

Speech for 2006 Graham Hill Award

Many flattering things have been said of Graham Hill:

The Honourable Justice Michael Kirby has said

“He was one of the finest lawyers and most successful judges of his generation”

And the Honourable Justice Ian Gzell:

“... I doubt that any one else will emerge with the gifts he possessed to take his place and divert our attention away from the enormous contribution he made to taxation law jurisprudence in this country”

Everyone here tonight can personally testify his or her first hand knowledge of Graham's contribution.

But with the advancing of time, and retreating of memories – this contribution is likely to be forgotten – or at least its significance diminished.

There are certain things which should not be forgotten – and Graham's contribution is one.

In not forgetting - there is a fundamental difference between on the one hand treating his contribution as an inspirational reminder of what each and every one can achieve - and on the other hand elevating Graham to an unattainable level.

The Graham Hill annual award is about the former - Graham would have found offensive an award to glorify him or an award in his name conferred by, and given to members of a club.

The purpose of the award is to provide an inspirational reminder of the contribution made by Graham Hill to revenue law in Australia.

Whilst providing inspiration – the award will hopefully stir a gentle recollection of Graham, the person.

What Graham was about was the pursuit of the understanding of revenue law and teaching and debating what he had learnt. That was his passion - and that was his contribution.

In this passion we all participated, academic, accountant, associate, barrister, judge, solicitor and student. No one - regardless of status or age had any greater claim to be right - what mattered were one's reasons for one's conclusion.

It is those reasons Graham valued and sought to extract - so that they could be debated – well one did not actually debate with Graham – you lay on his operating table - whilst he dissected your reasons – and if this was not painful enough - you looked on – without anaesthetic.

This debate on one reasons was therefore often brutal - and rarely flattering - what mattered was the honest robust appraisal of whether those reasons were sound or not. The debate was never intended to be personal - and thus Graham saw no need for diplomacy. There was no soothing of egos of those whose reasons lay shattered on the table for all to see.

No one could hide before the Mansfield's directive of:

“Give your decisions, never your reasons; your decisions may be right, your reasons are sure to be wrong”.

The reasoning mettle of every commentator - whether judge, academic or otherwise - is tested by the general anti-avoidance provision in Part IVA of the Tax Act - some rely on divine intervention - others treat the matter as a culinary experience - where smell separates out the tax avoiders, in much the same way as cheese is judged – others - as an excited sniffer dog at the airport goes about its work searching for avoiders.

Graham would have none of this - his writings on Part IVA are a triumph of robust reasoning over delphic discourse.

The Graham Hill Award, is intended to recognise one person each year for his - or her own personal contribution to revenue law.

The contribution may be in an area which we take for granted or simply not see - or worse in Graham's mind - which we give lesser significance because the contribution is at a certain level or has a lower profile. What mattered to Graham - and to this award – is the objective contribution made by the person.

It is easy to overlook the skill and dedication of those who publish information on revenue law - whether in daily reports, media, journals, tax guides or books. In Australia we have world class publishing of tax information - which is a major contribution to the working of our tax system.

It is also easy to overlook the skill and dedication of those in treasury who frame tax laws. More and more this process is being opened up to constructive consultation - and when you become part of this process you begin to appreciate the dedication of those involved and their desire to get the law right.

It is also easy to overlook the skill and dedication of those in the tax office. Those on the outside can always obtain headlines from criticism, and do doubt some is justified – but for example working with the tax office on a tax ruling reveals at all levels, not just tax counsel, the high standard brought by ATO persons to the task.

It is also easy to overlook the skill and dedication of academics. We are blessed in Australia with revenue academics not only of an exceptional standard, but who are prepared to assist developing countries with their tax systems. These academics are not removed from tax practice as they may be elsewhere - and they are an essential and important part of our system. Their encouragement to students is as critical as their publications.

It is also easy to overlook the skill and dedication of parliamentary draftsmen. Any one involved in the drafting process is impressed by these parliamentary wordsmiths. They face massive time pressures - yet produce legislation which most of us would be very proud.

Then there are the tax practitioners - at the coal face of tax practice, whether in private practice, in-house or elsewhere. Each face the daily pressure of giving correct advice and the drudgery of keeping up-to-date with the daily tidal waves of tax information. It is easy to understate the contribution made to revenue law in Australia by the tax practitioners who make the system work. Their skill and dedication is not only knowing and understanding tax law, but applying it correctly on the run.

It is also easy to overlook the skill and dedication of barristers: not simply in presenting an argument in court but in their advisory work. Merely because an opinion of counsel may not see the light of day in court does not mean it has not made a substantial contribution - the opinion may be the beginning of a ripple effect of reasoning.

Then there are the judges whose findings of fact and reasons are most open to public scrutiny. Faced with the prospect of making findings on the facts and a decision with close reasoning - requires tremendous skill and dedication.

I have laboured on those different areas in an attempt to explain that there are many areas of revenue law where a person's contribution is made - often unknown - and should be recognised.

Graham at one time in his life occupied the role of most of us here, student - solicitor - tax advisor - academic - barrister - judge. It therefore fitting that an award in his name be conferred each year on a person in recognition of that person's contribution to revenue law in Australia.

This award is an award given by what I broadly call tax practitioners - for tax practitioners. It is not funded by - nor part of - any organisation - and only asks that supporters give a little time in suggesting nominees and providing background information.

This year's award committee comprised: Mr Justice Richard Edmonds, Stephen McMillan and myself. I wish to thank both of them for having served so willingly on the committee. Whilst it is the ultimate responsibility of the committee to make the decision it was assisted by an advisory panel comprising: Professor Lee Burns, the Commissioner of Taxation - Michael D'Ascenzo,

John Durack, Mark Ferrier, Justice Ian Gzell, Terry Hayes, Justice Kevin Lindgren, Peter Madden and Tony Slater.

This committee found this first decision very difficult and each of us, I think, were surprised what we did not know about the contribution made by each of over thirty nominees for the award.

Most of the nominees are here tonight and they might be surprised to know that they were nominated. I will not embarrass them by reading out their individual names – or their contribution - but it is important to recognise that although only one person could be chosen - that person is a representative of Graham - and of each of you.

Thank you for taking the time to come to this inaugural presentation of the Graham Hill annual award.

Robin Speed
30 November 2006