

**Supreme Court of the Australian Capital
Territory**

**Speech delivered by the Honourable Chief Justice
Helen Murrell
at a Memorial Sitting paying Tribute to the Late
The Honourable Russell Walter Fox AC QC LLB,
Judge and Chief Judge of the Supreme Court of the ACT
from 1967 to 1977**

4 February 2014

Distinguished guests, the Fox family and friends,

The Court acknowledges the traditional custodians of this land. We pay our respects to their elders, past and present. This land always has been and always will be Aboriginal land.

We are gathered to honour Russell Walter Fox, who died last December, at 93 years of age.

His Honour was this Court's first Chief Judge.

It is 47 years since, at 47 years of age, His Honour came to Canberra as the ACT's only resident judge. There had been no resident judge for nearly 7 years. It was 1967. The population of the ACT was about 100,000. Harold Holt was Prime Minister. This building was in its infancy, having been opened in 1963.

His Honour received assistance to purchase a two-storey house in Dominion Circuit, Deakin, by way of a 4% Government loan of \$57,000. At that time, ordinary citizens were eligible for a loan of \$7,000. The house was equipped with maid's quarters in the upstairs/downstairs fashion. It is not true that his Associate and Tipstaff resided there.

At that stage, the Court's work was approximately one third criminal work, one third personal injury and one third divorce. As His Honour's practice at the bar had been in the areas of commercial law and equity, His Honour's experience in these areas was negligible.

His Honour was motivated to take the appointment because it presented an opportunity to modernise the Court's practices at a time when the ACT's justice system was lagging behind that of its sister jurisdictions. Matters proceeded in a dilatory way and practitioners accepted long delays.

His Honour's approach was different. He brought legal rigour and administrative efficiency to the Court, demanding strict adherence to time standards. He introduced a Friday applications list and that has been described as "a seminar for young lawyers". Some practitioners simply attended to observe and learn from the embarrassment of others. His Honour had a saying, "some learn a lot, some learn a little and some don't even know that instruction is at hand". His Honour was firm but patient with his students. Although he was a legal purist who demanded efficiency, His Honour's old-school personal charm made him popular with the profession.

For four years, His Honour remained the only resident judge. Indeed, His Honour was the only judge in the ACT. It was not until 1980 that the High Court became housed here. In 1971, Justice Blackburn (formerly of the Supreme Court of the Northern Territory) was appointed to assist His Honour, and in 1972 Justice Connor (formerly of the Victorian bar) was appointed.

His Honour achieved notoriety through the 1972 decision in *Golden-Brown and Ors v Hunt and Anor* (SC 701 of 1972), a case concerning removal of the "Aboriginal Embassy" from the lawns in front of Parliament House. His Honour (with Blackburn and Connor JJ) found that the *Trespass to Commonwealth Lands Ordinance 1972* had not been notified in accordance with s 12(2) of the *Seat of Government (Administration) Act 1910*. This put the cat among the pigeons at Commonwealth level for a number of days, because much other subordinate legislation had been notified in a similar way. In causing this disruption, His Honour was aided and abetted by Mr T J Higgins, who appeared for the plaintiffs. Fortunately, equilibrium was restored promptly and without the need to release the then relatively small number of ACT prisoners from custody. At that time the ACT, like Britain in the late 18th Century, sent its convicts to New South Wales for incarceration.

His Honour was a strong opponent of the death penalty. His personal beliefs were challenged by his role as a judge in the 1970s, when the death penalty was the only available penalty for murder.

A former staff member tells of one occasion when His Honour experienced agony while waiting in chambers for a jury to deliver its verdict in a murder trial. His Honour searched his chambers for a black cloth to put over his wig in the event that the jury returned a guilty verdict.

In a 1973 murder case, His Honour attempted to reassure the convicted offender, Mr Pantelic, by informing him that it was the government's proclaimed policy to abolish the death penalty and that the offender could form his own opinion as to whether the sentence would ever be carried out. He also directed that the jurors should not be recalled for jury service for five years.

His Honour had strong opinions about drug law reform and about the utility of imprisonment. In an address to the Civil Rehabilitation Committee in 1972, His Honour stated that "banishment to prison ... is too often an opiate for the community conscience."

In 1977 His Honour was appointed as the Court's the first Chief Judge. At the same time, he was appointed as a judge of the recently established Federal Court. We are privileged to have Chief Justice Allsop of the Federal Court with us today.

His Honour made a strong contribution to judicial development, which was then a new concept. He helped to found and was the first Chairman of the Australian Supreme Court Judges Conference from 1972 to 1977. He was influential in the formation of the Australian Institute of Judicial Administration and was its first Chairman from 1980 to 1984.

In 1975 His Honour was appointed by the Whitlam Government to Chair the Ranger Uranium Inquiry into the environmental aspects of mining uranium in the Northern Territory. The resulting Fox Report evidences His Honour's independence and skill in social policy analysis. The Report became the foundation for the Australian Government's policy on uranium mining. Among other things, the Report recommended the creation of Kakadu National Park and the granting of Aboriginal title to a number of areas of land.

In late 1977 His Honour retired as Chief Judge of this Court, but remained on the Federal Court.

In same year, Prime Minister Fraser appointed His Honour as Ambassador-at-Large to represent Australia internationally in relation to nuclear non-proliferation. He continued in that role until 1979.

After his return to Australia, His Honour sat on the Federal Court and as Chief Judge of the Supreme Court of Norfolk Island.

His Honour is fondly remembered by those who, in the 1970s, were youthful members of the Canberra legal profession, including the aforementioned TJ Higgins, our immediate past Chief Justice, former Justice Gallop, and former Masters Hogan and Harper. Those here today who practised in his Court remember His Honour as a kind but firm tutor and mentor, with a vast knowledge of the law.

His Honour was a thoughtful man of great intellectual capacity and discipline. He was dedicated to the law. But unlike many of his peers, his interests and contribution extended well beyond his work as a judge and as a leader of the profession.

The people and the legal profession of the ACT are fortunate indeed to be able to claim him as our first Chief Judge. In his delivery of justice, in his administration of the law and in his appreciation of emerging social policy issues, His Honour set a precedent that we should endeavour to follow.

There are a number of people who would like their apologies noted also. They are:

The Chief Justice and Judges of the High Court of Australia (they are all sitting in Full court hearings and are unable to attend).
Chief Minister for the ACT

Additional Judges of this Court
Mr Alan Hogan, former Master of the Court
The Hon A Neaves
Mr R Cahill (former Chief Magistrate)
Mr G Hardimann
Mr D Pearce
Mr E Clancy
Mr M Cummins
Mr Neil Macphillamy

I would like to thank all of those who have contributed to this speech in particular
Master Harper.