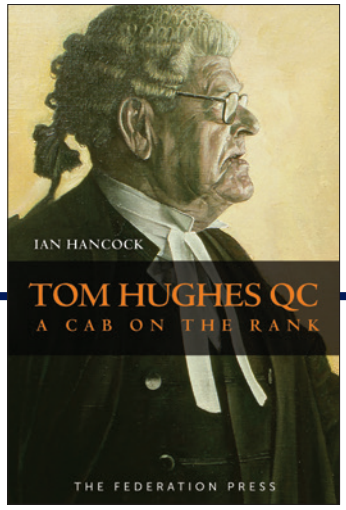

Book Review

***Tom Hughes QC: A Cab on the Rank*, by Ian Hancock**

Review by Rob O'Connor QC

There are many biographies of Queen's Counsel who become judges, but not many of QCs who do not go on to be judges. This biography of Tom Hughes is one of those few.

Hughes was much more than a QC, and this makes for a very interesting life story. At various times Hughes was a wartime pilot in England, junior barrister, Member of the House of Representatives, Commonwealth Attorney-General, a leader of the Australian Bar retiring in 2012 at age 89, a grazier and a racehorse owner.

The biography is written by Ian Hancock, a non-lawyer, who is an Editorial Fellow at the Australian National University, Canberra . Hancock has done an outstanding job, giving chapter and verse of Hughes' 92 years to date. He gives more than that by detailing Hughes' ancestral family history of four earlier generations in Australia. The family has a long commitment to public affairs. Great-great-grandfather Thomas arrived in Sydney in 1840 and carried on a grocery business in central Sydney. Great-grandfather John was a wealthy businessman and a very generous benefactor to the Catholic Church; he was a Justice of the Peace and a magistrate. Grandfather Sir Thomas was a solicitor and became Lord Mayor of Sydney, a member of the NSW Legislative Council for 22 years and a Royal Commissioner several times; he owned a substantial number of properties, was a member of many company boards and gave generously of time and money to Catholic institutions and charities. Father Geoffrey MC, AFC served as a pilot Captain in World War I and was a very prominent Sydney solicitor. Hughes' daughter Lucy was a Lord Mayor of Sydney and is the wife of current Prime Minister Malcolm Turnbull.

Hancock was greatly assisted by the large archive of family records still retained, Hughes' letters to his parents during his RAAF service in World War II, Hughes' personal diaries for some of his life and his retention of personal files and professional records such as fee books for his whole career as a barrister. Hughes also co-operated with Hancock by making himself readily available for interviewing by Hancock. This wealth of material has made the book particularly detailed, giving the impression in some parts that the materials have been included simply because they were available. My own view is that Hughes' air force record in England contains too much unnecessary detail, especially as Hughes himself described his war career as a pilot "a relatively lucky and safe war".

One interesting aspect of Hughes' air force service in England was his serving with Sir Francis (Red) Burt, later Chief Justice in WA. They remained close friends until Sir Francis's death in 2004.

Another chapter written in too much detail is Hughes' unsuccessful application for a Rhodes scholarship. Hughes came third in the contest for two scholarships.

Hughes' successful efforts to gain Liberal pre-selections and then elections for the Federal seat of Parkes, and later the seat of Berowra, make very interesting reading. Hughes was very ably assisted in those campaigns by young solicitor, later Prime Minister, John Howard.

One of the best chapters deals with Hughes as Attorney General. He appeared for the Commonwealth twice before the High Court in his determination to test the extent of the Commonwealth's legislative powers generally, but especially in matters such as the continental shelf and territorial sea, restrictive trade practices and the corporations power. Hughes and Prime Minister John Gorton held 'centralist' views, taking the attitude that, if the Constitution gave the power to the Commonwealth, there were no relevant State 'rights'. Sir Clarrie Harders was Secretary of the Attorney-General's Department under eight Attorneys-General. He said that Hughes was "not only my favourite but the best Attorney-General under whom I served".

Hughes supported Gorton in the power struggle between Gorton and William McMahon. The book details the steps leading up to the resignation of Fraser as a member of Gorton's Cabinet which show that Hughes was able to establish that Fraser's story in his resignation speech was not an accurate or full account of what had occurred. When McMahon won the leadership of the Liberal Party and became Prime Minister in 1971 on the casting vote of Gorton himself, McMahon sacked Hughes for being a Gorton supporter, for his views on State rights (which were unpopular with the States), and for floating the possibility that homosexuality should cease to be a criminal offence. Hughes was very bitter at the time, but it turned out to be a blessing in disguise for his future. Hughes gained preselection for the next election, but withdrew before the election was held. He returned to the Sydney Bar.

Hughes soon became head of his chambers and President of the NSW Bar Association. Some areas were starting to be agitated for reform and Hughes had the carriage of those. He had to defend the Bar from criticisms in newspaper articles about restrictive trade practices such as that a QC had to appear with a junior counsel and the junior was able to charge a fee of two-thirds the QC's rate. This must have presented some difficulties for him in view of his hard-line approach to restrictive trade practices while Attorney-General. Those practices ceased to exist some decades ago. He also made submissions to the Federal Government's National Committee of Inquiry on Rehabilitation and Compensation against changes being proposed for the abolition of common law actions for damages arising from personal accidents and the introduction of a universal compensation scheme, which threatened the income-earning livelihoods of many barristers and solicitors. Hughes' submission did not oppose introduction of a no-fault scheme but wanted the retention of common law litigation for the victims of serious injuries

who deserved justice in their cases. Royal Commissioner Justice Woodhouse rejected this stance, but the Labor Government's Bill was not passed by the time of the dismissal of the Government in November 1975, and the incoming Fraser Government never resurrected the Bill.

A case which created a lot of early publicity for Hughes was his representation of High Court Justice Lionel Murphy for his comment: "And what about my little mate?". This involved representation before Senate Committees, a Commission consisting of three judges, and then Court appearances. Hughes found Murphy "a difficult client".

In 1977 Hughes resigned from the 11th floor of Selborne Chambers and moved to 16th floor Wardell Chambers following a nasty dispute at 11th floor of Selborne Chambers concerning the admission to membership of the floor of a junior female barrister with whom Hughes had a close personal relationship. A decision at a board meeting to elect the junior barrister was challenged at a later meeting held while Hughes was away from Sydney. No one spoke directly to Hughes about their objections. In a letter to a colleague, Hughes said that he was appalled and disgusted by the cruelty and injustice of some of his other colleagues. "I was naïve once to think that escape from politics would bring me back to a gentlemanly environment. Now I know better." Decades later, although Hughes is still disappointed that no colleagues spoke to him personally about the matter, he accepts that at the time he made unwise decisions and choices.

Hughes came to national prominence as a QC in 1978 with the publication of a cover story in *The Bulletin* written by 23 year-old Rhodes scholar Malcolm Turnbull under the title "From silk to riches – Portrait of a $1,000-a-day QC". This followed a number of high-profile appearances, often in defamation cases.

From a huge number of possible cases, the book has selected a good number of interesting ones to illustrate the style, skill and expertise of Hughes as one of Australia's leading QCs.

One of Hughes' most devastating performances was his representation of Federal Minister for Finance Eric Robinson in the Royal Commission of Inquiry: Matters in Relation to Electoral Redistribution Queensland 1977 set up by PM Malcolm Fraser after certain allegations were made by Liberal MP Don Cameron. The Commissioner was Justice Douglas McGregor. Hughes cross-examined Cameron for nearly three days and Cameron's accusations against Robinson fell away completely after the merciless cross-examination by Hughes which had Cameron conceding that he himself "lacked common decency", had "a lamentable disregard for accuracy", was "a backstabber" and had "a scant regard for truth". Hancock closely examines Hughes' technique as a cross-examiner with the aim of destroying Cameron's character and credit, which was at times brutal and always relentless and unsettling. Hughes also demolished Cameron's supporting witnesses. Robinson was completely exonerated by no findings being made against him.

However, there was an unexpected victim in that Royal Commission. The Commissioner found that Minister Senator Reg Withers from WA had acted with impropriety by suggesting to the Electoral Commissioners that in the electoral re-distribution they retain the name of McPherson for the seat instead of the proposed name Gold Coast. If the name of the seat was retained, under arrangements existing between the Coalition parties (Liberal Party and Country Party), Robinson would be able to contest the next election without a Country Party candidate also contesting the seat. (If the name of Gold Coast had been adopted, it would have been regarded as a 'new' seat and both parties could have fielded a candidate.) Fraser does not come out of this well, because Robinson said that he told Fraser three times that Withers had spoken to the Chief Electoral Officers and approached the Distribution Commissioners about the name change and Fraser therefore had three opportunities to form the view that Withers had acted with impropriety. Fraser nevertheless sacked Withers. Hughes believed that Withers, himself a former barrister, acted unwisely by not having legal representation at the Royal Commission. Withers' final comment to Hughes before giving evidence at the Royal Commission had been "It'll be a breeze."

It is surprising the number of times prior to the mid-1980s that Hughes expressed his concerns as to whether there would be enough work coming through his door and whether he would be able to meet his expenses. It is interesting to read the annual income figures from his fee books.

That position changed in the mid-eighties in the era of the high-flying corporate characters. Hughes acted in many cases involving takeover battles, the stockmarket crash, banks, major media organisations, and insurance, construction, finance and industrial companies. He appeared in cases involving Warwick Fairfax, Alan Bond, Laurie Connell, Robert Holmes a Court, and Gina Rinehart (where he famously tangled with witness Rose Porteous).

The book discusses Hughes' skills in many other cases, including defamation cases, and the levels of compensation awarded by juries: Jane Makim (sister of Sarah, Duchess of York), solicitor Nicholas Carson, rugby league footballer Andrew Ettingshausen, Chief Judge Elizabeth Evatt, cricketer Clive Lloyd, rugby league coach Reg Austin and architect Harry Seidler. He had two successful appeals to the Privy Council. By this time Hughes was known as the venerable lion of the Sydney Bar.

Justice Howard Smith of the Supreme Court of WA was admired by Hughes: "…urbane and pleasant…enjoying himself testing me out to the utmost, while being extremely polite in the process."

Part of a 2009 letter in reply to Justice Geoffrey Miller is also quoted.

A very interesting revelation is that when Hughes was Attorney-General in early 1970 he invited Sir Francis Burt, then aged 51, to consider appointment to the High Court, but Sir Francis declined. Hughes' views of Sir Francis's qualities were: "a limpid mind, a great grasp of principle, a capacity for clear and simple expression and a tolerable understanding of the foibles of human nature."

The book also discusses Hughes' marriages to Joanna (1951–1973) and Chrissie (happily since 1981), personal relationships in the period in between, his brother art critic and author Robert, and his children Lucy (wife of Malcolm Turnbull), Tom Jnr (a Sydney barrister) and Michael.

A valuable part of the book is the description of Hughes' special skills as a barrister by such learned legal personalities as the Hon Murray Gleeson QC, the Hon Sir Anthony Mason QC, the Hon Sir William Deane QC, the Hon Michael McHugh QC, the Hon Dyson Heydon QC, the Hon Chief Justice Tom Bathurst, Jim Merralls QC, Terry Tobin QC, the Hon Justice Ian Harrison and Justin Gleeson SC.

The book provides a snapshot of the political and legal landscape over the past 50 years. Altogether, it is an exceptionally enjoyable book for a lawyer to read.