

THE HONOURABLE MORETON ROLFE Q.C.

ARBITRATOR, MEDIATOR AND REFEREE

CURRICULUM VITAE

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PERSONAL

Full Name: James Moreton Neville Rolfe

Date of Birth: 6 October 1939

Nationality: Australian

Academic Qualifications: Educated at Sydney Grammar School and the University of Sydney from which he graduated with the Degree of Bachelor of Laws (Honours) in 1962.

Fellow of The Institute of Arbitrators and Mediators Australia.

PROFESSIONAL CAREER

- ❖ Admitted as a solicitor of the Supreme Court of New South Wales in 1963 and called to the Bar of that Court in February 1964.
- ❖ Appointed Queen's Counsel in 1978.
- ❖ Appointed an Acting Judge of the Supreme Court of New South Wales for three months in early 1989 to help clear the backlog of cases in the Common Law Division.
- ❖ Appointed a Judge of that Court on 24 September 1990 and assigned to the Equity Division.
- ❖ In February 1992 assigned to the Commercial Division and was senior Judge and administered the Commercial, Construction and Technology and Admiralty Lists for three years before retiring on 16 March 2001.
- ❖ At the request of the President of the Court of Appeal sat on the NSW Court of Appeal reasonably frequently as an Additional Judge of Appeal.
- ❖ In the months after retirement sat for two short periods as an Additional Judge of Appeal and in November 2002 sat for one month as an Acting Judge of the Supreme Court of Western Australia, whilst Justice Owen was involved in the HIH Royal Commission. This involved sitting on the Court of Appeal and, mainly, the Court of Criminal Appeal.
- ❖ Since 2001 has practiced exclusively as an Arbitrator, Mediator and Court appointed Referee, save for the periods as an Acting Judge.

AREAS OF PRACTICE

At the Bar practiced extensively in most jurisdictions, including commercial, equity, construction, technology; and admiralty matters, both at first instance and on appeal. As Senior Counsel prosecuted on behalf of the Commonwealth an alleged Sales Tax evasion scheme and an alleged fraud perpetrated by an employee of a Territory. Both matters proceeded for many months. Appointed from time to time as an arbitrator.

ACTIVITIES ON THE BENCH

The Commercial Division, which later became the Commercial List within the Equity Division, heard cases involving trade and commerce, including contract, insurance, franchise, security enforcement and professional negligence matters; construction and technology cases, including the consideration of referees' reports to decide whether they should be adopted by the Court; and applications for leave to appeal from arbitral awards, the appeal if leave was granted and for other relief in respect thereof. It also heard Admiralty matters. Moreton Rolfe was involved in all facets of this work and the administration of the various cases on a case management basis. He heard many long and complex matters involving large amounts. All of these judgments were delivered promptly. This work was additional to acting, from time to time, as an Additional Judge of Appeal.

He was requested to deliver papers to professional bodies both on substantive legal questions and case management procedures. He took a leading role in promoting case management with a view to ensuring that cases were heard as quickly as the circumstances of the matter allowed.

WORK SINCE LEAVING THE BENCH

Arbitrations

In addition to arbitrations where Moreton has sat as a single arbitrator, he has been involved in the following arbitrations, all of which were potentially complex and involved, on their face, substantial amounts. They were all arbitrations where each party nominated an arbitrator and the arbitrators appointed a chairman:

- ❖ Appointed by the State of New South Wales, which was the respondent, in a matter in which the applicant sought substantial damages for alleged breach of contract and other duties in relation to the performance of large scale development work to establish port facilities and a factory in the Newcastle region of New South Wales for the refining of iron ore, which, as part of the overall project, was to be extracted in Western Australia and shipped to Newcastle for treatment. It was a “stop watch” type arbitration, which would have placed considerable pressure on the arbitrators, as well as the parties, to meet the schedule. The applicant decided to exercise a contractual right not to proceed on the day before the hearing was to commence.
- ❖ Appointed by a large foreign company, which was the applicant and cross-respondent, in a matter in which it was suing and being sued by an instrumentality of the Commonwealth. The issues involved not only contractual construction, but also technical questions relating to the design and manufacture of certain equipment. The respondent/cross-applicant appointed a former Justice of the High Court of Australia. The chairman was a former Judge of the Court of Appeal of the Supreme Court of Victoria. After several preliminary hearings the parties advised that they had resolved the dispute, the hearing of which was estimated to take some six months, privately.
- ❖ Appointed by another foreign company, which was the applicant, in a dispute with a large Australian based construction company, concerning the installation of equipment in tollways. Once again, the issues involved contractual interpretation and technical matters. The parties resolved the matter shortly before the hearing commenced. This arbitration was conducted under the ICC rules. The construction company took no objection to Moreton’s nomination notwithstanding that he had made adverse findings against it as a Judge and Referee, facts which were known to the company and revealed to the ICC prior to its approving the appointment.

Mediations

Moreton has been a mediator on numerous occasions in cases involving a wide range of issues. This has required his obtaining a mastery of the material provided by the parties, sometimes at quite short notice, to form an impartial view such as to enable him to explore with the parties the strength and weaknesses of their respective cases with a view to trying to enable them to reach a settlement. Many mediations conducted before him have been successful either at mediation or have led to settlements shortly thereafter. Moreton’s experience both at the Bar and on the Bench has enabled him to explain to litigants many of the pitfalls, which confront them in the litigious process, and to discuss privately with the legal representatives possible legal and practical matters, which may affect the ultimate outcome. He has adopted the attitude that one of the essential requirements for a mediator is patience to allow the parties to consider their positions, without pressure or undue hassle and to take advice before committing themselves to a position.

Court References

Moreton has been appointed by the Supreme Court of New South Wales as a referee in five (one still to be heard) complex matters. In each completed reference, the report has been submitted to the Court within the generally short time stipulated by it.