

## The Hon Philip Ernest Powell AM QC (1930–2016)



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Philip Ernest Powell died in Sydney aged 86. He was the son of a well-known piano tuner and the family lived at Vaucluse. He attended Sydney Boys High School (1942–1946) and was a brilliant scholar. He had a phenomenal memory. Powell graduated from the University of Sydney in Arts and in Law and was admitted as a solicitor of the Supreme Court in 1954 and practised at Dudley Westgarth & Co. After just one year as a solicitor, Powell was called to the New South Wales Bar in 1955.

Powell was in active practice in the 'Golden Years' of the Sydney Bar, the post-war years. He had a large room on 12<sup>th</sup> Floor Wentworth Chambers where he remained for almost the entirety of his career as a barrister. He had a vast practice, appearing in common law and in equity, in commercial cases, in industrial cases and in appeals. He practised alongside the greats of the

day Rogers QC, Traill QC, Needham QC, Finlay QC, Hope QC, McLelland QC and Sully QC many of whom later became his judicial brethren.

Powell took silk in 1970 and became one of her Majesty's counsel. In April 1977 he was sworn in as a judge of the Supreme Court of NSW. At the time, he was senior vice-president of the New South Wales Bar to President Doug McGregor. Thence his commission would span a quarter of a century.

As a junior barrister, the Hon Michael Kirby remembers Powell for two things. First, Powell kept a Domesday Book in which he recorded the ages and dates of sitting superior court judges, in order to monitor judicial opportunities. Second Powell was well-known for dropping everything to advise and assist junior counsel. This old tradition of the bar was one which he assiduously maintained.

A third thing for which Powell is remembered is his meticulous attention to detail both of facts and of the law which stayed with him throughout his career.

Powell's generosity was legendary whether in court, in chambers or at his home in St Ives where he lived for 43 years. A very junior clerk who later became a judge, remembers his gentlemanly manner and bonhomie, whilst accompanying Powell on the Wage cases interstate in the 1970s.

Powell sat as the Probate judge for over a decade. And he was also the Protective judge. He is remembered for the

humanity he showed on many occasions by stepping off the bench, taking off wig and gown and explaining to litigants, often children, the implications of the orders he would make. Though, on occasion, Powell could be robust.

Powell acquired an encyclopaedic knowledge of law relating to procedure and to the history and evolution of equitable doctrines. His judgments show an authoritative erudition of the law rendered in beautiful prose. He was published in authoritative texts on commercial law and the protective jurisdiction, including 'Origins and Development of the Protective Jurisdiction of the Supreme Court of New South Wales'. Powell's particular reverence for retaining the antique rules of practice and procedure is well-known.

Powell was appointed a Judge of Appeal in October 1993.

Justice Philip Hallen said at his own swearing-in:

I have been lucky enough to have appeared before equity and probate judges who have mentored me. For a number of years when my career in the equity, probate and the protective areas was developing, the judge whom I appeared before most often was the Honourable Philip Ernest Powell.

Powell is remembered for any number of lives and persons he helped change for the better, and for the many and varied cases he heard. Of the latter, the *Spycatcher Case* is notorious. A

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young Malcolm Turnbull appeared as counsel for Peter Wright of MI5. Powell took a dim view of the opposing English witnesses. In a letter to the Bar Association Michael Kirby noted that

*A pantheon of dignitaries attended Powell's obsequies, befitting someone who did so much and who was truly learned in the law. The prime minister came to pay his respects ...*

Powell was upheld in that case by both the Court of Appeal and by the High Court of Australia - only the tabloid newspapers in London dissented.

On the occasion of his retirement from the Court of Appeal in 2002, the then Chief Justice James Spigelman commented:

Your Honour's predilection for precision is, you should know, much admired. You always stayed on the right side of that fine line between precision and pedantry. The clarity of your Honour's expression will mean that the judgments you delivered in your long period of service on this Court will stand the test of time. On behalf of all of the Judges of the Court I thank you for your contribution to the people of this State and to the law.

A pantheon of dignitaries attended Powell's obsequies, befitting someone who did so much and who was truly learned in the law. The prime minister came to pay his respects, as did many senior sitting and retired judges who had been Powell's colleagues over the last 30 years and who came to bid him farewell in St James' Church. Powell was a witness of his times. To begin a legal career may be easy, however to persevere with and to succeed to the extent that Powell did, with intellect, faith and patience, is sanctifying.

**Justice Philip Hallen**  
**Trish Hoff**  
**Kevin Tang**

## Andrew James Lidden SC (1954–2016)



When asked for some personal reflections about Lidden SC for the preparation of his eulogy, the overwhelming theme from colleagues was that he was a formidable advocate. His almost photographic memory was, perhaps, his greatest strength. Over the course of his 35-year career Lidden would have been briefed in - conservatively - 15,000 cases.

The sentiment from the defendant bar was that one had to have complete mastery of their brief if Lidden was on the other side. He had an uncanny talent for turning a weak case into an unlosable

one (usually by cross-examining a witness a defendant ought not have called).

Whilst he is remembered for his extensive common law personal injury practice, Lidden came to the bar at a time when barristers truly were 'general practitioners'. In the early years he had an extensive criminal, probate, matrimonial causes, equity and appellate practice. He even appeared for an insurance company (once).

Andrew James Lidden was born on 20 February 1954, a Southern Highlander