

The Hon T E F Hughes AO QC

By the Hon Sir Anthony Mason AC KBE, Chief Justice of Australia (1986 – 1995)

As my mother knew Tom's mother, I encountered him at a very early age. My early impression of him was by no means favourable. This was not his fault. It was because my mother held him out as a desirable role model. 'Why can't you be well-mannered, like Tom Hughes?' she would say.

So the image I had of him was of a boy who handed around the scones and cakes at Eastern Suburbs' afternoon tea parties attended by Roman Catholic mothers in the early 1930s.

I next encountered him at the Sacred Heart Kincoppal Convent then situated at Elizabeth Bay. The Rose Bay Convent was a separate institution, though it was also administered by the Sacred Heart Order. The convents then educated boys as well as girls at the level of kindergarten and the first year or so of primary school. Tom was a year, perhaps two years, ahead of me, this being a massive gap at that age in human experience and savoir faire. This meant that I did not fraternise with him to any extent. He seemed to be a distant, proper, upright boy and people spoke of him in terms of high praise. Had I then known that in later years he would earn the nickname 'Frosty', it would not have come as a surprise.

He left Kincoppal for Riverview. His career at Riverview was made known to me by my uncle, who was a Jesuit with connections to Riverview. He provided me with copies of the school magazine, which revealed that Tom excelled in athletics and other activities, being the winner of the 880 yards.

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We saw more of each other at the law school, after he was discharged from the RAAF where he served in the same squadron as Gough Whitlam. He was admitted to the bar before I was and read with Bruce Macfarlane and also with Ken Asprey (with whom I later read).

Tom quickly developed a busy common law practice. He appeared as junior counsel with many silk, including Ken Asprey and Tony Larkins, impressing them all with his knowledge and skill. He also appeared frequently on his own and this was no doubt the foundation of his success as an outstanding advocate.

I recall that in one case, in which he was led by Rae Else Mitchell QC, Else Mitchell left the cross-examination of a critical witness to Tom with beneficial results for their client. This led to Else Mitchell presenting Tom with a red bag.



A young Tom Hughes.

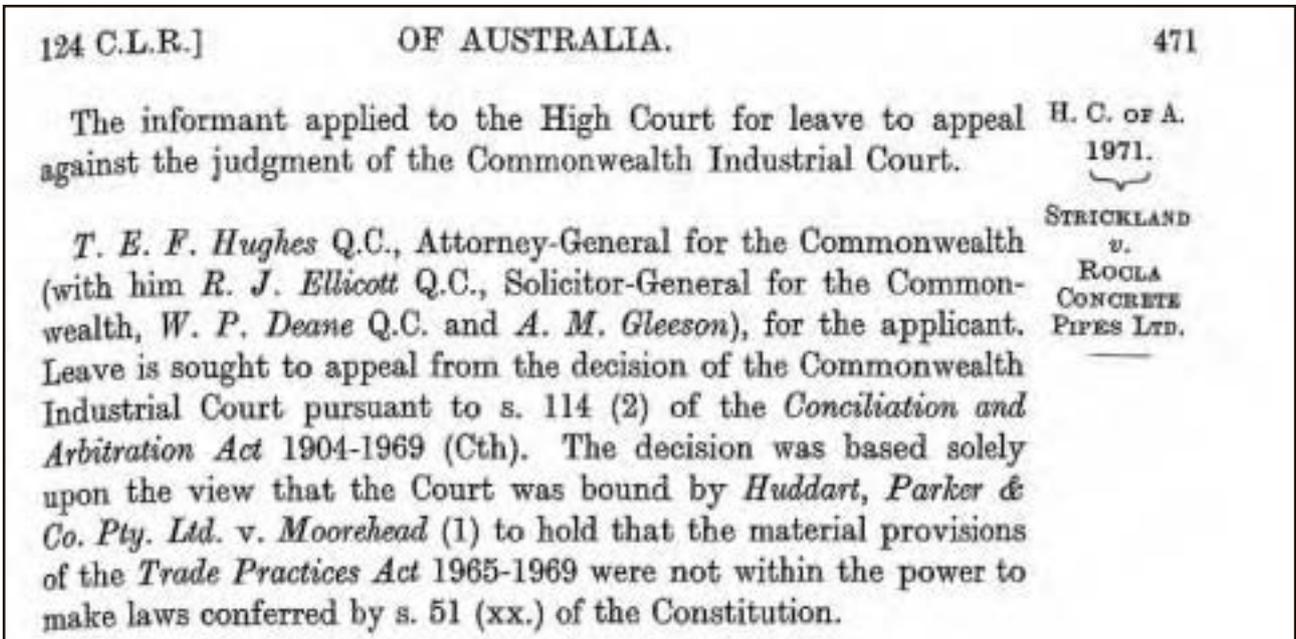
Tom was a great friend of Tony Larkins. Tom's style as an advocate exhibited characteristics of both Larkins and Asprey, each of whom was expert in acting a part. They were both theatrical in style, Larkins being the more flamboyant and more given to rhetorical flourishes which involved the use of arresting language. The use of arresting, even archaic, language has always been a feature of Tom's advocacy, most notably before juries.

Like many successful advocates, he has an imposing presence and voice, evocative of the image of an aristocratic Guards officer, an image which, I imagine, would have daunted not only the dedicated perjurer but the witness who was hesitant or lacking in confidence.

He was, and is, a vigorous cross-examiner who looked at the judge or the jury rather than the witness, particularly during the telling parts of the cross-examination. Like other successful cross-examiners he was prone to begin his cross-examination with questions such as 'Do you put yourself forward as a witness of truth?' or 'Do you put yourself forward as a man of honour?'

Unlike some outstanding advocates he was also a good lawyer with the result that he was at home in any court, including the High Court where he argued constitutional questions with great ability.

As an advocate, whether at trial or in an appeal, he seemed to be the very personification of rectitude. And the appearance reflected the reality. As a judge you felt that you could trust Tom – within limits, of course. He managed to create the impression that his opponent, whoever he might be, was suffering from a rectitude impairment, if only by comparison. Even such an engaging and charming counsel as Sir Maurice Byers QC could seem devious and



a trifle tricky when compared to Tom.

The reflection of rectitude was a great advantage to him in cross-examination. It seemed to point up the contrast between the cross-examiner and the shifty witness. It was also an advantage in address. It gave added point to the stern denunciation of the deceitful and dishonest conduct of those whose machinations had brought Tom's client undone.

Tom became a federal MP when I was solicitor-general. When in Canberra, he was our neighbour in Forrest, a suburb of Canberra.

About this time, there was an occasion when he entertained Billie Mackie Snedden, then federal attorney, and me to dinner at his Sydney home in Bellevue Hill. I do not have an extensive recollection of the evening. The one thing I do recall was that Tom produced a demi-john of Scotch whisky. Perhaps that is why my recall is so limited. I hasten to add that I do not suggest that Tom drank too deeply from the demi-john. There can be no doubt that his reason for buying such a large container of whisky was economy rather than thirst.

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In 1969 Tom became federal attorney-general. For some years his chief claim to public fame was as the attorney-general who wielded a cricket bat in the face of the anti-Vietnam War demonstrators who protested at his home in Sydney. The cricket bat belonged to his son Tom.

Some years later Tom and I were involved in a fathers and sons school cricket match in Centennial Park where a savage dog – a mastiff or an Irish wolfhound – attacked the sister of one of the boys, puncturing her lung. This event resulted in the match being abandoned before Tom was called upon to bat. So we did not discover whether his cricketing ability with the bat when facing the school bowlers equalled the ability he exhibited with the bat when confronted by the anti-Vietnam War demonstrators.

The owner of the dog refused to give his name. Tom bravely led a posse of fathers who followed the savage beast and the owner to his house in Paddington. This heroic expedition enabled us to ascertain the owner's name and address.

Tom Hughes was a highly regarded law officer, a professional attorney-general who appeared as counsel in the High Court in major cases. He succeeded in *Strickland v Rocla Concrete Pipes Ltd* in persuading the High Court to uphold Pt V of the *Trade Practices Act 1974* (Cth) on the basis that it was supported by the corporations power. It was a critical decision in the development of the corporations power. He was not, however, in favour of the establishment of the Federal Court and the Family Court. Ultimately his view did not prevail.

He continues to devote his boundless energy to the law and his rural interests.



The Hon T E F Hughes AO QC

By the Hon John Howard AC, Prime Minister of Australia (1996 – 2008)

Jaiwei Shen's superb portrait of Tom Hughes, which hangs in the National Portrait Gallery, captures its subject in fully robed, rhetorical flight. It is the image of Tom Hughes which so many of his friends and colleagues have known over many years.

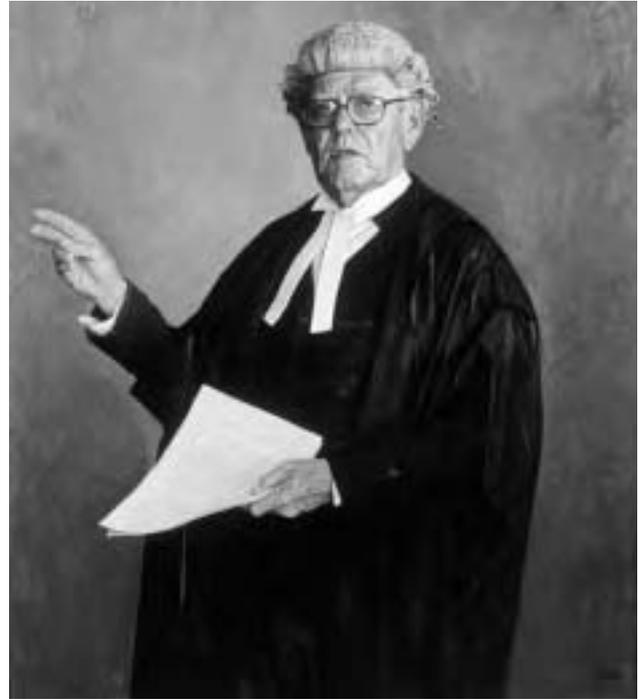
When I admired the portrait at the gallery's opening last December I thought how wonderful it might have been if Jaiwei Shen had been at Campsie railway station on a Saturday morning in October or November 1963 and been able to capture the political candidate Tom Hughes on the back of a utility truck haranguing the locals about the shortcomings of the then sitting Labor MP for the electorate of Parkes, Leslie Haylen. The scene would have been very different and not just for the absence of wig and gown, but the focussed passion would have been exactly the same.

That was my first experience of the public face of Tom Hughes. When he sought pre-selection for Parkes quite a number of people opined that he did so in the steadfast belief that he had no hope of winning. I always had my doubts about this. I cannot recall encountering anyone in politics who didn't want to win. For somebody with the competitive instincts of Hughes it seemed even less plausible.

Whatever his motives he became the chosen Liberal for a seat which then comprised the suburbs of Earlwood, Campsie, Canterbury, Hurlstone Park, Ashbury, Croydon Park and a touch of Dulwich Hill. It is a metaphor for the changed political demography of Sydney that a seat comprising those areas was, in the 1960s, marginal political territory because even in some of the Labor Party's darkest days between 1996 and 2007 those suburbs remained predominantly Labor.

When Tom became the candidate for Parkes he was a stranger from Bellevue Hill, whom the locals took to immediately. He charmed them and they liked his energy and enthusiasm for the task. I had lived in Earlwood all my life, was active in the local Liberal Party organisation and became his campaign director. Thus commenced a friendship which has continued to this day. Almost immediately his political opponents labelled him 'Packer's Pea for Parkes', due to his close association through legal representation with the Packer family. Such barbs did not bother the candidate who developed a very thick skin within a few short weeks.

Tom was responsible for one of the more famous political photographs in recent Australian memory. It showed him brandishing a cricket bat in defence of his family home under siege from an anti-conscription / Vietnam War demonstration.



Portrait of Hughes QC by Jaiwei Shen.

It was a memorable campaign blending together an army of Tom's legal mates and wide circle of friends with a band of enthusiastic locals. He spent every spare moment knocking on doors and must, in the space of a few weeks, have canvassed thousands of his future constituents. Just a week out from the election the world was shaken by the tragic assassination of President John F Kennedy on 22 November 1963. This overwhelmed the remaining weeks of the campaign but would not have affected the result.

The news of Kennedy's assassination came through at approximately 8.30 on the morning of Saturday 23 November. Like all people of my age group I remember exactly where I was and what I was doing at this time. I heard the news at home, but joined Tom and the campaign team at our local headquarters in Earlwood just a few moments later. Local campaign challenges suddenly seemed trivial.

To our delight Tom Hughes secured a swing of over seven per cent on election day and was to remain the member for Parkes for six years until the abolition of the seat in time for the 1969 election. He had confounded many who thought that a so-called 'silvertail' from the eastern suburbs of Sydney would not go down well with more knockabout people. It illustrated the absurdity of such stereotypes in our essentially classless society. The people of Parkes liked Tom Hughes. He worked very hard for them and issues relating to where he lived simply didn't arise.

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parliamentary Liberal Party during the 1960s and Tom had to wait six years before becoming attorney-general in the Gorton government after the 1969 election. He was anything but idle as a backbencher. Amongst other things he played an active part in defending Australia's involvement in the war in Vietnam and also became a leading advocate for freer trading principles in Australia's wool market.

In the ballot for Liberal leadership following the drowning of Harold Holt, Tom Hughes was a staunch Gorton man, a conspicuous loyalty he still maintains. Gorton appointed him attorney-general after the 1969 election and he made the most of an all too brief tenure as the first legal officer of the Commonwealth. As attorney-general he was responsible for a significant expansion of the Commonwealth's corporations' power in the *Concrete Pipes Case*. Almost thirty years later the government I led had reason to be grateful for this when the High Court upheld the use of the corporations' power to underpin its industrial relations legislation.

In this time Tom was responsible for one of the more famous political photographs in recent Australian memory. It showed him brandishing a cricket bat in defence of his family home under siege from an anti-conscription/Vietnam War demonstration. Australians of many political persuasions identified with his gesture.

Sadly, Gorton's downfall and more particularly Bill McMahon's foolish decision to sack Hughes as attorney-general effectively sounded the death knell of Tom's political career. He left politics at the 1972 election not long short of his fiftieth birthday. His



Pictures (above and below left): Attorney-General Tom Hughes brandishing a cricket bat in defence of his home during an anti-Vietnam War demonstration. Photo: Newspix

subsequent stellar career at the bar has become something of a legend. I thought Tom Hughes was a huge loss to Australian politics. In that great realm of what might have been he had the intellect, the passion and the flair to reach any position. Yet having decided to return to his first love I never detected in my continuing friendship with him lingering regrets about leaving politics. That is not to say he ever lost any of his intense interest in political affairs, nor did his concerns for the fortune of the Liberal Party ever diminish.

He is an intensely loyal person as I know from my long friendship with him. He demonstrated it, controversially, in his powerful eulogy at John Gorton's State Memorial service in 2002. In that tribute to his departed friend, he attacked Malcolm Fraser's role in Gorton's downfall as prime minister. To many it was inappropriate. For Tom it was a last opportunity to speak with feeling and passion about what he had always seen as an injustice done to an admired friend and former colleague.

For more than 40 years I have counted Tom Hughes as a close friend whose company I have always enjoyed and whose style and skills I continue to respect. It is hard to think of a more durable figure in the professional life of Australia than Tom Hughes. His continuing stamina and enquiring intellect are inspirational. Keep going Tom – your friends and admirers wish you many more years of classy rhetoric and advocacy.



The Hon T E F Hughes AO QC

By the Hon Murray Gleeson AC, Chief Justice of Australia (1998 – 2008)

It is not easy to imagine the New South Wales Bar without Tom Hughes. He was there when I arrived in 1963; he was there when I left in 1988; and he is still there. I have been invited to make some personal observations on his sixty years as a barrister.

In 1963, Tom was a relatively new silk, with a large and varied practice. His political career was beginning. I was one of a group of young barristers rounded up to distribute how-to-vote cards in his electorate when he first became a candidate for the House of Representatives. In those days, it was not unusual for a busy lawyer to enter parliament, federal or state, while continuing to practise. In Tom's case, this involved dividing his time between Phillip Street and Canberra. The practical impossibility, nowadays, of such a dual operation almost certainly has deprived the community of some valuable contributions to public life. The days when eminent barristers (such as Menzies, Barwick, Bowen, Ellicott, or Hughes – to take only one side of politics) could serve in parliament, and maintain a legal practice, have gone. Confronted with a choice between that form of public service and the law, most would choose the law. Yet it is only in recent years that being a member of parliament (as distinct from a minister) has been regarded as necessarily a full-time occupation. This can discriminate against people whose income is derived solely from personal exertion. Those with income from property may not have as much to lose as those who are required to give up an occupation as a condition of entering politics. There may be other reasons, as well, why it is not necessarily a good thing for parliament to be made up entirely of people who are exclusively politicians. Tom's years of parliamentary service are a reminder of a time when it was thought to be in the public interest that elected representatives might bring with them a wide range of past and current occupational experiences. He was a better representative because he was an excellent lawyer. Furthermore, in my assessment, his effectiveness as a barrister in many cases was enhanced by his political experience. I would hesitate to contradict Sir Owen Dixon, but I cannot accept his opinion that, while a lawyer can become a good politician, there is no going back. Tom made the move to politics, and the move back to law, very successfully, and while he was in parliament his legal and political careers complemented each other.

My professional association with Tom, which also became a valued personal friendship, began when he was appointed attorney-general in the Gorton government. He led a team of barristers, of

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Hughes QC with legendary West Indian cricket captain Clive Lloyd.

which I was the most junior member, to argue the *Concrete Pipes Case* on behalf of the Commonwealth. He was of a moderately centralist disposition, and he made the most of an opportunity to persuade the High Court to reconsider the scope of the corporations' power. A couple of years ago, I re-read the transcript of the hearing in that case. Tom presented the Commonwealth argument powerfully. It should be added that the then chief justice (also of a moderately centralist disposition) provided a following breeze. The case concerned the power of the federal parliament to make laws regulating business activities of trading corporations. The decision provided the constitutional underpinning for the modern trade practices legislation. The capacity of the Commonwealth to regulate financial corporations, including their practices as to executive remuneration, is now at the centre of public attention. It would be entertaining to hear Tom's response to a suggestion that such regulation is a matter for the states.

Tom led me in his first case after he ceased to be attorney-general. The case, although it had a commercial flavour, was in the common law list and, as was usual in those days, was heard before a judge and jury. Our client was suing a Japanese corporation. The matter came on for hearing the day after Anzac Day. The other side had produced, on discovery, a record of a discussion in a Tokyo teahouse in which a visiting Australian lawyer had remarked that the Japanese corporation had slim prospects of success in the pending litigation. It would be excessive to describe Tom's exploitation of these irrelevancies as ruthless; it would be better described as resourceful.

I was Tom's junior many times after that and, after I took silk, we were often opponents. In my last case at the bar, he and I were opposed in an international arbitration. He was an excellent lawyer

and a charismatic advocate, equally at home in jury trials or before appellate courts. His area of special expertise was defamation law, but I can think of few barristers with as wide a range of experience. He appeared, sometimes for the prosecution, and sometimes for the defence, in a number of important criminal trials.

In equity suits, Tom had a particular technique that troubled incautious opponents. A statement of claim had to be verified by the plaintiff. When Tom, appearing for a defendant, cross-examined the plaintiff, he would invariably ask whether the witness had read and understood the statement of claim before putting his oath to it. The answer was almost always yes, without mentioning by way of qualification that the statement of claim was a technical legal document that had been drafted by a lawyer in accordance with rules and conventions with which the witness was not familiar. Tom would then confound the witness by drawing attention to alternative allegations, apparent inconsistencies and (to the witness) unintelligible assertions. For most, this was a bruising experience. It was surprising that so many of his opponents fell for it. Most of the problems could have been anticipated and managed with a little help in a pre-trial conference. On the other hand, there is something comforting about seeing an old tactic work again and again.

Tom's mentors included the late Sir Jack Cassidy, and Antony Larkins. From them he learned the importance of attention to detail. His questions in chief, and in cross-examination, and his legal arguments, were prepared meticulously. He had a realistic appreciation of the weaknesses as well as the strengths of a case. He was not one of those barristers whose geese are all swans. He was courteous, and adept at handling an adverse judicial reaction to a witness or a line of argument. I once heard him say, in response to an explosion of judicial rage, 'I hope to be able to deflect your Honour's tentative asperity.' This is much better than saying: 'Your

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Hughes QC speaks at the '50 Not Out' dinner in 1999.

irritation is a gross over-reaction based on a misunderstanding of what has occurred'. He was a forceful advocate, but never self-indulgent. Everything he did was disciplined; calculated to advance his client's cause, not to make himself look or feel better. He was comprehensively professional.

His career was rich in service to the community and to his profession. Tom came to the bar after service in the Second World War as a pilot. I have referred above to his political career, and his work in the parliament and as attorney-general. He was a member of the Bar Council for a number of years, and made a notable contribution as president.

Many years ago Tom Hughes pointed out to me the commendation of the patron saint of French lawyers, St Yves:

Advocatus et non latro

Res miranda populo.

A lawyer and not a thief,

A thing almost beyond belief.

The New South Wales Bar can be proud of this great advocate, who has served his profession, and the public, with distinction.