
Remembering Sir Cyril Walsh KBE

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Cyril Ambrose Walsh, one of the greatest alumni of St John's College and of the University of Sydney, was born in Sydney on 15 June 1909. He was the sixth child and fourth son to Michael John Walsh, a labourer with the Water Sewerage Board, and Mary Ellen Murphy.¹ The family lived in Werrington, Western Sydney, on a small dairy farm.² Cyril was no ordinary sixth child. Attending Parramatta High School,³ Cyril not only graduated as Dux aged 17 but also received a state-wide essay prize in history for an analysis of the mutiny on the HMS *Bounty*.⁴ He was awarded a scholarship to study at the University of Sydney, commencing in 1927.⁵ He would reside at St John's College, beginning a life-long association with it. Cyril was an active participant in college life, serving as Secretary and President of the College Students' Club.⁶ He would later act as a College Tutor in Law, Deputy Chair of the College Council and Fellow of the College.

The enduring legacy of Cyril Walsh at the University of Sydney extends far beyond his contributions to St John's. He achieved a measure of success in his undergraduate studies that remains astonishing in its breadth and consistency. He first obtained a Bachelor of Arts, graduating with first class honours and the University Medal in English, first class honours and the University Medal in Philosophy, as well as first class honours in Latin.⁷ No doubt encouraged by those triumphs, he then embarked on a Bachelor of Laws, graduating once again with first class honours and the University Medal.⁸ Among the vanquished in Walsh's class of 1934 was one Nigel Bowen, who would become the Commonwealth Attorney-General and the inaugural Chief Justice of the Federal Court of Australia.⁹

The extent of Walsh's achievements in his legal studies are recounted in an anecdote appearing in *The Jubilee Book of the Law School of the University of Sydney* penned by Alan Bridge, later a judge of the Supreme Court of the Northern Territory and the Supreme Court of the Australian Capital Territory. Bridge recalled that Walsh's "brilliance ... shut the gate against ... all other comers", and joked that a rare exception to the "monotony of Walsh's predatory habits" was his failure to win the Rose Scott Prize for most outstanding female student.¹⁰ A similar assessment of Walsh's academic record was made by John McLaughlin, one of his former associates and later a Master in Equity and Associate Justice of the Supreme Court of New South Wales. McLaughlin wrote in 2007 that Walsh's "undergraduate achievements have been neither equalled nor surpassed by any lawyer graduating from the University of Sydney".¹¹

* Chief Justice of the High Court of Australia. This is a lightly edited version of an address given at the Sir Cyril Walsh KBE Law Library Dedication and Ceremony held at St John's College within the University of Sydney on Sunday 21 April 2024. Considerable thanks are due to Andrew Belyea-Tate and Flynn Wells for their assistance in its preparation.

¹ John Kennedy McLaughlin, "Sir Cyril Ambrose Walsh (1909-1973)" in John Ritchie (General ed), *Australian Dictionary of Biography* (2002) Vol 16.

² John Kennedy McLaughlin, "Walsh, Cyril Ambrose" in Michael Coper et al (eds), *The Oxford Companion to the High Court of Australia* (OUP, 2007); McLaughlin, n 1, Vol 16.

³ McLaughlin, n 2; McLaughlin, n 1, Vol 16.

⁴ "Parramatta High School", *The Sydney Morning Herald*, 17 December 1926, 7; McAuley, "Pandemic Letter 45: Cerebral Cyril", *St Thomas More Society* <<https://web.archive.org/web/20240322001943/https://stms.org.au/pandemic-letter-45-cerebral-cyрил/>>.

⁵ McAuley, n 4.

⁶ McLaughlin, n 1, Vol 16.

⁷ McLaughlin, n 1, Vol 16.

⁸ McLaughlin, n 2.

⁹ See Thomas Bavin (ed), *The Jubilee Book of the Law School of the University of Sydney 1890-1940* (1940) 242.

¹⁰ ABKI Bridge, "1933-1939" in Thomas Bavin (ed), *The Jubilee Book of the Law School of the University of Sydney 1890-1940* (1940) 95.

¹¹ McLaughlin, n 2.



Immediately after graduating from his law degree in 1934, Walsh was called to the New South Wales Bar at the age of 25. He established a substantial practice, especially before the Equity Division of the Supreme Court.¹² In what must have been a noticeable contrast with the leading figures of the pre-War Bar, Walsh became well-known for his “friendliness, co-operation and courtesy”.¹³ His contemporaries noted his “innate diffidence and a reluctance for self-promotion”.¹⁴ Despite that reluctance, in 1954 he was appointed to the Supreme Court of New South Wales aged 44 and without having taken silk.

Justice Walsh soon gained a reputation as one of the most thorough, incisive and even-handed judges on the Court. Tom Hughes AO KC recounted that Walsh’s patient yet inquiring temperament was “completely suited to judicial office”, and that when appearing before him “one gained a strong impression that one of his main aims was to enlist counsel’s involvement in a co-operative exercise designed to expose and unravel the problems, factual and legal, thrown up by the case in hand”.¹⁵ One notable example of Walsh’s disciplined and methodical approach to the judicial role is his judgment at trial in the seminal negligence case of the *Wagon Mound (No 2)*.¹⁶ The case, well known to law students, concerned ships docked at Mort Bay. While the SS *Wagon Mound* was refuelling, its crew carelessly allowed oil to spill into the Bay which gradually floated underneath an adjacent wharf where repairs on two ships were taking place. The repairs involved the use of welding equipment. A spark ignited the floating oil, engulfing the wharf and the ships in flames. The owners of the wharf sued the charterers of the *Wagon Mound* in negligence and nuisance in the Supreme Court. Those claims went to trial, then on appeal before the Full Court of the Supreme Court, and then finally on appeal before the Privy Council in London, which delivered a bombshell judgment¹⁷ disapproving of the well-established test for remoteness in negligence.¹⁸ A separate proceeding was commenced against the charterers in New South Wales by the owners of the damaged ships. Walsh was allocated as the trial judge. He found himself in the unenviable position of applying the Privy Council’s new test of “reasonable foreseeability” in circumstances where the parties were willing and able to take the case back to London on appeal.

The trial lasted 18 days, with Walsh delivering his judgment a month later. He held that the charterers were not liable to the shipowners in negligence but were liable in nuisance. The charterers appealed directly to the Privy Council, which, once again, took a novel approach – this time concerning questions of duty and breach. However, the Privy Council’s judgment, delivered by Lord Reid, stated that their Lordships were “indebted to that learned judge [at first instance] for the full and careful survey of the evidence which is set out in his judgment”.¹⁹ Such compliments extended by an ultimate appellate court to a trial judge were, and remain, rare. Praise for Walsh’s judgment has not been confined to its factual findings. Former Chief Justice of New South Wales James Spigelman has argued that his own “preference”, on the question of the law regarding breach of a duty of care in negligence, “would be to go back to what Sir Cyril Walsh said in *Wagon Mound [No 2]* and start again”.²⁰

Despite his reputation as a “lawyer’s lawyer”,²¹ Justice Walsh’s 15 years on the Supreme Court included several contributions to public life beyond his judicial work. He was a member of the Chief Justice’s Law Reform Committee in New South Wales, the precursor to the New South Wales Law

¹² Transcript, *Occasion of the Swearing-In of Mr Justice Walsh as a Justice of the High Court of Australia* (High Court of Australia, 3 October 1969) 4.

¹³ Transcript, n 12, 4.

¹⁴ McLaughlin, n 2.

¹⁵ Hon TEF Hughes AO QC, “As Time Goes By” [2006] (Winter) *Bar News: Journal of the NSW Bar Association* 58, 63.

¹⁶ *Miller Steamship Co Pty Ltd v Overseas Tankship (UK) Ltd* (1963) 63 SR (NSW) 948.

¹⁷ *Overseas Tankship (UK) Ltd v Morts Dock & Engineering Co Ltd* [1961] AC 388.

¹⁸ As stated 40 years earlier by the Court of Appeal of England and Wales in *In re Polemis and Furness, Withy & Co* [1921] 3 KB 560.

¹⁹ *Overseas Tankship (UK) Ltd v Miller Steamship Co Pty Ltd* [1967] 1 AC 617, 632.

²⁰ Hon JJ Spigelman AC, “Negligence: The Last Outpost of the Welfare State” (2002) 76 *Australian Law Journal* 432, 443.

²¹ Fricke, *Judges of the High Court* (Hutchinson of Australia, 1986) 198.

Reform Commission.²² He was appointed to represent Australia at the 1962 meeting in Bangkok of the Working Party of the UN Economic Commission for Asia and the Far East on International Commercial Arbitration.²³ Nonetheless, it was undoubtedly the quality of his judgments that led to two elevations in quick succession. He was appointed as an inaugural member of the Court of Appeal of the Supreme Court of New South Wales in January 1966, and as a justice of the High Court of Australia in October 1969 at the age of 60.

The merit of Walsh's appointment to the High Court could not be questioned. One contemporary commentator noted that Walsh was considered "one of the three or four most brilliant – and adventurous minded" private lawyers in Australia.²⁴ However, for reasons beyond Walsh's control, his appointment to the Court was controversial. The first cause of controversy was perennial state rivalry. Walsh's appointment meant that six of the Court's seven justices were from New South Wales. At a ceremonial sitting of the Court in Melbourne to welcome his appointment, the Chairman of the Victorian Bar Council, PA Coldham QC, jested that "it was suggested to me that I should welcome your Honour on behalf of the barristers of the district of Port Phillip".²⁵ The second factor was age. Walsh's appointment meant that all members of the Court were in their 60s, except for Justice McTiernan who was well into his 70s.²⁶ The third was political speculation as to the implications of Walsh's appointment for upcoming cases. *The Australian* wrote that "[h]e is expected to add to the conservative tone of the present bench at a time when it is about to consider important constitutional cases involving the delineation of Commonwealth powers".²⁷ Walsh felt compelled to respond publicly. *The Australian* reported that in a subsequent interview:²⁸

[Walsh] flared at the observation published in several newspapers that he would add to the "conservative tone" of the present High Court bench. He said: "Without being offensive to the people who said it, I feel that it was a very foolish statement. There was no qualification."

The irony was that Walsh had long been considered by his peers as both apolitical and open-minded. At the University of Sydney, he won the University Medal for philosophy as a devoted Catholic at a time when the faculty was dominated by Challis Professor of Philosophy John Anderson, an avowed religious sceptic. He was appointed to the Supreme Court by a Labor Government, and to the High Court by a Liberal Government. Walsh had further opportunity to clarify his judicial philosophy publicly at his swearing-in. He said that:²⁹

[W]e who spend our time as lawyers engaged in the adjustment, by the application of the rules of the law, of the relations between one man and another – or sometimes between the State and its citizens – and in the enforcement of their rights and obligations, are doing a thing which is well worth doing and which is of fundamental importance ... [I]n trial work and in appellate work I have found often that the questions to be resolved have touched very closely the emotions and the cares of troubles of men and women being the people concerned. In my experience it is wrong to say that the law and the material on which it works are remote from life and humanity.

Tragically, Walsh's opportunity to resolve legal questions of importance to the Australian community would be cut short. He died of multiple myeloma in November 1973, just over four years after his appointment to the High Court. My friend James Stevenson, now a judge of the Equity Division of the Supreme Court of New South Wales, was his associate when he died. James recalls him as a modest, gentle, humble and quietly spoken man, with a broad Australian accent, who managed his work efficiently between the regular hours of 9:15 am and 4:30 pm Monday to Friday and who showed no signs of illness

²² Barwick CJ, 128 CLR, vi.

²³ McLaughlin, n 2.

²⁴ Graham Fricke, *Judges of the High Court* (1986) 199.

²⁵ Transcript, *Welcome by the Legal Profession in Victoria to Mr Justice Walsh* (High Court of Australia, 7 October 1969) 2.

²⁶ Fricke, n 24, 196.

²⁷ *The Australian*, 20 September 1969.

²⁸ *The Australian*, 23 September 1969.

²⁹ Transcript, n 12, 8.

until quite close to his death. My predecessor as Chief Justice, Sir Garfield Barwick, would reflect that on his passing “the Court ... lost a ... great lawyer and a great judge ... from whom increasingly distinguished service was confidently expected ... He had not reached his zenith”.³⁰

The passage of half a century since those remarks has brought the significance of Walsh’s contribution to the Court and to Australian law into sharper focus. His judgment in the *Tasmanian Breweries* case³¹ remains a concise and insightful excursus on the nature of judicial power. He wrote a considered separate judgment in the landmark *Concrete Pipes* case concerning the corporations power.³² But it was in private law cases that Walsh was at his most confident and innovative. In *Wenham v Ella*,³³ he cautioned against “treating rules which constitute useful guidance in the ascertainment of damages as rigid rules of universal application, instead of treating them as prima facie rules which may be displaced or modified whenever it is necessary to do so in order to achieve a result which provides reasonable compensation for a breach of contract”.³⁴

Sir Anthony Mason briefly sat on the Court alongside Walsh. He has recalled that Walsh “shared a similar approach to judicial work to [his] ... good friend ... Sir Harry Gibbs”. Mason noted that:³⁵

Walsh had one unusual characteristic. He was unwilling to discuss a judgment after argument concluded until he had thought the case through and arrived at his final conclusion. He evidently thought that, by expressing a tentative view, he might compromise his impartial judgment.

It is that earnest commitment to the independent performance of his judicial role that looms large in the remarks of Chief Justice Barwick at a special sitting of the Court after Walsh’s passing. Barwick said that Walsh was:³⁶

[P]atient, courteous and painstaking [during hearings], ever anxious to understand the submissions of counsel, ever alert to see that all aspects of the problem in hand received attention. His judgments betray the intense and unremitting research into the subject matter which he always undertook and the calm, penetrating and dispassionate consideration from which his decision resulted. He was completely independent of mind. He understood and spoke of the task of deciding “as one for which one is personally responsible and as an anxious and lonely one”. But, though always humble and careful in his exploration of a matter, once he researched a decision in the loneliness of his own mind he expressed himself in judgment clearly and firmly.

It is fitting that the Sir Cyril Walsh KBE Law Library be named in honour of one so dedicated to “intense and unremitting research”. It will stand as a memorial both to Sir Cyril’s diligence at St John’s College and to the substantial contribution to Australian public life that diligence facilitated. It should serve as an inspiration to present and future generations of students to make their own distinctive contribution to our community.

³⁰ Barwick CJ, 128 CLR, ix.

³¹ *R v Trade Practices Tribunal; Ex parte Tasmanian Breweries Pty Ltd* (1970) 123 CLR 361.

³² *Strickland v Rocla Concrete Pipes Pty Ltd* (1971) 124 CLR 468.

³³ *Wenham v Ella* (1972) 127 CLR 454.

³⁴ *Wenham v Ella* (1972) 127 CLR 454, 466.

³⁵ Anthony Mason, “Supreme Court of New South Wales: Opening of Law Term Judges’ Dinner” (2008) 82 *Australian Law Journal* 839, 846.

³⁶ Barwick CJ, 128 CLR, vii.