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ROBERT FENWICK ELLIOTT

Call: 2013 (South Australian Bar)
(admitted solicitor, England & Wales 1977)

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Areas of Practice

- Construction & Engineering
- Energy & Natural Resources

Clerks Details

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Practice Overview

Robert Fenwick Elliott was admitted as a solicitor in England and Wales in 1977, founded what is now Fenwick Elliott LLP in 1980 and was senior partner of that firm in London for over 20 years. In 2003, he moved to Australia, where he is now based. He was admitted as a lawyer in New South Wales in 2006, as a legal practitioner in South Australia in 2007, and as a solicitor and barrister of the Australian Federal Court in 2008. Having initially practised as a partner in his Adelaide-based firm Fenwick Elliott Grace, he went to the independent bar in 2013. He joined Keating Chambers in 2014 as an International Member.

Since qualification, Robert has practised as a specialist in construction, engineering and energy law. He has a wealth of experience in the resolution of many disputes involving in aggregate some billions of dollars. The projects have involved the construction of mining facilities, process plants, power stations, pipe lines and pumping stations, marine terminals, ships, FPSOs, harbours, dams, reservoirs, hospitals, factories, office buildings, shopping malls, hotels, housing developments, libraries, sports facilities, roads, bridges, tunnels, security facilities and other types of structures. They have involved work in many jurisdictions, including Argentina, Brazil, Christmas Island, Egypt, England, Fiji, Hong Kong, India, Iran, Iraq, Jersey, Kenya, Lebanon, Libya, Malawi, Malta, New South Wales, the Northern Territory of Australia, New Zealand, Queensland, Pakistan, Russia, Scotland, South Africa, South Australia, Spain, Syria, Ukraine, USA, Victoria, Wales, the West Indies and Western Australia.

As a strategist, he is particularly known for obtaining substantial recoveries for clients in difficult cases. He has particular expertise as an advocate in intermediate dispute resolution process such as adjudication, mini-trial, mediation and expert determinations.

He is particularly well-recognised in the field of adjudication, having advised legislators, trained adjudicators, acted as adjudicator, advised and appeared as advocate for parties in adjudication proceedings and successfully both attacked and defended adjudication decisions in several courts.

He also has a particular interest and expertise in retrospective delay analysis. He led the development of specialist software particularly designed for forensic purposes, and has contributed to Masterclasses around the world on the topic. In smaller cases, he has himself prepared critical path analyses using CPA software, and as counsel, persuaded courts to accept them at trial without the need for expert evidence.

In addition to his advocacy and advisory work, he now spends much of his time acting as a mediator, adjudicator and dispute board member.

Recent Cases

- Advocate for a major contractor in quashing an adjudicator's decision on the ground of apprehended bias by the nominating authority (Supreme Court of South Australia).
- Acting for a major contractor in relation to disputes arising out of the construction of infrastructure at a major Australian mine (Arbitration).
- Advocate for another contractor in quashing an adjudicator's decision on the ground of want of qualification (Supreme Court of South Australia).
- Acting for a contractor in a substantial claim for payment for a substantial sports facility.
- Adjudication of construction disputes in the Northern Territory arising of road and other projects.
- Advising a construction consortium on foundation issues on a superway project in South Australia.

“Far and away the best construction litigator”
in the South Australian market with one peer
noting “clients love him”

Doyle's Guide 2012

- Advocate for a contractor defending an adjudication decision allegedly made without jurisdiction (Supreme Court of the Northern Territory).
- Advocate for US engineers in claims arising out of the construction of bascule bridges (expert determinations and Supreme Court of South Australia).
- Advising a government as to its liability for claims made against it in relation an offshore detention facility.
- Acting and advocacy in an ICC arbitration, for a South American company in claims and counterclaims relating to the construction of an oil pipeline, including pumping stations and a marine terminal, in Africa.
- Acting and advocacy in adjudication proceedings, for the UK government in relation to claims arising out of the construction of the British Library.
- Acting for a South American company in expert determination and subsequent TCC litigation arising out of the conversion of an FPSO.
- Acting for an international hotel group against a construction manager for mismanagement, including the formulation of a delay analysis.
- Acting and advocacy in mini-trial, for a major UK contractor in a claim arising out of the construction of a highway in Africa.

- Advising an Italian contractor as to its prospect of appealing an adverse decision relating to submarine North Sea gas pipelines.
- Acting for the UK government in relation to claims arising out of the construction of the Millennium Dome.
- Appointment as adjudicator in relation to a nuclear power project in the Ukraine.
- Acting for a Scandinavian contractor in an ICC arbitration brought by a Japanese contractor concerning a multi-unit combined cycle power station in the Middle East.
- Acting for the Law Society of England and Wales in Med-Adj proceedings.
- Acting and advocacy in the TCC, for a major UK financial institution making claims in misrepresentation and mismanagement by a construction manager in relation to a shopping centre.

Selected Reported Cases

- Tagara Builders P/L vs AP & L Services P/L & Ors [2015] SASC 30
- Built Environs Pty Ltd v Tali Engineering Pty Ltd & Ors [2013] SASC 84
- Kennett Pty Ltd v Janssen & Anor [2013] SCSA 30 July 2013 (unreported)
- Department of Construction and Infrastructure v Urban and Rural Contracting Pty Ltd and Anor [2012] NTCS 22
- KO Commercial P/L v BLD Construct P/L (16 December 2013)

Education & Professional Career

University of Kent (BA)	1969 -1972
Admitted Solicitor (England & Wales)	1997
Founder & senior partner Fenwick Elliott LLP	1980 -2002
Fenwick Elliott Grace (Adelaide, South Australia)	2005 -2013
Admitted as lawyer (New South Wales)	2006
Admitted as legal practitioner (South Australia)	2007
Admitted as solicitor & barrister (Australian Federal Court)	2008
Independent Bar at Howard Zelling Chambers (Adelaide)	2013
Keating Chambers	2014

Seminars, Publications & Papers

Robert is the author of a number of books on the topic of construction law:

- Building Contract Litigation (4 editions from 1981 to 1993)
- Building Contract Disputes: Practice and Precedents (Looseleaf, now in its 37th release, from 1997 to current). This book is included in the electronic Construction Law Service (Sweet & Maxwell) which also contains Keating on Building Contracts)
- The Worker's Liens Casebook (2010)
- His book on Extra-Contractual Recoveries for Construction and Engineering Work is nearing completion.

He edited the Construction Industry Law Letter from 1994 to 2000.

He has delivered many papers on construction law topics at conferences around the world, including in Adelaide, Beirut, Brisbane, Florida, Kuala Lumpur, London, Melbourne, Sydney and Tasmania.

Professional Bodies

As Chairman of the Technology and Construction Solicitor's Association, Robert was responsible for the drafting the Construction and Engineering Pre-Action Protocol, and the TeCSA Adjudication Rules. In that role, he was also responsible for the training, accreditation and appointment of adjudicators by TeCSA. Before that, he was the original draftsman of the ORSA IT Protocol.

He was recently re-elected as a board member of the Society of Construction Law Australia, and as chairman of their Australian Legislative Reform Subcommittee was responsible for SoCLA's 2014 report in adjudication and security of payment in Australia.

Dispute Boards, Adjudication, Mediation etc

Robert has been accredited as an adjudicator by TeCSA, CiOB, CIC, the Northern Territory of Australia and JANA, and has adjudicated many disputes.

He has been accredited as a mediator by CeDR in the UK and AIMA in Australia. As a mediator, he has yet to fail to resolve a dispute.

As a spin-off from his brief time playing competitive croquet, he has heard and resolved a number of appeals, disciplinary complaints etc in the croquet world.

He has been a committed supporter of dispute boards as a means of preventing or promptly resolving construction disputes on major projects, and for some years has been a member of Dispute Resolution Board Australia. He was accredited by that organisation as a board member in 2013.

Additional Information

Robert maintains a website which includes information and links in the area of construction law in the Asia-Pacific region - particularly in the area of adjudication – at feconslaw.wordpress.com