

The Judges of Western Australia



SASHA MOSS[†]

In this the sixth in our series of pen portraits of the judges of Western Australia, we provide a short biography of Michael Holden, Chief Judge of the Family Court of Western Australia.¹

MICHAEL HOLDEN

Born in 1944 in the small English village of Brancaster, Norfolk, Chief Judge Michael Henry Holden describes many of the formative twists and turns of his life as 'accidents in history'. The first of these 'accidents' occurred during World War II when his father, a member of the Royal Canadian Air Force, was sent to Britain where he met his future wife, herself the daughter and grand-daughter of British army generals.

When he was 18 months old, the Holden family returned to Canada where his father became a history teacher and his mother, according to the ethic of the day, assumed the role of full-time wife and mother. Holden's sister and mother still live in Canada and the Chief Judge returns there every few years to spend time with them.

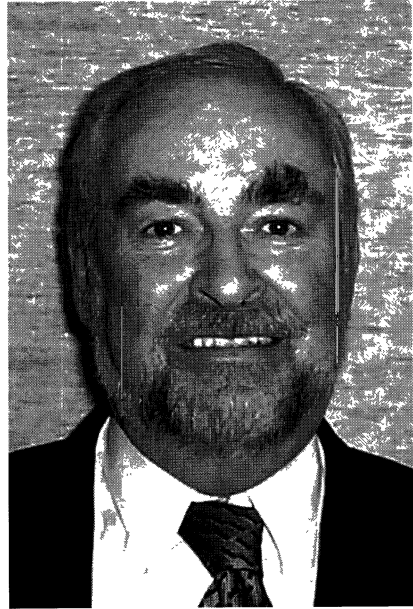
The Chief Judge's education began at St Andrew's College, a private boarding school located in a small town named Aurora, approximately 25 miles north of Toronto. Studying Law never crossed his mind during these teenage years; instead he enjoyed history and excelled in team sports. A true Canadian, he had a particularly strong passion for ice hockey. His fondest memories are of the friendships he made during his years at St Andrew's, many of which have endured.

[†] Member of the Student Editorial Board, UWA Law Review, 2002.

1. Previous pen portraits appear in UWAL Rev, vols 27, 30 and 31(1).

Following in his father's footsteps, the Chief Judge commenced his tertiary studies at Bishop's University in Quebec. Given his dismal track record in mathematics and the sciences, Holden recalls that it was 'the humanities or nothing', and so he undertook an Arts degree. He had a strong interest in political science whilst at university; however, upon graduating he soon realised that he was qualified only to 'sell life insurance and used cars'. He decided it was necessary to gain further qualifications.

The Chief Judge's entrance into the Law commenced at the 'Harvard of Canada', Osgoode Hall Law School. He had no particular interest in family law at this stage and certainly never dreamt of becoming a judge. Upon graduation he was not greatly motivated to apply for Articles but, with his summer job coming to an end, he decided he should make the effort. Putting forward only one application, another turn of fate, and some high marks at Law School, saw him win a position at a prestigious Toronto law firm, Montgomery Cassell. After completing his Articles, Holden returned, as required in Ontario, to Osgoode Hall to study for the Bar exams. He was offered a position at a Toronto law firm at the conclusion of his studies; however, after a spur of the moment phone call to his wife, proposing that they set sail for Australia, he gracefully declined.



The ensuing months took Holden and his wife across Canada by train and down to San Francisco by bus. This was followed by a two month freighter journey to Western Australia. He and his wife arrived in Fremantle in August 1971.

With just \$6 to his name, Holden set out to find work and was employed almost immediately in a Perth law firm. Instinct, however, told him that not all was right in the firm and he chose to leave. The firm subsequently closed, the principal ending his legal career in gaol. The Chief Judge remembers this as a very interesting introduction to the Western Australian legal world.

Another 'accident of history' then arose for the Chief Judge, as the only opening available at the time was with the law firm Paterson & Dowding, which specialised in family law. He soon became a partner. Initially he had taken a great interest in criminal law, undertaking about a dozen jury trials, but before long it was family law which captured his interest.

In 1984 Holden moved to the Bar and in 1987 he began his own practice with fellow solicitor John Barlow: Holden Barlow. He greatly enjoyed starting his own

practice and found it gratifying to have opened the first 'boutique' family law firm in Perth. His fondest memories of this time are the excellent relationships with his co-partners, John Barlow and then Nan Janour who took over after John Barlow was appointed a judge of the District Court of Western Australia in 1988.

In August 1991 Holden was appointed to the Bench and in November 1996 to the position of Chief Judge of the Family Court of Western Australia. He was honoured to be offered this appointment and the opportunity to put something back into the community. The Chief Judge admits there were major adjustments to overcome, including a sense of isolation inherent in the transition from making submissions to taking the decisions.

While there is no aspect of his position that the Chief Judge dislikes, he admits that the most difficult part of the job is making decisions which affect children in the far too frequent event of either both parents being very deserving, or conversely, where neither spouse has much to recommend them as a fit and deserving parent. The Chief Judge recalls conversations with his Supreme and District Court judicial counterparts who have told him that they would find it extremely difficult to make choices between parents in child custody cases. The Chief Judge, however, confides that he could not imagine sentencing a person to gaol as his colleagues must sometimes do!

The Chief Judge believes that the most important characteristics of a judge are patience, tolerance and courtesy. It is his view that people who appear before a judge are more likely to accept a decision if they believe that they have had a chance to present their case fully, and beyond that, that the judge has listened carefully to what they have had to say. Upon his appointment as Chief Judge, Holden was praised for this very quality. Judy Eckert, then President of the Law Society of Western Australia, stated that his appointment was warmly welcomed, in great part because of his impressive ability not only to make sound decisions promptly, but to conduct proceedings with patience, politeness and a unique approachability.²

After seven years at the helm of the Western Australian Family Court, the Chief Judge sees the Court's foremost problem – that of a distinct lack of resources – as being one that will face it for many years to come. When the Chief Judge's administrative commitments and leave are taken into account, the Court is effectively run on a maximum of three judges at any one time, with the result that waiting lists, in the Chief Judge's mind, are unacceptably long. Another serious issue for the Court is the increasing number of self-represented litigants. For the Chief Judge this is of particular concern in custody cases where, if you do not have one or both sides legally represented, you often do not get the full presentation of evidence needed to decide what is truly in the child's best interests.

2. J Eckert *Justice Michael Henry Holden: Chief Judge of the Family Court of Western Australia* (1997) 24(1) Brief 31.

An issue the Chief Judge has had to face with increasing frequency over the last few years has been the constant scrutiny of the Court by men's rights groups. While sympathising with those groups, he makes clear that one of the significant weaknesses of their criticisms is the misconception that the Court has had any part in framing the legislation on child support. The Chief Judge states that he is constantly imploring individuals who are unhappy with the child support legislation to speak to their members of parliament. The Chief Judge recognises that there will always be criticism of the courts, particularly the Family Court, as there will often be at least one party who is unhappy with the outcome.

The Chief Judge is a permanent member of the Appeal Division of the Family Court of Australia and the demands and challenges he faces in this position make it possibly the most enjoyable aspect of his work. The only 'downside' of this role for the Chief Judge is that he spends far too much of his time flying from Perth to other capital cities.

During his career the Chief Judge has held many roles in the legal community, including being a Legal Aid Commissioner in the late 1980s, a council member of the Law Society, and for five years the Western Australian representative on the Executive Council of the Family Law Section of the Law Council of Australia. The Chief Judge also devoted two years to the Presidency of the Western Australian Family Law Practitioners Association and is still very supportive of the organisation, praising its goals and professionalism in the pursuit of improvements in the family law area.

Despite his busy life, the Chief Judge does find time to relax, enjoying reading, pottering in his garden and escaping to his beach house in the south-west of Western Australia. The Chief Judge has three children and two step-children, none of whom, he fondly notes, have shown any interest in the law. Despite his strong connections to England, his birth place, and his fondness for his homeland of Canada, the Chief Judge now considers himself an Australian at heart. However, he admits to greatly enjoying the Commonwealth Games as it is almost certain that one of his teams will win!

As he boarded that freighter in the early 1970s in San Francisco, the Chief Judge initially envisaged his journey to Western Australia as no more than a three month sojourn to explore a land so revered by his peers. Over 30 years later the Chief Judge is still here – a fact he explains away as 'never deciding to stay, just never deciding to leave.'