

The Hon Justice Peter Garling

On 7 June 2010 Peter Garling RFD SC was sworn in as a judge of the Supreme Court of New South Wales.

His Honour attended St Ignatius College Riverview and then studied Arts/Law at Sydney University graduating in 1977. His Honour practised at David Landa Stewart before commencing practice at the bar in 1979. His Honour initially commenced practice in Garfield Barwick Chambers, moving to the 2nd floor of Wentworth Chambers, and then to Fifth Floor St James Hall, his floor for nearly 20 years. His Honour was appointed senior counsel in 1994.

Garling J practised widely, appearing for private and government clients, in a variety of common law and commercial litigation cases, involving important points of law in negligence, public liability, product liability, insurance law, administrative law and health. His Honour was involved in a number of significant royal commissions and public inquiries, including the Special Commission of Inquiry into Acute Care Services in New South Wales Public Hospitals.

Outside practice at the bar, his Honour was a member of the Army Reserve, Sydney University Regiment from 1970 to 1996; a member of the School Council at Loreto Kirribilli from 2002 and from 2004 chair of the council; a member of the NSW Rugby Union Appeals Tribunal and the Australian Rugby Union Appeals Tribunal, and the Appeal Tribunal of the Australian Paralympic Committee, and a member of the University of Sydney Law Faculty since 2004.

The attorney general spoke on behalf of the New South Wales Bar. Mary Macken spoke on behalf of the solicitors of NSW. Garling J responded to the speeches.

The attorney noted that his Honour

appeared in the inquiries into: the Sydney bushfires in 1994; the Thredbo landslide in 1997; the Glenbrook rail accident in 1999; the collapse of the HIH Insurance Group in 2001; the Waterfall rail accident in 2003; the Medical Research and Compensation Foundation in 2004; and the Pacific Highway road collapse in 2007. Clearly, you have been the counsel of choice when things go wrong.

Because of your extensive knowledge and demonstrated forensic skills, in 2008, you were appointed by the New South Wales Government to conduct the Special Commission of Inquiry into Acute Care Services in New South Wales Public Hospitals. The Inquiry was the most comprehensive of its kind ever seen in this State. Over the ten months of the Inquiry you and your team visited



sixty-one public hospitals, reviewed over 1,200 submissions, held thirty-nine public hearings, and analysed over 30,000 documents. ...

The rigour with which you undertook this Herculean task and the respect in which the results of your work is held are reflected in the fact that, of the 139 recommendations you have made, the Government has accepted 134.

Your significant contribution on this Inquiry alone has the potential to significantly improve our public hospital system.

Ms Macken said that in addition

your Honour has also been considered to have brought the first class action commenced in the Federal Court in the case of *Fischer v Bridgelands Securities Limited* in 1990. The legislation creating group proceedings in Australia at a federal level was not enacted until 1992.

Ms Macken referred to his Honour's involvement with Loreto Kirribilli:

Loreto Kirribilli School Council, which the Attorney noted your Honour has chaired since 2005, will also be tight put to fill your shoes. Your annual reports provide such an in-depth history of the school that they should be bound. Your Honour has lent his legal expertise to assisting with the College Constitution and the structure of the school. Perhaps the only glimmer of light for the board members is that there may be some respite in the need to be exhaustively on top of every single detail in order to keep up with the Chair. Principal Janet Freeman, who is with us

today, is reportedly devastated at the prospect of your departure from her board after six years as the Chair. I also note that there are many here today who have thought or still think that blue and gold were Loreto colours.

Ms Macken referred to his Honour's forebears:

... your Honour is a descendent of Frederick Garling, one of the first solicitors admitted to this Court who was appointed in 1830 as the first Crown Prosecutor in New South Wales. Your Honour's family also tips the scales in terms of numbers of legal practitioners. Your three brothers completed law degrees. Eldest Max gave up practising in favour of becoming a mining entrepreneur. Anthony is a New South Wales District Court Judge, Kim is in private practice and is a former President of the Law Society. Your Honour's wife Jane, also a solicitor, currently lectures at the University of Technology and your eldest daughter Antonia is a solicitor at Freehills. Uniquely, daughter Lucie appears to have escaped the long arm of the law and is an accountant with Price Waterhouse in Sydney.

Garling J did likewise:

My forebear Frederick Garling, in 1824, no doubt heard the public reading of the Third Charter of Justice, by which this Court was founded, from the Georgian School House in Elizabeth Street, opposite where the Francis Greenway building, which this Court occupies, stands. I have wondered whether he thought to himself that he was witnessing the creation of an institution which, 185 years later, would have his descendent as a member.

Frederick (as you have just heard) was one of the first, although according to Garling family folklore, the first, solicitor of the Colony. He was paid 300 pounds by the Government to come to Australia and to serve its citizens. In February 1816 he was appointed an Acting Judge Advocate and presided over the Court of Criminal Jurisdiction in the Colony of New South Wales or, as it is described in the Charter of Justice, "the island of New Holland." Later, in 1824, he became Commissioner to the Court of Civil Jurisdiction known as the Court of Requests. Thereafter, he served as a Clerk of Peace, and he became the first Crown Prosecutor of the Colony. He subscribed as one of the original shareholders for the establishment of the Colonial Bank which became known as the Bank of New South Wales, he provided articles of clerkship to a smart young man called George Wigram Allen, who went on to found Allen Allen & Hemsley, and, by all accounts, Frederick was quite a civil minded person.

Unfortunately, history does not adequately reveal what happened to the 1200 acres of land which was granted to him by Governor Macquarie in the area where Blacktown

now is.

After Frederick, there were then only one or two lawyers in the Garling family until my three brothers and I came along.

... I have had cause recently to pause and wonder quite how all four of the Garling boys came to be lawyers. I have not found a satisfactory explanation unless it be that advanced by my wife Jane, namely, that it simply shows a singular lack of imagination.

Garling J also referred to his experience as an acting District Court judge:

I thought back to my time as a District Court Judge when considering how I might discharge my duties in this office.

I immediately recalled an incident which has taught me how not to discharge my duties as a judge. In my first case, counsel called the plaintiff, after about six questions he asked what seemed to me to be an outrageously leading question. I immediately objected. Fortunately, I did not rise to my feet. A stunned silence fell over the courtroom, I upheld the objection and invited the counsel to ask his next question.

Later in that week I had occasion to be in the presence of Chief Justice Gleeson who was then the Chief Justice of this Court. I thought that I would obtain the benefit of his wisdom on this thorny issue of objections. His Honour was at that stage presiding over a murder trial in the St James Road Court. After asking after his Honour's health and welfare, I asked him how he found dealing with objections with a jury present. He looked at me rather quizzically, he then said "I don't find objections difficult at all". He said "When an objection is made I look intently for about 15 seconds at either the questioner or the objector. Either the question or else the objection has been withdrawn. After two weeks it has not been necessary to give a ruling".

Emboldened by this I returned to the District Court for the next case. I was determined to follow the Chief Justice's guidance. A question was asked, I thought it was plainly objectionable, an objection was taken, I stared at the questioner. He didn't seem to react. I looked at the objector, he didn't seem to react. I looked back at the questioner and after an undue pause, a voice came from the objector, "Does your Honour propose to give a ruling on the objection?" Clearly I had failed where Chief Justice Gleeson succeeded.