

The Hon Justice Alan Robertson

Alan Robertson SC was sworn in as a judge of the Federal Court of Australia at a ceremonial sitting in Sydney on 18 April 2010.

His Honour went to school in England and after a year at University College London came to Australia with his parents. His Honour graduated from the Australian National University in 1973 with a Bachelor of Arts with honours and then joined the Commonwealth Public Service, spending five years with placements at Treasury, the Public Service Board and the Department of the Capital Territory. His Honour then studied law part time and then full time at the Australian National University, graduating with a Bachelor of Laws with honours in 1980. His Honour commenced practice as a legal officer in the Attorney-General's Department, in the Deputy Crown Solicitor's Office and then the Advising Division.

Between 1981 and 1983 his Honour worked for the then Commonwealth solicitor-general, Sir Maurice Byers. At the conclusion of Sir Maurice's term as solicitor-general, his Honour followed Sir Maurice to the New South Wales Bar, reading with WMC Gummow. His Honour commenced practice on the Ground Floor Wentworth Chambers, moving in 2003 to 5th Floor St James Hall. His Honour was appointed senior counsel in 1995.

His Honour was the convenor of the Administrative Law Section of the New South Wales Bar Association between 1988 and 2008, and from 2008 convenor of the constitutional and administrative law section. His Honour was a member of the Administrative Review Council for five years and for 22 years consultant editor of the CCH High Court and Federal Court Practice.

The solicitor-general for the Commonwealth, Stephen Gageler SC, spoke on behalf of the Australian Government. Stuart Westgarth spoke on behalf of the Law Council of Australia and the solicitors of NSW. The president of the Bar Association, Bernie Coles QC, spoke on behalf of the Australian Bar Association and the New South Wales Bar. Robertson J responded to the speeches.

His Honour said that indirectly that KE Enderby QC was responsible for his interest in the law:

He was Minister for the Capital Territory in 1973 and I was working in that department. The government decided there should be residential rent control and price control of certain goods, which I will come back to, in the ACT. The Landlord and Tenant Ordinance 1949 was revived as

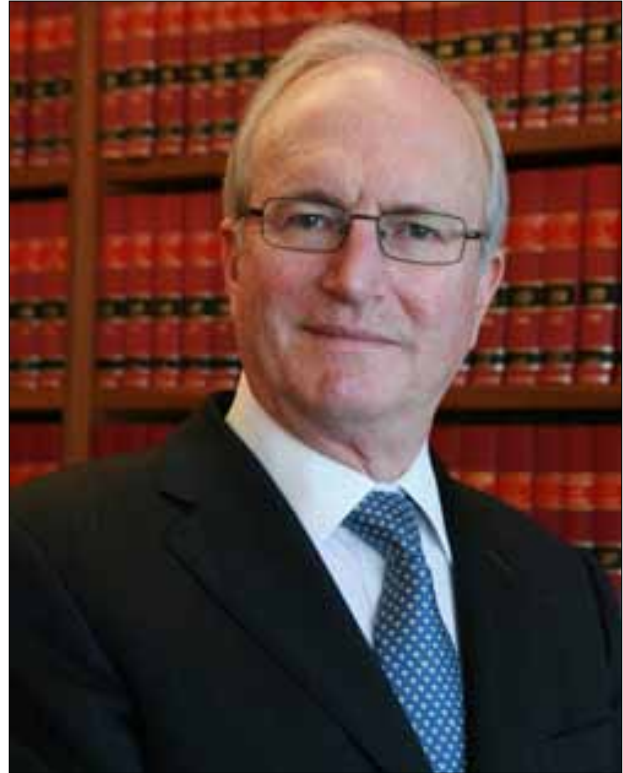


Photo: Courtesy of the Supreme Court of New South Wales.

well as a Price Control Ordinance. The first case that I ever read was *Rathborne v Abel*, decided in 1964; a rent control case. Thus I came to be exposed to the analytical and linguistic skills of Sir Garfield Barwick who wrote the main judgment. His analysis of the statutory language and his own muscular prose were revelations to me as a student of English. I decided I should learn more and began my legal studies at the ANU in 1976.

You will be pleased that only the necessities of life were the subject of price control orders in Canberra in 1973 and those goods were petrol, bread, milk and beer.

Robertson J said of Sir Maurice Byers:

I worked with him as Solicitor-General on many cases between 1981 and 1983 and benefited immeasurably from what I then learned. He was a man of large intellect, large vision and wide interests, although those interests did not extend to reading novels. He thought radically and in relation to the Constitution he said we must sit as students and understand what it teaches us and what it says without imposing on it what we want to hear. He wrote in a distilled way, sticking close to those radical issues he had identified and dispensing with non-essentials. ...

The solicitor-general referred to his Honour's advocacy style with an example from the UN Oil for Food Program Royal Commission conducted by the Hon Terence Cole QC in 2006:

The Commission held 70 days of public hearings before delivering its final report in November 2006. Each of those 70 days of public hearings was the subject of intense media scrutiny. A national newspaper reporting on one of them noted that a witness named "Snowball" had responded to a lawyer who had risen to ask him a question with a question of his own, "Who do you work for?" The newspaper report continued as follows:

"It is of no concern to you, Mr Snowball," snapped the Commissioner. "Mr Snowball, your obligation is to tell the truth no matter who asks you the question".

No doubt seeking to capture the tension of the moment the newspaper report went on as follows:

Terence Cole QC is known as one of the hard men of the law. He is sharp, he snaps, he asks withering questions but this was ugly. Snowball's barrister protested but Cole ordered the questioning to proceed but then –

said the report –

the mystery lawyer, Alan Robertson SC, courteously apologised to the man in the witness box, "I didn't hear the question, Mr Snowball. I represent the Department of Foreign Affairs."

Mr Westgarth quoted a *Sydney Morning Herald* journalist on the same topic:

...trying to conjure up an image of you reminiscent of a character in a Dickens or Peter Carey novel *The Herald's* opening line read:

A strange and ruffled figure had risen from among the lawyers to quiz the witness.

This seems a rather unfair description, given that your Honour acquires your suits from the highly reputed Sydney tailor, J.H. Cutler. The word "strange" seems particularly inapt. Your Honour has been described by many colleagues and those who had briefed you as a real gentleman, a hard-working, trustworthy and honourable opponent, courteous, highly intelligent and possessing a dry sense of humour; all wonderful attributes for the bench and the task ahead. One colleague, while describing you as her favourite silk to appear with, did concede that she looked forward to appearing before your Honour because you would undoubtedly display the same incisive and unflappable characteristics that were apparent during your time at the Bar.

The president said:

one senses a real degree of appreciation of loss amongst many of your Honour's admiring junior colleagues.

They have, of course, been able to console themselves with the ready acknowledgment that today's ceremony was a predictable, indeed, inevitable outcome of your Honour's distinguished success. As one of your former juniors has said of your Honour that in his view, "He," that is to say, your Honour, "always has been a judge." ...

One of your readers with perhaps a knack for alliteration has described your Honour as constant, calm and confident and utterly unflappable. One senior counsel has observed of your Honour that, "He is the epitome of efficiency in preparation of opening address and cross-examination." Your Honour has been described as a precision-guided advocate. Australia's most pre-eminent appellate counsel has said of your Honour:

His quietly spoken demeanour masks a very intelligent, very determined and very skilful advocate. Add to that a considerable knowledge of the Law, particularly in the constitutional and administrative areas, and he is ... a formidable opponent.

Not to be outdone by the praise of the Bar, your Honour's numerous instructing solicitors have been effusive about your encyclopaedic knowledge of cases, your Honour's ready ability to call to attention cases directly in point, as well as your Honour's grasp of detail. There has been a high degree of praise for your thoroughly collaborative approach, and many of those with whom you have worked have praised and commented upon your Honour's insight and readiness to work through problems with the members of your team, and to listen to, and absorb and to take into account the views of others.

...

Your Honour is indeed well recognised in a profession not given for manifestations of particular sloth, as a phenomenally hard worker, but your Honour has managed always to balance your Honour's practice with family commitments. It is said that your wife once took you on a cruise out of the range of mobile telephones so that you couldn't be contacted, but your Honour's particular skill and ingenuity was put to use and your Honour managed to find a fax machine on board the ship and at some expense, managed to communicate with your secretary some urgent amendments to an advice then nearing completion. Your Honour's IT skills have often been noted, to the admiration of your numerous juniors, most of whom have not had that experience with other skills by whom they have been led. One junior observed that your

Honour was the first silk she knew that could actually edit a document and return it with comments, all via email.

The president also referred to Robertson J's administrative law practice:

The early 1980s heralded something of a considerable boom in the growth and expansion of the administrative law areas of jurisprudence, and your Honour was well positioned with the coming into operation of the *Administrative Decisions Judicial Review Act 1977* for the areas of practice and the opportunities which the commencement of the Act promoted with effect from the early 1980s. Your Honour was junior counsel to the Commonwealth Solicitor-General, Gavin Griffith QC in the Spycatchers case. Your Honour appeared in *R v Murphy*, *Georgiadis v The Australian and Overseas Telecommunications Corporation*, *Commonwealth v Evans*, *Deakin Industries*, to name but a few cases of significance in those areas.

Your Honour also made as counsel, a significant contribution in the area of the law of privilege and notable cases in this regard included the *Commonwealth v The Northern Land Council* and *Waterford v The Commonwealth*. Your Honour's particular insight into the areas of constitutional law and Section 92 include such leading cases as *Cole v Whitfield* and *Street v The Queensland Bar Association*. Increasingly in recent years, your Honour has argued successfully for the Commissioner of Taxation in a number of High Court cases. These include, but of course are not limited to the *Commissioner of Taxation v Linter Textiles*, *Bluebottle v The Deputy Commissioner of Taxation*, *Raftland v The Commissioner of Taxation*, *W.R. Carpenter Holdings v The Commissioner of Taxation* and *The Commissioner of Taxation v Reliance Carpet Company*, all decisions which illustrate propositions of significantly more extensive importance than the particular issue of revenue law which they resolved for the immediate parties.

Your Honour's prowess at taxation law should not have come as a surprise, given early indications in the late 80s when your Honour appeared in a case called *Air Caledonie International v The Commonwealth* as junior to Mr Rodney Meagher QC, that being a constitutional case regarding whether an immigration fee was in fact a tax. Perhaps your Honour's early dipping into the experiences of the revenue law came as some measure of light relief from the emerging thicket of jurisdictional error.

Robertson J said on the same topic:

I have practised, as you have heard, mainly in this Court, and I have regarded this Court as my professional home. I have been in cases in most, if not all of its jurisdictions, and in a few where the question was whether it had jurisdiction at all. It has more now than it had then. Indeed, as I understand it, the court only does not have general jurisdiction in federal matters because the court was not seen as the place to have cases involving collisions with federal telegraph poles and running down cases involving federal post office vans. Federal jurisdiction can, of course, be very complicated. I, myself, have never been unduly troubled by identifying it. I have proceeded on the robust basis that if I was in a case then it was very likely to be in federal jurisdiction.

The Federal Court Reports post-dated the establishment of the Court by some years. But I was interested to see that I appeared in a case in volume 1 with WMC Gummow, with whom I was reading, as you have heard, and most recently, at least thus far, in a case reported in volume 189. That suggests that I was at the Bar a very long time ago or that too much is reported or both of those things.

The first case in the Commonwealth Law Reports where I was listed as appearing was Clunies-Ross in 1984; a section 51(31) case. I was led by one AR Emmett and by Sir Maurice Byers QC and despite these advantages, we lost. I, of course, no longer have any opinion on whether the case was rightly decided.

Robertson J concluded with two stories in answer to the question, 'why go to the court now?':

In the middle of argument in *Tasmania v Commonwealth* in 1983 the Solicitor-General's Office was moved from the administration building to the brand new Robert Garran offices. When I was in Canberra for a case last year with Stephen Gageler, that new building, finished in 1983, had been demolished. This had a chilling effect on me. I thought that the cycles of life were getting shorter. There was less time than I had thought.

The second and last story is that four years ago, as you have heard, 2007, I was briefed in an inquest into the death of one of the journalists in Balibo, some 30 years before in 1975. I had a very bright and capable assistant from the Australian Government Solicitor and we were thinking about evidence. And I said to him, Andrew, just remind me, who was the Minister for Defence in 1975? A quizzical look passed his brow and the short answer was, "I was three".