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CONTENTS

- 146 Editorial Announcement
- 147 Obituary – The Honorable Justice D. Graham Hill
Patrick Gallagher
- 151 Commodity Tax Reforms In A Many Consumers Economy: A Viable Decision-Making Procedure
Fabrizio Bulckaen and Marco Stampini
- 170 Trans-Tasman Tax Reform: The Real Story
David G. Dunbar
- 206 The Determinants of Malaysian Land Taxpayers' Compliance Attitudes
Nor Aziah Abdul Manaf, John Hasseldine and Ron Hodges
- 222 The Attitudes of Tertiary Students on Tax Evasion and the Penalties for tax Evasion – A Pilot Study and Demographic Analysis
Ken Devos
- 274 Taxing Non-Fixed Trusts
Elaine Abery
- 288 Record Keeping Practices and Tax Compliance of SMEs
Chris Evans, Shirley Carlon and Darren Massey
- 335 Book Review – Global Challenges in Tax Administration
Dale Pinto

Obituary

The Honourable Justice D Graham Hill, 1938 - 2005

Patrick Gallagher¹

“With the untimely passing of Justice Graham Hill ... on Wednesday 24th August, the Australian judiciary lost one of its outstanding legal minds. We in the Federal Court lost a superb judge and fine colleague whose contribution to the work of the Court judicially and extra-judicially was quite exceptional.” Words of The Honourable Michael Black AC Chief Justice of the Federal Court of Australia at Graham’s memorial service.

Typically, the evening of his death saw Graham Hill taking classes at Sydney University. The longest serving teacher of law at Sydney University, Graham had taught every term for 40 years. In that time, he had created an unannounced reputation as one of Australia’s leading tax academics – albeit his academic work was always ‘part-time’ – in name at least. The quality of his teaching was exceptional and his writings and legal research (which have been fully catalogued recently by Colin Fong), in the form of papers, judgments and public addresses – not to mention the Stamp Duty service he wrote with Bill Cannon and Michael Aitken – were at the cutting edge of practical tax analysis.

Part-time? It is doubtful that Graham ever did anything without becoming involved body and soul – and he did so much! For example, he also had formal links with law schools at Flinders University, Wollongong University, the University of Western Sydney – and was involved in the very creation of Atax at UNSW as well as many subsequent successes achieved by Atax. Not only was Graham patron of the Australasian Tax Teachers’ Association, year after year he attended its annual conferences to the great benefit of all tax teachers across NZ and Australia. Formal recognition for all of his contributions to law, well deserved, took place when The University of Sydney awarded him the degree of (honorary) Doctorate of Laws.

Graham’s analytical skills, which equipped him as a fine educator, also equipped him to be amongst the very finest of judges. His judicial activity was not alone limited to taxation – but that is where his mark is truly profound. Dick Edmonds, like Graham a prominent tax QC, now like Graham a Federal Court Judge, wrote words for the Taxation Institute (an organisation whose members benefited from Graham’s

¹ Patrick Gallagher is an Associate Professor at the University of Western Sydney and a former Deputy Director of Atax.

unbelievable level of support over decades) that hit the mark: “I doubt that we will see the likes of Graham Hill in the revenue law area again, however, if I am wrong, then it will be a long time before we do. He was, as Professor Richard Vann said, and the press reported, a Titan in the field. We shall all miss him greatly.”

Richard Vann’s ‘titanic’ description is a further pointer to the fact that for Graham, law and education could not exist apart – through entire careers. He was involved in the education of judges in his own Federal Court; he was involved in educating judges in Thailand, judges in China – in judge education forums in the USA. He was aware of cultural, intellectual and philosophical issues involving the law and its application at all levels. Professor Faith Trent of Flinders University, a long time friend and colleague, understood so well that Graham “... enjoyed playing with ideas, challenging orthodoxies and striving to ensure legislative fairness.”

Her observation is demonstrated again and again in Graham’s judgments and writings. It is demonstrated in a paper perhaps pivotal to tax understandings – “Barwick CJ: ‘The taxpayer’s friend’?” (1997) 1 *Tax Specialist* 9-13. In that paper, Graham explores the underlying character of tax judgments in the Barwick High Court. As always, Graham’s approach is both convincing and reasonable – arguably a ‘must read’.

Graham’s writing always was clear and obvious. One illustration will suffice – in the particularly difficult area of the law relating to the taxation of one off activities and whether relevant gains are on income account. In the *Westfield Case* (91 ATC 4234 at 4243) he observed, perhaps controversially at that time, certainly from the ATO’s point of view, (see TR 92/3 where his judgment is not received with appreciation) that:

While a profit-making scheme may lack specificity of detail, the mode of achieving that profit must be one contemplated by the taxpayer as at least one of the alternatives by which the profit could be realised. Such was the case in *Steinberg*. But, even if that goes too far, it is difficult to conceive of a case where a taxpayer would be said to have made a profit from the carrying on, or carrying out, of a profit-making scheme, where, in the case of a scheme involving the acquisition and resale of land, there was, at the time of acquisition, no purpose of resale of land, but only the possibility (present, one may observe, in the case of every acquisition of land) that the land may be resold.

There have been some, arguably notorious, cases where Graham’s decisions have not survived appeal. The quiet acceptance of his approach in *Westfield* is demonstrative of the fact that Graham’s strength of argument usually allowed no option other than simple acceptance.

When GST came along open minds and careful logical analysis were essential in dealing with the extraordinary complexity involving apparently simple questions. Graham set about ensuring the development of an informed profession regarding the complexities of GST. He attended and spoke at many conferences all the while educating more fully the ATO, practitioners and us academics. He was instrumental, with Peter McMahon of Blake Dawson Waldron and me, in conceiving the Sydney GST Discussion Group. Graham even organised its monthly lunchtime venue from 2000 until his death. One of Europe’s leading VAT lawyers, Roderick Cordara QC, of Essex Court Chambers London and more recently also Wentworth Chambers Sydney,

after Graham's death said to me that Graham would be sadly missed and that we had lost one of the very best tax judges anywhere – echoing Dick Edmonds, Roderick queried whether any person could even partly fill the void.

Graham spoke at a huge number of tax conferences over many years – for an array of organisations. He was generous with his time and his knowledge and concerned to ensure clear understandings and mutual gratification in learning and in work. He enjoyed meeting delegates from all areas of all professions and he had no time for grandeur or graces – but all the time in the world for people and their opinions. When at Atax UNSW, I was honoured time and again to have Graham accept invitations to attend events I was organising. His generosity was simply without equal – with all people. Little known is that, about the time he became a judge, he contributed entire weekends of his time, with a range of key tax experts assisting Yuri Grbich and me in planning the very foundations of the Atax program at UNSW (we might not have thought it until now but, a Sydney University heart, in part at least, beats within Atax).

Recently, prominent Sydney tax practitioner Carlo Moretti discussed with me Graham's enthusiasm for Italy. I was interested that, rather than concentrating on Italian anecdotes, Carlo moved straight to Graham's generosity and interest in education and in sound legal understandings. Carlo was quite moved that only a short time before his death, Graham accepted an invitation to dine with junior staff from Carlo's firm. At that event, after discussing tax in some depth, Carlo was once more impressed at Graham as he took the time to meet the junior staff as individuals and ensure that each one felt important and comfortable at that function.

Michael D'Ascenzo – to be the new Tax Commissioner recently wrote a valedictory note with Frank O'Loughlin on behalf of the Law Council of Australia. This can be seen on the Law Council website. In addition to that note Michael commented to me, reflecting the views of many people with whom I have spoken, that: "I personally enjoyed Graham's company as a fellow presenter at many conferences, seminars and workshops. He was always a good contributor who had a real interest in lifting the level of sophistication and understanding in our knowledge of the tax law. I always found it a mark of distinction that Graham would share his insights with us..."

Faith Trent, a long time friend of Graham, and another person glowing in her comments on Graham, has provided some biographical details. In the next two paragraphs, modified slightly, are some of the details provided by Faith – details which help us to understand more about this remarkable man.

Graham was born in Sydney on Melbourne Cup Day, 1938. An only child his father was an engineer and his mother headmistress. From Summer Hill Opportunity School he entered Fort Street Boys' High School. By the age of 20, while studying psychology as part of his BA/LLB, he had become an orphan. While undertaking the LLB at Sydney University, he came under the influence of, and subsequently worked with Professor Ross Parsons – indeed Graham is thanked for his contributions in Ross' seminal 1985 publication. Graham was awarded the University Medal and gained First Class Honours in Law – quite an achievement given that his fellow graduates included both their Honours Murray Gleeson and Michael Kirby of the High Court. During his student days, his house in Croydon became a place of parties, music (Graham was a great piano player – as well as fluent in German) and passionate discussions about religion, politics, sex and all the things of importance to young people in the changing world that then confronted them.

Graham was awarded a Fulbright Scholarship and a Ford International Fellowship. Travelling to the US by ship, Graham disembarked at Panama and wandered the Americas to Harvard. A wandering way that from then became part of his life. It was an important experience as Graham learned more about people and life and the circumstances in which people live and survive – surely key knowledge for a good judge!

Graham's most recent Federal Court Assistant and also Associate in many cases, Jennifer Farrell provided some lovely insights, amongst them were her description of many treasured memories, including the "... stimulation of just working with someone so brilliant ... along with his 'family' of associates who will always appreciate how lucky they were to have the opportunity of working with him. We will hold the past associate's dinner every year in his honour."

Many have written many words about Graham – every one of them demonstrating Graham's sense of fairness, his reason and recognition of right – along with his kindness and compassion. Professor Robin Woellner perhaps summarised the views of so many when he said "He had one of the sharpest intellects I had the pleasure of encountering, but with a grace, humility and tolerance one does not always find in the law."

Sadly missed, he was our friend, a friend who confided both to my wife Diane and to me of the great pride he had in his family and their achievements. I will leave the last words to Graham, relayed to me by more than one person. They seem appropriate, given our collective loss, for this man who became great in life through his care and support of so many people and so many things.

"It's only tax – there are more important things. People with tax problems should be thankful – there are far worse problems."