

## The Hon. Anthony Frederick (Tony) Garling

(1941-2021)

Solicitor and Judge of the District Court of New South Wales

For over 26 years, the Honourable Tony Garling sat on the District Court of New South Wales in both in civil and criminal jurisdictions. He was a vital element in that vast jurisdiction and had a profound effect on its operations.

Anthony Frederick Garling (Tony) was born in 1941 and this would have been his 80th year. He was born to Patricia and Max Garling. He was a true war-time baby and was then for some years raised by his grandmother in Sydney after his mother and father moved to Malaya in 1947 where they lived there for some years. As a boy, Tony only saw his parents at most once a year, together with his younger brother Max before the family grew. From an early time, he was first in the care of the Dominican nuns at Bathurst and then boarded at Saint Ignatius College Riverview between 1954 and 1958. Garling was acutely aware of his elder son status in the family. Garling kept that parental mantle throughout his life and performed it lovingly.

Whilst at Riverview he was an enthusiastic and capable sportsman who played rugby, cricket and participated in all aspects of school life. There he made great friends who remained close to him throughout his life. The Jesuit brothers left a very deep mark upon Garling such that he carried their teachings and faith with him, quietly, throughout life in pursuit of excellence. At the University of Sydney, Garling studied economics and Law. It was the early 1960s, and as a young man he found Sydney a melting pot of social interaction which he enthusiastically embraced, allowing academic rigour to take second place. It was the best of times.

The older Garlings had returned from Malaya at the end of the 1950s and built a wonderful home at Castlecrag which was so remote from neighbours that parties could be held undisturbed. Garling married his wife Jane on 23 July 1964 at St Mary Magdalene at Rose Bay, following in the tradition of his parents who had wed there in the 1940s.

Thereafter Garling moved to the North Shore and there he and Jane would remain. Garling played cricket for the Roseville Cricket Club, the Vagabonds and refereed rugby in winter. The whole family – Emily, Sarah, Emma and Matt did well at school and were encouraged to be well-rounded individuals. Social and sporting interests were always much prized over drier academic matters.

Garling took articles of clerkship in 1962



at Abram Landa & Co. He became a partner in another iteration of that firm, David Landa Stuart & Co. After more than twenty years at that firm he struck out on his own, with Tony Garling & Co, in 1981. His brother Kim who had been a past President of the New South Wales Law Society, joined him at the firm. Tony had become well known amongst solicitors. His practice mainly featured common law, personal injury, motor vehicle accidents and occasionally some crime. First and foremost, Garling's preoccupation was to resolve any case for a proper sum of money in the shortest time possible. In a way, it was a forerunner of the 'just, quick and cheap' incantation that the courts now apply. He was a true servant to his clients' interests. Indeed, Garling was never much interested in reported cases and as for any appellate court he tended to keep well away if he could.

At least two of his cases ended up in the High Court. The first in 1976 was for schoolboy Peter Maloney who had been gravely injured when flung out a train on his way to school. The High Court found it was negligent of the New South Wales Government to operate trains with doors which would remain open whilst travelling at high speed. The second case was a criminal case about the obligations of a trial judge when the Crown had finished presenting its case to the Jury. That case was *Doney v the Queen* and is regularly cited to this day.

For Garling, these cases were remarkable not because of their result but because he believed that the ordinary people involved had been treated unfairly by the courts and, as a practitioner, he sought justice on their behalf.

After wonderful years in practice, in 1991 Garling was sworn in as a Judge of the District Court directly from the ranks of solicitors. This occasion was of some moment. It had only happened four times previously. When Garling first sat on the Court, delay in hearing civil claims was over five years between commencement and finalisation. In 2002, having been the Civil Claims List Judge for some time, his efforts resulted in the median delay period

being reduced to 11.3 months between commencement and final hearing.

Whilst he was on the Court, he took active interest in the many committees of the Court. In 2003, he was the Deputy Chairman of the Attorney-General's Working Party whose task it was to regularise and to simplify the uniform rules by which all courts in New South Wales would operate. With him on that committee was Michael McHugh SC, now the President of the New South Wales Bar Association. The outcome became known as the NSW Uniform Civil Procedure.

The Hon. Virginia Bell, formerly of the High Court, recalls appearing before Garling in the District Court and later, when a judge of the High Court, restoring one of his judgements wrongly overturned by the Court of Appeal. Her Honour expressed her profound sadness and condolences upon learning of Garling's death.

Tony Garling worked hard for the District Court of New South Wales, often hearing complex and long cases. He was much admired. He worked hard for the people of New South Wales and remained true to his Judicial Oath. He was possessed of a calm, intelligent and kindly manner and a number of his colleagues and friends remember him for those qualities particularly. Garling was never a pretentious or overbearing advocate and was a fair, compassionate but robust judge. To his closest family, the words of W.H. Auden should be recalled:

*'He was their North, their South, their East, and West,*

*Their working week and their Sunday rest,*

*Their noon, their midnight, their talk and their song...'*

'Funeral Blues', W.H. Auden, 1938

Garling is survived by his wife, Jane Sarah, Emma, Matt and Jane and their children.

Kevin Tang  
8 Wentworth Chambers



## Before Garling / After Garling

Those reflecting on the life of Tony Garling should know more about the dynamic effect he had on the District Court – positive effects, still being felt today. In a sense, the change was so dramatic that the work of the District Court could be viewed in two periods – before Tony Garling and after Tony Garling.

By the 1980s the District Court had become a miserable place. There was an awful backlog of cases. A litigant starting a case in the District Court could expect to wait six or more years for a hearing – and that is even if the case had been prepared with maximum efficiency. It was notorious that when chasing debts, creditors would do anything they could to keep the case out of the dark abyss of the District Court.

One of the key problems was the colossal number of small motor car claims – tiny claims which had been defended with ruthless inefficiency by the monopoly insurer, the GIO.

There seemed no way out of the mess. Then, in about 1990, someone proposed a special project be undertaken designed to flush out old cases and to force them on for hearing. Several acting judges were appointed to assist in the task.

That project really got going under Tony Garling following his appointment in 1991. Many cases were listed for hearing each day. All were called-over before Judge Garling at 9.30am. Judges were allocated on the spot. Suddenly, cases which had lain dormant for years settled. The project was a huge success.

But Tony's impact on the Court did not end with the GIO project. These were the days of the explosion of claims from the 'public liability crisis'. Crisis or not, there were a lot of cases and the backlog began rebuilding.

Tony Garling to the rescue. Once the Court moved to the John Maddison Tower in 1993 it gave him better control over the allocation of cases. He became the dominating spirit of the civil jurisdiction of the District Court. In fact, in the jargon of the time, if a young barrister was asked about his or her work that day they might simply reply 'Garling' or '15B'.

Court 15B – the mere mention triggers a flood of emotions. Throughout his long tenure as a judge Tony Garling always sat in Court 15B. It was quite a sight, sometimes more resembling a noisy middle eastern bazaar than a court room. Haggling, arguing, schmoozing – and standing room only.

Court 15B opened for business at 9.30am. About ten judges would be sitting in the civil jurisdiction, each already with a case. Tony Garling would then manage about 20 or so other 'reserve' cases which would be allocated immediately a judge became free. Counsel were required to attend that call-over, silks included. Each had to give a quick account of the case – issues; length; prospects of settlement. Then they were required to wait within earshot of Court 15B so that if a judge became free they could be sent immediately to start their case. And counsel were not released from 15B until about 3.00pm – the threat of which had a marvellous effect of focussing the mind upon settlement.

That was only the start of Tony Garling's day. After the call-over he would often deliver a reserved judgment (he would only reserve for a week at most), then give directions in ten or so cases, then hear two or three applications to approve infants' settlements. He would also entertain one or two adjournment applications – which he invariably refused.

After that Tony would get back to his own hearing which he would run through till 4.00pm – or later if there was a prospect that he could complete the matter. Mind you, that hearing would be interrupted whenever Tony got information that another judge had become free. Even that was dramatic. Tony sat on the Bench with a mobile phone (high-tech for those days). All of a sudden the phone would ring. Waiting counsel would either look up hopefully, or avert their eyes. Mumble, mumble then – 'Matter No 12, Judge So and So, you're on in 15 minutes'.

Every day was a very busy day, and Tony did this every day. His energy and stamina were amazing.

What was he like as a judge? Well, loud and direct – no barrister ever had any doubt as to what was on Tony's mind. Generally speaking, good humoured. Sure, occasionally he could get a little cranky – but he was never personal and never cruel. He possessed loads of common sense and was instinctively fair. He was a good judge.

Today a civil case will be wrapped up within 12 months of it being filed in the District Court. Tony Garling changed the District Court for the better, introducing efficiencies which were way ahead of their time.

**Geoffrey Watson SC**

## The Hon. Robert Shallcross Hulme QC

(1941-2020)

The Honourable Robert Shallcross Hulme QC (Hulme QC) has died age of 79 in Sydney. Hulme QC was born and raised in Brisbane by his father, Sir Alan Hulme (the last Commonwealth Postmaster-General) and mother Jean (née Archibald). Sir Alan was the federal member for Petrie for most of Hulme QC's formative years, sparking in Hulme a keen interest in politics and the law.

The young Robert, his brother, and his sister were raised in the Methodist tradition, and the principles of his faith guided him throughout life. He was always an extremely hard worker, rigidly disciplined, however, humble and generous to a fault.

After completing his legal studies in Queensland, Hulme determined that the Sydney Bar would be the best place to seek out the commercial practice he aspired to. The Sydney Bar attracted greater opportunities and higher profile cases.

Robert Shallcross Hulme was called to the Sydney Bar in 1965. In his early days he lacked chambers and set himself up outside one of the equity courts together with Malcolm Cockburn. He soon established himself on the Eleventh Floor of Wentworth Chambers. There he developed a solid commercial practice in the Equity Division of the NSW Supreme Court and in the Court of Appeal.

As a rising junior, Hulme QC appeared frequently in the High Court, led by Sir William Deane QC and K.R. Handley QC. He is recorded as having appeared as an un-led junior in the High Court at least twice (*Brien v Dwyer*; *Penfold v Penfold*), on each of those occasions for the successful party. He was well prepared and had an agile mind.

He was appointed one of Her Majesty's Counsel in 1982. In one of his notable cases as a Silk, Hulme QC led P.R. Garling (currently a Judge of the Supreme Court) acting for the Bar Association of New South Wales in the High Court regarding a barrister's suitability to practise. Many years later, while sitting as the duty judge, Hulme J was invited by the same litigant to disqualify himself for apprehended bias by reference to the case decades ago. He declined.

Hulme QC took judicial appointment to the Supreme Court of New South Wales in 1993. Initially, he was sworn in to the Equity Division of the Supreme Court where he had conducted a majority of his practice at the



Arthur Emmett and Robert Hulme

Bar. It seemed to be his natural habitat. It was not long, however, before a shortage of judges in the parallel stream saw Hulme J pressed, somewhat reluctantly, into service in the Common Law Division.

Hulme QC found that life in the Common Law Division offered a broader range of fare than in Equity. The judges of the Common Law Division presided over serious criminal trials, the Bails List and sat on the Court of Criminal Appeal. Having had some experience of the criminal law while at the Bar, Hulme J quickly developed a taste for crime and he never reverted to the ranks of the whispering gentlemen in Equity.

As a Supreme Court judge, Hulme J applied the same tenacious work ethic that had seen him rise through the ranks of the Bar. He was known to be tough, but he was always rigorously fair. The distinguishing feature of Hulme QC was his extraordinary facility in the law and the extreme sense of competence that he exuded.

The role of Bails List Judge was rotated, with each judge presiding over the List for a week. Prior to the adoption of audio-visual appearances, applicants for bail would be brought in person to the Bails Court 1A, in the basement of the Law Courts Building, adjacent to the holding cells. Hulme J's

long-term Associate and longer-term friend, Therese Armstrong, recalls an application for bail in which the applicant's lawyer had clearly not convinced his Honour for a grant of bail. The applicant, being present in the dock, took things upon himself, stood up, and convinced his Honour that he was a changed man who had learned from his recent incarceration and deserved a chance at conditional liberty. Hulme J acceded to the application and granted bail – on what terms it is not recorded.

On another occasion Hulme J, having determined to grant bail at about 8.00pm, was informed on behalf of Corrective Services that the successful applicant for bail could not be released that day, because the paperwork was back at the gaol. When the court adjourned his Honour drove out to Long Bay Gaol and signed the papers himself, thus ensuring his orders were given effect without an overnight delay.

Hulme J went on country circuit for murder trials several times a year. This required Hulme J, his Associate and Tipstaff to spend Mondays to Fridays in regional New South Wales, flying home each weekend, for weeks at a stretch. Hulme J would usually drive to the trial location for its commencement, leaving his car there for



Carolyn Simpson, Joe Campbell,  
Suzette Hulme and Robert Hulme

the duration and flying home to Suzette each Friday evening. His car was always available outside of sitting hours to staff who might wish to visit the beach or a local landmark, while Hulme QC immersed himself in transcript and interlocutory judgments back at his hotel.

Hulme J retired in 2012 and returned as an acting judge and sat until 2016. Hulme J was treated to the traditional send off by the Bar. Members spoke to his Honour's lengthy career on the bench, but his Honour's eldest son Mark stole the show with a deeply moving speech about Hulme the man, the father, and the lawyer.

Hulme QC was a devoted family man, however that did not affect his other pastime, sailing the *Nereus*, a sixty-foot motor yacht he had commissioned. Nereus was the ancient Greek god of the Aegean Sea. Nereus was truthful and virtuous 'never forgetful of what is right, but the thoughts of his mind are mild and righteous'.

Hulme QC is survived by his darling wife Suzette (Suzi) and sons Mark, Braddon, David and Richard. He and Suzi were also the parents of Louise Elizabeth, who passed away in infancy.

**Mark Maconochie**



John Dunford, Harold Sperling,  
Robert Hulme and Kevin Lindgren

## Susanne (Sue) Elizabeth Schreiner

(1939-2020)

Susanne (Sue) Schreiner was a pioneer of the Canberra and Sydney legal community, and an empathetic advocate for the reformatory place of law in the community and the role of the courts as a protector of human rights and liberties. She is remembered for her commitment and contribution to the community, as a champion of the need for compassion in the administration of justice, and as a woman who despite facing a myriad of difficulties throughout her life and career refused to waver and instead responded by putting her head down and getting on with it with a courageous spirit.

Sue graduated in the first cohort of ANU law graduates in 1962 (having commenced her studies on an arts/law scholarship at the University of Sydney), and was then admitted to the New South Wales bar and entered onto the High Court roll in May of that same year; the first woman in ACT to be admitted to practice as a barrister. Shortly thereafter, Sue became the first woman to appear before the Supreme Court of the Australian Capital Territory (an appearance described as a 'particularly successful one'). Both of these 'firsts' were widely reported upon in the Canberra Times at the time; an early testament to her success and a promise of things still to come. In many ways, this pioneering spirit was a reflection of her upbringing; Sue's mother having been the first woman to acquire a builder's licence in Australia, and both Sue and her family having re-established themselves in Australia after fleeing Vienna shortly before World War II and spending a period in an internment camp in Tatura.

Having practiced for three years with John Donohue in Canberra, Sue relocated to Sydney in 1965 where she became the sixteenth woman to practice at the New South Wales bar. Although conscious of being one of the few women practicing at the bar at that time – reflecting later that attending the bar common room for lunch was a 'terrifying' and 'daunting' experience – Sue refused to be defined or limited by that status. Memorably, in her days appearing in the Divorce Courts, Sue mounted a one-woman protest to her colleagues' suggestion that she robe in the ladies bathroom. Sue – knowing the importance of being present in the robing room for those critical at the court-steps negotiations – opted instead to robe and disrobe alongside the men using



the 'brightest pink petticoat' she could find.

Less than three years after commencing her practice at the NSW Bar, Sue had appeared in the High Court of Australia before Chief Justice Barwick, and Justices Menzies and McTiernan (led by Clive Evatt QC) for the successful appellant. She would go on to be led often by Evatt. Whilst at the bar, Sue also read with John Kearney, juniored to Tony Bellanto QC, and worked alongside the likes of Val Menart, Adrian McGuinness, Paul Flannery, Alex Bannon, and Mary Cass. Sue also maintained her love of academia and legal studies, working as a court reporter for the Law Book Company and Butterworths, consulting with the latter as to the feasibility of an Australian version of Halsbury. In 1971 she co-authored with Kevin Morgan the leading text *Probate, practice and precedents*, and in 1975 the pair co-authored a companion text, *The probate act and rules*.

However, by far Sue's greatest contribution to Australian legal jurisprudence – and to the broader community of New South Wales – was her period of service of nearly twenty-five years as a magistrate (from 1975 to 2000). In that time, Sue presided over a wide variety of cases – both in subject matter and location (ultimately sitting in most courts in New South Wales, both metropolitan and regional). This included a period of eight years at the Redfern Local Court (from 1980 to 1988), during which Sue became close friends with MumShirl MBE AM, who Sue has previously described as becoming her 'mentor in Aboriginal affairs and in life with all its challenges'. Later, she took on the role as Assistant City Coroner for two years,

presided over the Broken Hill Circuit Court for two years, went on circuits in Wilcannia, and conducted a number of hearings under the Mental Health Act.

In that time, Sue sought to use her position in the community to act as a champion for the protection of the vulnerable and of the Court's place as a safeguard of human rights and liberties. She was known in this regard to be forceful in drawing to the attention of the government and legal community perceived deficiencies in the services provided in rural communities and failings in the adequacy of the law to prevent the unjustified deprivation of liberty. Sue was also well known as an advocate for the particular difficulties faced by Aboriginal people, children and those leaving incarceration, and for her concerns as to the injustices created by poverty, low opportunity, voicelessness and discrimination. Despite the work involved, Sue viewed it as an 'absolute privilege' to be able to travel to and engage with people and the challenges faced by communities across New South Wales. Perhaps more than anything, Sue was keenly conscious of the impact which the law – and the Court process – could have on an individual, both good and bad. This was illustrated in her practice of requiring young offenders who came before her to, on the eve of a sentencing hearing, pen an essay on the topic of 'What is the effect of a criminal record' to encourage them to consider the consequences of their actions.

Amongst other notable contributions during that period, Sue was an author of a study called 'Ultimate Isolation' which reported on persons who had died alone



*The Canberra Times, 1962.*



and lay undiscovered for substantial periods, with a view to improving awareness of how this could occur and how it might be prevented. Sue's report re-surfaced in 2008 when the issue once again attracted media attention; her report remaining as insightful and useful as ever. Outside of her magisterial responsibilities, Sue played a critical role in establishing the Homeless Children's Association, and also served as the first Patron of South Sydney Youth Services (now Weave) and President of Glebe House.

Not one to accept the idea of 'retirement',

Sue continued as an Acting Magistrate from 2000-2008, as well as serving as Chair of the Serious Young Offenders Review Panel and on the Premier's Council on Crime Prevention. During that time, Sue was also involved with the Tranby National Indigenous Adult Education & Training Centre in Glebe, including participating on a study tour in Kalgoorlie. Sue later moved to Canberra with her partner long-term Alan. There, she continued to be involved in community projects and organisations, later developing a growing passion for animal

welfare and ethical issues, including serving on the RSPCA's Approved Farming Scheme Panel, Boards of Vets Beyond Borders and Delta, Vets Beyond Borders, Health Care Consumers ACT, ACT Ministerial Council on Health, Canberra Hospital Ethics Committee and Woden Seniors.

Sue will long be remembered for the mark she made on communities throughout New South Wales and for the example she set as an early pioneer of the female bar.

**Kathleen Morris**

## The Honourable William (Henric) Nicholas QC

(1942-2021)

**Barrister, Queen's Counsel,  
Judge of the Supreme Court  
of New South Wales**

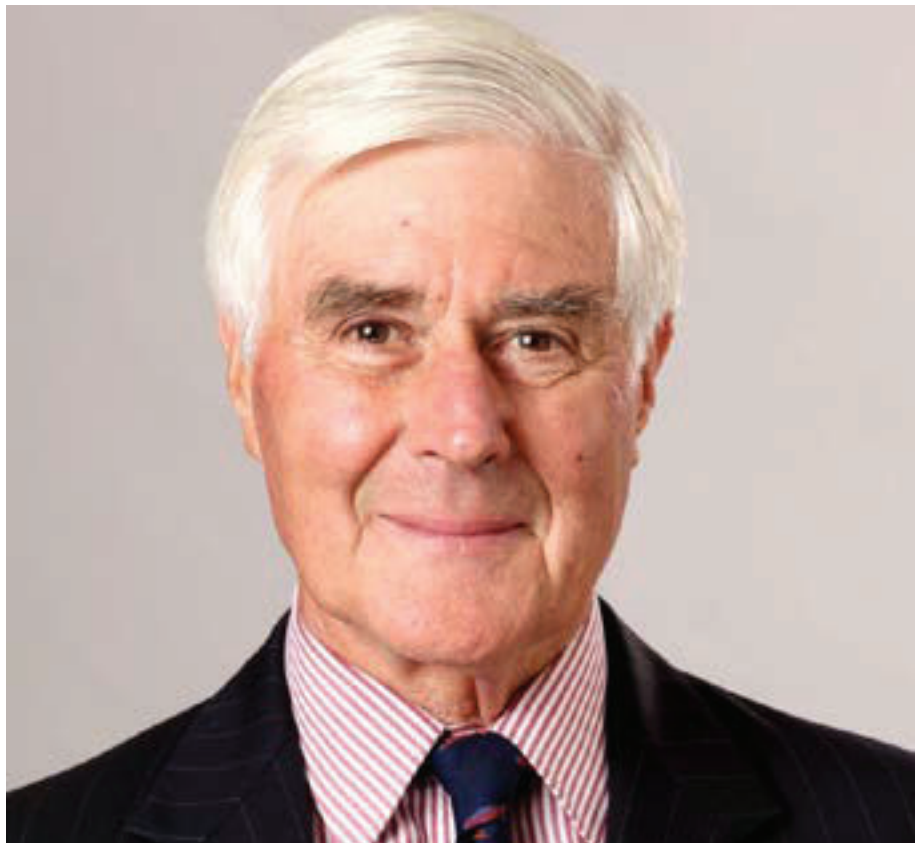
The Honourable Henric Nicholas QC (Nicholas QC) was born in Orange in New South Wales to a family on the land. He was educated at The King's School, Parramatta and then read law at the University of Sydney, graduating in 1964. During his years at university, he resided at St Paul's College and indeed throughout his life he maintained a strong connection with that institution. In the year 2000, he became Chairman of the College Council immediately following the death of Justice John Lehane.

After university, Nicholas QC took articles of clerkship at Stephens Jaques & Stephen under the esteemed master solicitor, Major General John Broadbent, some time President of the Law Society of New South Wales.

Nicholas QC was admitted firstly as a solicitor of the New South Wales Supreme Court on 6 March 1964. One R.P. Meagher of counsel, who himself became a Judge of Appeal in the New South Wales Court of Appeal, moved his admission as a legal practitioner, Nicholas QC travelled to Europe and Great Britain for twelve months as was the practice at the time – a rite of passage. He worked as a researcher in the International Commission of Jurists in Geneva and that work resurfaced later in life when he took an interest in the International Court of Justice and the Council of Civil Liberties.

Upon his return to Sydney, he reverted to Stephens Jaques & Stephen however was admitted as a barrister on 21 October 1966. Nicholas QC's pupil master from that time was the late Hon. B.S.J. O'Keefe, later a Judge of the Supreme Court. In 1969, shortly after he came to the Bar, he married the journalist Marion MacDonald. He started at Forbes Chambers and after some years became a member of the Sixth Floor of Selborne Chambers in February 1971.

As fate would have it Nicholas QC's first room upon joining the Sixth Floor was that of the retiring W.A. South who had once been an associate to his paternal grandfather, the Hon. Harold Sprent Nicholas – the Chief Judge in Equity between 1939 and 1946. It was an auspicious sign.



Nicholas QC remained in those chambers until his appointment to the Equity Division of the New South Wales Supreme Court on 5 February 2003. His major areas of practice evolved over time. He started with common law, general equity and commercial cases but in later years his focus at the Bar was mainly defamation and media law trials, developing the law over some twenty-five years in that sphere. By 1981 he was in silk. He appeared in the longest-running defamation trial, concerning John Marsden, and held general retainers from both News Limited and John Fairfax & Sons Ltd, tabloid newspaper publishers of the day.

Nicholas QC led a fashionable and varied life, having acted for Gianni Versace and with the ties to prove it. He was a member of the Bar Council on several occasions, Director of Counsel's Chambers Ltd and was a member of various legal disciplinary tribunals and the Legal Services Division of the then Administrative Decisions Tribunal. He was also Chairman of the New South Wales Publications Classifications Board and a Trustee of the Centennial Park Trust. He was also an Assistant Commissioner of the ICAC on at least two occasions.

Nicholas QC had an abiding interest in the arts. He was a Director of the Sydney Theatre Company, Chairman of the Eleanor Dark Foundation and of the Varuna Writer's Centre at Katoomba. He was a Director of the Blake Society for Religious Art and sponsored the prestigious Blake Prize in this discipline. While a sitting judge, his chambers in Queen's Square on the 7th Floor spilled over with the best examples of Aboriginal Art (once a

computer was thought to have been placed in that room somewhere). Indeed for some time, he was Chairman of the Kimberley Foundation of Australia, promoting research and preservation of Aboriginal rock paintings in the Kimberley. Life was made beautiful – one painting at a time.

Nicholas QC maintained a traditional town and country life. Having come from a grazier family near Tumut he owned a property at Mount Irvine (adjoining that of the Hon. Ken Carruthers). It was a bucolic life where he cultivated gardens and bred Aberdeen Angus cattle with his floor colleague J. Sackar QC (now the Hon. Justice Sackar). For many years, he was a councillor of the Royal Agricultural Society of New South Wales.

Nicholas QC's personal endeavours and social conscience went much beyond that of the law. Art ranked highly, as did charitable causes. In the law, he had been a great jury and appellate advocate and with his wisdom, energy and dutiful work ethic he made life in the world a better place for those around him. For those that knew Henric Nicholas QC, he was a kind, humorous and unassuming individual who never affected any pomposity. Mostly to others, he was a quiet and joyful person, prone to understatement.

In recent years, he accepted the challenges of life with equanimity. In Nicholas QC, the Bar has lost a quiet and humble servant who practised to the measure of excellence.

His wife Marion (Minny) survives him, together with their three children Grace, Edward and Hugh.

**Kevin Tang**  
8 Wentworth Chambers