what would happen to him and replied: "Business as usual."

"All bloody hell broke loose at Mount Crawford Prison," O'Flynn said. "I think Sweeney was the only calm person in the place." His sentence was eventually commuted to life imprisonment and hanging was abolished several months later.

Although O'Flynn said he became fed up with criminal work he made an exception for any unions which gave him accident compensation work. "I defended people charged with stealing meat from the chain and various things," he said. He recalled that Sir Thaddeus McCarthy had privately referred to his clients as "the blood and boners." O'Flynn said: "It seemed to me to be unreasonable and unfair and unkind to pocket the big fees you got out of their accident work and then refuse to appear for them."

During the big 1951 waterfront dispute Harry Arndt acted for the Waterside Workers' Union. O'Flynn recalled: "We appeared for all sorts of bloody awful people who had bloody awful cases who were prosecuted for various offences. Harry appeared for every last one of them at a minimum fee."

O'Flynn says he was sympathetic to the watersiders "up to a point" "But I didn't really approve of the personnel," he said. "I knew (watersiders' secretary) Toby Hill quite well but he was a somewhat doubtful character and (president) Jock Barnes was an even more doubtful character. I thought the union was badly led. But I didn't approve of (then leader of the opposition) Walter Nash's 'neither for nor against.' "

O'Flynn started his own practice in Wellington in 1954 and was later joined in partnership by Donald Christie. There was no ill feeling in leaving O'Regan and Arndt. "Arndt was prepared to give me a partnership but O'Regan was not. I wanted to get on. In the end I had quite a large practice with workers compensation and claims for damages. I got a lot of work from Frank O'Sullivan of the Hotel Workers' Union, Peter Butler of the Labourers' Union, Harry Thompson of the Plumbers' Union and Len (later Sir Leonard) Hadley.

O'Flynn took silk in 1968 and was called to the Inner Bar before the Chief Justice, Sir Richard Wilde.

"In retrospect, taking silk was the silliest decision I ever made if you're going to go into politics," he said twenty years later. "But at the time I took silk I didn't intend to go into politics."

Two of O'Flynn's daughters followed him into the legal profession. Maeve, a barrister and solicitor became a director of Taranaki Savings Bank and married Hawera barrister and solicitor John McCarthy. Rosaleen, a Wellington barrister, married fellow barrister Graham Taylor. The O'Flynn's have two other children, Terrence and Brigid.

O'Flynn's career at the Bar was notable for two major defamation cases in which he appeared. *Thompson v Turbott* (1963) and *Brooks v Muldoon* (1972).

Dr A.W.S. Thompson, who came to New Zealand from Northern Ireland in the late 1940s, was Chief Medical Officer of Health in Auckland before being appointed Director of Clinical Services in Wellington ("He had a tremendous reputation in health circles in Britain before he ever came to New Zealand," O'Flynn was to recall).

Dr H.B. Turbott, well-known as the Radio Doctor, was Director-General of Health.

O'Flynn appeared for Dr Thompson in his defamation claim against Dr Turbott before Mr Justice McGregor and a jury in Wellington Supreme Court. Denis (later Sir Denis) Blundell, who became New Zealand High Commissioner in London and Governor-General, appeared for Dr Turbott.

At issue was a conversation between Dr Turbott and a Professor Mackintosh, of the London School of Tropical Medicine in a corridor in Geneva where it was alleged Mackintosh used words which defamed Dr Thompson. Mackintosh was alleged by Dr Turbott to have said: "Thompson has a brilliant brain but he would never do for a top job. Self comes first with Thompson."

The jury found the words defamed Dr Thompson and awarded him £500 damages. It found that when the defamatory words or words to the same effect were used by Dr Turbott at a meeting in Wellington he did not honestly believe Professor Mackintosh had used them. This meeting had been called to prepare Dr Turbott's evidence before the Public Service Appeal Board which had before it an appeal by Dr Thompson over the appointment of the Director of Public Hygiene, a position for which he unsuccessfully applied.

The defamatory statements by Dr Turbott at the briefing meeting and the Appeal Board hearing were made as Director-General of Health.

It was not contended the statements were incapable of any defamatory meaning and the main questions at the trial were whether they were made maliciously and whether statements made at a briefing meeting were covered by qualified or absolute privilege. The second of these questions was reserved for the consideration of the trial judge following the jury's verdict. Mr Justice Leicester held that Dr Turbott was entitled to the protection of absolute privilege at the briefing meeting and Dr Thompson lost his verdict for £500 damages. At a subsequent hearing on costs, Dr Turbott waived any claim against Dr Thompson who applied for costs against Dr Turbott which were refused.

Dr Thompson did not take any steps to appeal before the time for appeal expired but later applied for special leave to appeal.

He said he regarded the jury's verdict as full vindication of his character and conduct in bringing the action and also of his personal friend Professor Mackintosh.

For these reasons and not wishing to appear vindictive towards Dr Turbott, he had decided against an appeal.

Dr Thompson said he believed Dr Turbott's costs would be substantial and he would have to pay them himself. But since the time for appeal had run out newspapers had publicised the fact the Government had decided to pay Dr Turbott's costs in full amounting to £2,243. 11s 3d. Dr Turbott's expenses were paid with Cabinet's authority because the Attorney-General said the action against him arose directly from the discharge of his duties as Director-General of Health.

Dr Thompson said if he had been aware the costs would be paid by the Government he would certainly have appealed.

His application for leave to appeal was heard by Mr Justice McGregor and My Justice Leicester.

Dr Thompson said he felt strongly the Government's payment of Dr Turbott's costs and the publicity given to it destroyed the value of the Jury's verdict in his favour.

Mr Justice Leicester said the power to grant special leave to appeal could be exercised in such cases *as the justice of the case may require*. In the judges's view the important factors to be considered were (a) whether the question at issue appeared to be of public importance and (b) whether there were merits in the reasons given for delay. They thought the issue was of public importance. The emphasis in the Government's announcement it would pay Dr Turbott's costs appeared to be in the words used that the action against Dr Turbott arose directly out of the discharge of his duties as Director-General of Health and resulted in judgment being entered in his favour.

The implication there seemed to be that the result of the action was a vindication of Dr Turbott. The judges said: "This is clearly not so, as judgment entered in the defendant's (Dr Turbott) favour was the result of a technical rule of law, and he had been held to have made a statement in regard to the truth of which he had no honest belief. The announcement of the Attorney-General makes no reference to the vindication of the plaintiff's character and is capable of being read as a commendation of the defendant's conduct (which was the subject of criticism in the judgment) and inferentially a condemnation or disapproval of the plaintiff (Dr Thompson)."

The judges said there was a substantial derogation from the earlier vindication of Dr Thompson's reputation which he had received from the jury.

Blundell, for Dr Turbott, submitted that, on the expiration of the time for appeal, his client had a vested right in the judgment. The judges said there might be cases where it would be highly prejudicial to the defendant to divest him of that right by exercising their discretion to allow an appeal out of time. But they did not think any prejudice which might arise in the present case was sufficient to deter them from regarding it "possessing exceptional peculiarities" and warranting the exercise of a special indulgence in Dr Thompson's favour.

They decided the issue was a matter of public importance and a proper case for granting special leave to appeal, but they did not allow costs.

Dr Turbott then appealed to the Court of Appeal on the ground the judges' decision in the Supreme Court was erroneous in fact and law. The Court of Appeal found for Dr Turbott, declaring that the judges in the Supreme Court had misdirected themselves in point of law, when they decided the reasons they gave could properly lead to a decision to grant leave to appeal out of time.

O'Flynn told the Court of Appeal the public announcement the Government had paid all Dr Turbott's costs greatly detracted from the full vindication of Dr Thompson's reputation and conduct which he had obtained by the jury's verdict. He said Dr Turbott had been found guilty of publishing a malicious slander on Dr Thompson in his professional and official capacity. The Court of Appeal was not entitled to substitute its own discretion merely because it would have exercised it differently, he argued.

Delivering the Court of Appeal's judgment, Sir Alexander Turner, referred to the tests proposed by Mr Justice Chapman in *Pitcher v Dimock (1913)*: "If a party chooses to wait until the last day he must take the risk of ascertaining in point of fact and law what is the last day. If he fails in this, he must make out a clear, strong case for the indulgence of the Court. He must show either some reason connected with conduct of his opponent or some exceptional ground connected with his own position or the peculiarities of the case, or something equally distinct."

The Supreme Court had expressed the view that the tests proposed by Chapman J were satisfied. But the Court of Appeal said it was important in the exercise of the discretion that there should be a recognition that there were two different types of case - the first, in which omission to give notice in time was due to mistake, inadvertence or sickness, and the second, in which there was a definite decision not to appeal but where, after the expiry of time, some happening had caused a desire to appeal. It said this was a case of the latter type.

The Court of Appeal said Dr Thompson knew the time when the right of appeal would expire and knew it was possible Dr Turbott might ask the Government to pay his costs. It said O'Flynn had attempted to argue that the justice of the case required that Dr Thompson should be allowed an opportunity to demonstrate to the public that he had "won the case," but it said: "This is only a loose expression by which it is really contended that the respondent (Dr Thompson) should be afforded the opportunity of press publicity for a continuation of the litigation."

The Court of Appeal, which comprised Sir Alexander Turner, Sir Alfred North, and the President, Sir Kenneth Gresson, said: "Where an unsuccessful party deliberately allows the time to expire with a full knowledge of all the relevant facts as they then are, he cannot, at least in the absence of some consideration which does not appear in the present case, invoke a subsequent event even if that event is brought about by the successful party, if he should have foreseen the reasonable possibility of the event which actually occurred."

Allowing Dr Turbott's appeal against the Supreme Court's decision to grant Dr Thompson leave to appeal out of time, the Court of Appeal allowed him 30 guineas costs and 15 guineas for the Supreme Court hearing.

After the 1972 general election O'Flynn persuaded the new Labour Health Minister Bob Tizard to pay half Dr Thompson's costs.

The other major defamation case in which O'Flynn appeared, *Brooks v Muldoon* (1972), followed the National Government's rejection of industrial relations manager and university lecturer Brian Thomas Brooks for the post of chief industrial mediator.

Brooks, who claimed \$25,000 damages, alleged he was defamed in newspaper interviews and the *Gallery* television programme by the Deputy Prime Minister and Finance Minister Robert David (later Sir Robert) Muldoon who was later to become Prime Minister.

O'Flynn with D.A. Christie as his junior, appeared for Brooks and R.G. Collins, with him C.W. Jones, for Muldoon.

Brooks, in his statement of claim, said he was employed by Alex Harvey Industries Limited as its industrial relations manager. His duties were to resolve or attempt to resolve questions or disputes between the company and its employees and the unions.

At the invitation of the Secretary for Labour he had applied for the job of Chief Industrial Mediator of the Industrial Mediation Service under the Industrial Conciliation and Arbitration Act. He said he had been advised by the Secretary of Labour that a committee dealing with his application had unanimously recommended his appointment. Brooks alleged that before the Government made a final decision on the appointment Muldoon falsely and maliciously spoke certain words about him which were published in the *Sunday News*. They were: "I and some of my colleagues believe the Government would be taking an undue risk in appointing a man whose background is that of a way-out militant. Mr Brooks displayed that he was a way-out left-winger when he was involved with the National Union of Teachers."

Brooks claimed that further defamatory statements were published on three subsequent occasions. He said the words complained of meant he could not be trusted to act in an impartial and fair-minded way and there was an undue risk he would favour trade unions in disputes with employers.

Muldoon denied the words were defamatory and said the statements were true. He said he had a public duty to answer questions put to him by reporters and had spoken in good faith without malice.

O'Flynn told the jury the Government the previous year had introduced a new kind of conciliation procedure and mediators were to be given extensive powers. A selection committee included the Secretary of Labour, executive director of the New Zealand Employers' Federation and the president of the

Federation of Labour. There were 115 applications including 41 for the position of chief mediator. The Selection committee was disappointed with the calibre of some of the applicants and thought there might be some more suitable people who had not applied.

Federation of Labour President Sir Thomas Skinner mentioned two or three names including Brooks. The employers' representative, after making inquiries of Auckland employers, agreed to Brooks' appointment.

O'Flynn said Brooks, 35, was a long-standing member of the Labour Party and had been chairman of the Fendalton branch in Christchurch. He had also been president of the short-lived National Union of Teachers. He had an M.A. and L.L.B. and had been a part-time law lecturer at Canterbury University, later becoming a senior law lecturer there and at Auckland University. After his appointment to Alex Harvey Industries he continued as a part-time lecturer in industrial law at Auckland University.

The decision to reject Brooks' appointment as mediator had been made by the National Party caucus, O'Flynn said.

After publication of Muldoon's statements Brooks had noticed changes in attitude to him by employers he had dealt with and restrictions had been put on him by his own employer. O'Flynn said it was quite untrue Brooks had failed to disclose to the selection committee his background in the Labour Party and National Union of Teachers. The action was not brought for political purposes but simply to vindicate Brooks' character and reputation.

Former Prime Minister Sir Keith Holyoake was one of three ministers called by Muldoon in his defence.

Collins told the jury the Government was gravely concerned about the rather unsettled state of industrial relations in the country. It was also concerned about the economic consequences of that unsettled state which had led to a wage-price spiral and a breakdown to some extent in the arbitration system. Collins said all witnesses he had called had said that, ideally, the person selected as chief mediator would be one "without extreme identification" in his background. He suggested Brooks had a background of union activity which advocated and favoured direct action.

Muldoon in evidence had said the Government's main but not only objection to Brooks' appointment was his activities as president of the National Union of Teachers which was seen as a militant organisation, although he agreed under cross-examination by O'Flynn that the union had become inactive. He also agreed Brooks had nothing to do with a series of teachers' stop-work meetings because he was working at Alex Harvey Industries.

To O'Flynn, Muldoon agreed he has misquoted from a newspaper article on the *Gallery* current affairs interview. He had quoted Brooks as saying: "If you mean what I think you mean, it is not irresponsible for teachers to take direct action, it's their duty." But what Brooks actually said, referring to the policy of the National

Union of Teachers at a certain time, was: "... it is not irresponsible for teachers to take direct action. It's their duty to draw parents' attention to the poor deal children are getting."

O'Flynn recalled: "I think the case really turned on the fact that Muldoon had put the parts of two sentences together as if they were really one. When the jury asked to see the video (of the *Gallery* programme) a second time you could see them turn their heads from the set to Muldoon and back and I knew then that I had won."

The jury accepted O'Flynn's submission that Muldoon's misquotation of Brooks showed malice and awarded him \$3,500 in respect of the *Gallery* programme and \$1,500 for statements made by Muldoon in newspaper reports.

Referring to the statements he was alleged to have made about Brooks, Muldoon said he had "got into this thing accidentally." He did not think the term "activist" was discreditable but he said that if a person was required for a neutral position one who had been an activist was, to some extent at least, disqualified.

Brooks said nothing in his background could ever make him a "way-out militant." He strongly resented the description of him as a "way-out left-winger." He told O'Flynn: "I felt clearly that here was somebody who could not be impartial, who could not be fairminded, who will be a risk."

In his final address for Brooks, O'Flynn said the case was not over whether Brooks should have been appointed chief industrial mediator - the Government was at liberty to appoint whom it thought fit - but whether Muldoon's remarks were defamatory to Brooks. Brooks had given a good deal of voluntary service to the community and did not seek the mediator's job.

He said Muldoon had regarded the whole thing as a political question. His object had been to get the Government off the hook after it had messed about for some months over appointing a mediator. Brooks had been made a chopping block.

At the end of the six-day trial the 11 member jury (a woman juror had become ill) awarded Brooks \$5,000 damages. It found Muldoon was activated by malice against Brooks in comments he made on the *Gallery* programme.

Muldoon subsequently sought judgment, saying the finding of malice was against the weight of evidence and the occasions to which the jury's findings referred were covered by qualified privilege.

Mr Justice Haslam said he could find no authority to support a duty on Muldoon as a minister to publicise, even in answer to persistent questions, the particular reasons why Brooks was considered unworthy of the chief mediator's job.

The Government said it would pay the \$5,000 damages awarded against Muldoon but its decision was widely criticised and Muldoon eventually said he would pay the damages himself, adding that it should not be regarded as a precedent for other ministers.

O'Flynn, who described the verdict as a "triumph," said he owed the brief to fellow Labour lawyer Dr Martyn Finlay QC. who had recommended Brooks should consult him.

Brooks was to become a professor and Dean of Law at Victoria University, specialising in industrial relations, labour and employment law.

O'Flynn joined the Labour Party in 1938 as a member of the branch in Ngaio, Wellington, where his father, a member of the Legislative Council, had a government house. He was president of the Khandallah branch in the late 1940s and HAITAITAI-ROSENEATH branch in the 1950s. "I carefully did not advertise I was a Labour Party enthusiast and I think quite a few people were surprised when I emerged from the woodwork as Labour M.P. for Kapiti in 1972," O'Flynn said. His sister, Helen who became a prominent journalist in Sydney, had been more involved in politics and was campaign organiser for Prime Minister Peter Fraser in the old Brooklyn electorate. She became Chairman of the Press Gallery in the New South Wales Legislature and President of the New South Wales Branch of the Australian Journalists Union.

In the 1951 snap election following the waterfront dispute O'Flynn stood for selection against Wellington mayor Frank Kitts in Mount Victoria but Kitts beat him for the nomination, later becoming M.P. for Wellington Central.

"In the 1954 election all the Wellington seats were spoken for," he said. "But my real determination, having lost the battle against Kitts, was to be a lawyer," O'Flynn recalled.

In 1968, while he was appearing for passengers at the inquiry into the sinking of the inter-island ferry Wahine, former Labour minister Bill Fox, who was living at Otaki, north of Wellington, asked him if he was interested in standing for the Otaki seat in 1969. O'Flynn, who had a beach property in the area and was on the Otaki Borough Council, thought about it and declined.

In 1972 O'Flynn thought Labour leader Norman Kirk would win the election and that he himself could win in Kapiti. There were 10 candidates for Labour selection, with Labour Party president Bill Rowling, later prime minister, on the selection panel. There was also a representative of the Hotel Workers' Union, for which O'Flynn had done a lot of work, who he saw as a valuable ally - a belief which turned out to be correct.

O'Flynn won the nomination and faced fellow lawyer Barry Brill, the National candidate. He beat Brill but Brill took the seat from him in 1975. "I didn't think much of Brill at the time but in Parliament I came to think he was a good lawyer - a much better lawyer than he was given credit for."

O'Flynn's election in 1972 meant that, with Martyn Finlay, Labour had two lawyers in Parliament. A group of Labour MPs including Dr Michael Bassett, who became a close friend, were "pretty distressed at the meagre talents" for Cabinet and persuaded O'Flynn to throw his hat into the ring when the Labour caucus voted. He stayed in the ballot down to the last four before being eliminated. O'Flynn enjoyed the work of a backbencher, working hard on select committees and in debates and travelling extensively in Asia as a member of a Parliamentary Delegation, led by the Speaker, Sir Stanley Whitehead.

In 1976, after his defeat in Kapiti, he went for selection for the Nelson seat against Geoffrey Palmer, son of the former editor of the *Nelson Mail*, but Palmer was ruled ineligible because he had not been a party member for the required period. The nomination went to local supermarket owner Mel Courtney who won the seat.

O'Flynn's opportunity to return to Parliament came in 1978 when he won the Island Bay seat after standing for selection against the sitting member, Gerald O'Brien, who had been the subject of some embarrassing publicity in a court case. "It was a very unpleasant task," O'Flynn recalled. "But it became quite apparent that Gerald wasn't going to be selected whatever happened."

O'Flynn won Island Bay with a majority of 700. He thought O'Brien would get about 1,500 votes but he actually polled 3,500. "If I'd known that, I'd probably have ducked it," O'Flynn said later. O'Flynn held the seat in 1981 with a 3,938 majority and in 1984 when his majority went up to 6,007.

When Prime Minister David Lange distributed portfolios to his ministers in 1984 O'Flynn expected to be Attorney-General - his friends in the Parliamentary Labour Party also expected him to get the job. But his former law clerk - Geoffrey Palmer - "the best law clerk I ever had," O'Flynn says - had other ideas. He wanted to be Attorney-General himself and insisted on the deputy leader's traditional right to choose his own portfolio.

A disappointed O'Flynn was made Minister of Defence, Deputy Minister of Foreign Affairs and Minister of State.

He said in retirement that Lange told him when ministers were being sworn in at Government House that he would see O'Flynn got six months in office as Attorney-General. O'Flynn commented: "Which he didn't and which I didn't think he would."

In 1987 when O'Flynn was in hospital after a stroke Lange visited him to tell him he had been made a Privy Councillor, now the Right Honourable Frank O'Flynn. "That seemed to be the least I could do," he said Lange told him.

O'Flynn said he had a "love-hate" relationship with Lange, commenting: "If he was interested in something he was brilliant, but if he wasn't..."

The former RNZAF flight lieutenant had an uncomfortable time as Minister of Defence. Labour's anti-nuclear policy put him at odds with the defence chiefs and Defence Secretary Denis McLean. But he disagreed with Lange's description of his military critics as "geriatric generals." He said: "Bill Thornton lived for a long time after that and he could hardly be described as a geriatric at any stage."

In 1985 O'Flynn met United States Secretary of States George Shultz for post-ASEAN talks in Kuala Lumpur.

With the Americans fuming over the decision to ban their nuclear ships the atmosphere was anything but cordial.

"I quite liked Shultz but, after a photo opportunity at the beginning of our talks, he proceeded to deliver an oration in a monotone, lambasting New Zealand," he recalled. "After some thought, I decided to reply in kind. There was no meeting of minds at all. We got absolutely nowhere."

As defence minister he approved the purchase of the sixth Orion for the RNZAF and had some part in refitting the other Orions. He also approved the refitting of the Skyhawks.

But he came to feel staff at Defence Headquarters were undermining him and feeding damaging material to unfriendly journalists.

He was concerned at what he considered the exorbitant cost of sending officers to courses overseas and there was a very public row over sending a colonel to the Canadian Defence College. O'Flynn was furious that Defence Headquarters appeared to take his approval of the Canadian posting for granted and had delayed seeking his approval until "the 11th hour." The colonel, whose ten and a half months posting in Canada would cost about \$100,000, exclusive of salary, for him, his wife and family, had already paid fees in advance for boarding his dogs, O'Flynn noted caustically.

O'Flynn refused to approve the posting but was eventually overruled by Lange who accepted Defence arguments the Canadians would be upset if the posting was cancelled.

What particularly concerned O'Flynn was the feeling that postings to overseas defence colleges were "sacred cows" - not to be attacked by anyone, even ministers.

In an angry letter he drafted to Lange, he wrote: "It is I who have to front up to parades of soldiers whose officers, while saluting smugly, will be sniggering behind their hands."

O'Flynn said he took a "very dim view" of Lange voting against a provision in legislation which continued to make it an offence for service personnel to have homosexual relations. "I was opposed to it too," he said. "But I had a duty as minister to support it. It was a free vote but I resented Lange voting against it. He should have supported his minister or he could have abstained. He didn't discuss

his vote with me at all." He added: "I wouldn't say it embittered my relations with Lange. They were already very poor."

Lange was not a consultative prime minister, O'Flynn said. "If there was one thing he hated it was one-to-one confrontations. He was a brilliant chap so long as he was allowed to have his own way."

O'Flynn reflected in retirement: "I became a totally disenchanted member of Cabinet. I just did what I had to do. The only position that gave me any satisfaction was as Deputy Minister of Foreign Affairs."

He saw as his greatest achievement as Deputy Minister the setting up of trust funds with the more than \$12 million compensation New Zealand got from France after the Rainbow Warrior was sunk by French agents. "That has had more effect on New Zealand life and social conditions than you can possibly imagine," he said in 1999, adding: "Frankly I didn't get much public credit for it but I was too tired to be interested in getting credit."

O'Flynn retired from Parliament in 1987 after a severe stroke he suffered just before he was to visit European capitals to discuss trade access.

In the traditional valedictory speeches - made in O'Flynn's absence - Lange described him as "one of the more stern and real characters the Government has had." He said: "Fearlessly straightforward, he has been one of the wisest counsel at the Cabinet table." And he noted that O'Flynn was one of the members who still wrote his speeches by hand.

"He took on a task in Cabinet with real determination in a matter that was difficult and won through to the extent that he earned the respect even of those who advocated positions totally different from his own," Lange told Parliament.

In his own speech, read for him by Mike Moore, O'Flynn said it was a satisfying task - and, at times, an exciting one - to be a minister in a democratically-elected government. But he thought Parliament had gradually deteriorated in its work as a debating chamber - until reforms initiated by Geoffrey Palmer - and the standard of members' behaviour had declined considerably in the 12 years he had been there.

Of his time as a minister, he said: "I know that my period as a minister has not appeared to be a very successful one. There are certainly times when I have not enjoyed it much. That has partly been because of being deployed in quite unfamiliar territory. That in its turn, I feel obliged to say, was the result of an act of political selfishness from a quarter from which I least expected it and, I think, least deserved it."

O'Flynn said those opposed to the Government's policy and anti-nuclear policy had spent much time attacking him. "It was easier than attacking the Prime Minister, and I think it also had inspiration in various places." He added: "Gradually much of that has died away, partly because the Government's policy has been increasingly seen to be reasonable and not damaging to New Zealand as many

people feared it would be. I think, at the end of the day, I may get some credit for that state of affairs and that people will be surprised to find out how much that was constructive has been done while I have been in charge of the Defence portfolio."

Describing him as a "West Coast battler made good," Moore, later to be briefly prime minister said Westminster had traditional descriptions of MPs which appropriately applied to O'Flynn.

"He is learned, he is distinguished, he is gallant and he is honourable," he said.

***Derek Round***

