

**ATAX – GST Workshop – April 2006**  
**Tribute to the late Hon Justice D Graham Hill**  
**By Bill Cannon**

My task this evening is in some respects quite a difficult one because I am paying tribute to a person who has been a wonderful and generous friend and mentor to me all my professional life. On the other hand it is made easy because I think I can safely say that Graham was to a greater or lesser extent a friend and mentor to just about everyone here tonight. Even if only as a result of being able to hear or read one of his papers presented at a conference or published in a journal or, as a student attending his lectures which he gave every semester except one over a period of 36 years from 1969 to the day of his untimely death.

In speaking about Graham tonight I am also conscious of the tributes that have already been paid to his outstanding legal career by others more eminent than me, particularly Justices Michael Kirby and Richard Edmonds.

Justice Kirby was at school with Graham and has given us some insights into Graham's achievements at school and later as an advocate at the NSW bar. Justice Kirby, in his tribute to him, describes Graham as one of the finest lawyers and most successful judges of his generation.<sup>1</sup>

Justice Edmonds tribute focuses on the legacy left us by Graham with his judgment in the HP Mercantile case.<sup>2</sup> As His Honour puts in, in that case Graham has provided a template for the approach the Courts should adopt in future cases involving the construction of the GST Act where there are, prima facie, competing arguments based on

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<sup>1</sup> Tribute to the late Justice Graham Hill by the Hon Justice Michael Kirby: *Journal of Australian Taxation* 2005 Vol 8 206

<sup>2</sup> *HP Mercantile v FC of T* 2005 ATC 4571

syntactical inquiry into the meaning of words contained in that Act either standing alone or in juxtaposition with other words.<sup>3</sup>

Graham himself, during his graduation address on being awarded an honorary Doctorate of Laws from Sydney University also gave us a summary of his early academic career and achievements.<sup>4</sup>

#### *Academic Achievements*

After graduating with the medal from Sydney University in 1962, Graham was awarded a scholarship under the Ford Foundation and Fullbright scheme with which he obtained a Master of Laws from Harvard University. He was also awarded a scholarship from Sydney University which enabled him to do further postgraduate study in London.

While studying in London, Graham spent time in Eastern Europe particularly in East Germany and Russia. A few years ago, I had the good fortune of being able to attend a GST/VAT conference in Potsdam in the former East Germany (a conference also organized by ATAX), which Graham and some others here tonight also attended. Graham, on our sightseeing half day "off", took us on a tour of the former Eastern sector buildings in Berlin. He knew what just about every building we came across had been used for during the cold war era. He told us that during this time Australians had no problems crossing between the Eastern and Western sectors. Americans and UK citizens could not cross, but Australians virtually had the freedom of the city. Graham's friends in East Germany and Russia looked forward eagerly to the visits by their Australian friends who brought them news from the West including banned magazines (like Time magazine) which they were able to smuggle across the border.

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<sup>3</sup> Paper titled "Five Years of GST" by the Hon Justice Richard Edmonds presented at the Taxation Institute of Australia 2005 National GST Intensive 13 October 2005

<sup>4</sup> The occasional address delivered by Justice Hill at the University of Sydney on Friday 24 May 2002 published in (2003) 77 ACT at 275267

Graham's academic achievements, as Justice Kirby puts it, were stellar. One of my former partners, Aleco Vrisakis, lectured Graham as an undergraduate. Aleco states without hesitation that Graham was the brightest student he ever taught. He was in fact the only student he thought he had to give a 100% mark to in an exam as Graham had not only raised and dealt with all the issues Aleco had thought of in setting the exam but he had identified and dealt with a number of other issues Aleco had not thought of. Aleco did not in fact give Graham 100% in the exam. He gave him 99%. Many years later at a dinner to honor Graham's appointment to the Federal Court Aleco told this story, and apologized to Graham for the fact that he did not give him a 100% mark because he said, Graham had clearly deserved being awarded that mark.<sup>5</sup>

Graham returned from his overseas studies in 1965 and began working at Parish Patience & McIntyre. During the next four years he became interested in stamp duties and wrote his book on stamp death estate and gift duties. The book was published in 1969. By the time of its publication Graham had the first update also ready for publication. In 1979 a second edition of the book was published as a loose leaf service because, as Graham puts it in his preface to the second edition, the fashions in legal publishing had by that date, changed. In 1997, Graham entirely rewrote the book when the Duties Act was introduced. He did that over a period of approximately 4 weeks, a task which, in my view, could not have been accomplished in that time frame by any other living person.

As well as being a distinguished author and speaker, Graham served and distinguished himself at all levels of the legal profession, as a solicitor, junior counsel, QC and judge of the Federal Court. As noted by Graham in his graduation address referred to previously, he considered that he had been very fortunate in having been able to do so and for the help he had received along the way. That being the case, he considered he had an obligation to give back to the Universities and Professions something in gratitude for the

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<sup>5</sup> Speaking to Aleco subsequently, he informed me that in marking exam papers he always marked the answers for each question for all students first and then would go back and add up the marks each student obtained for all their answers to determine their overall mark. When he came to determine Graham's overall mark he found that the total marks he had allocated to Graham's answers gave him an overall mark of 100%. He thought that could not be possible. No-one could provide perfect answers to all questions. However, Graham had done just that.

benefits he had received. He urged the other graduates to do the same in ways of their own choosing.

So that is what I would like to focus on tonight – Graham's extraordinary generosity, "giving back" in far greater proportion than he in fact received, to the Universities and the Professions and to us his students, friends and colleagues.

In doing so, I am at a slight disadvantage however, because whenever I have spoken about Graham in this way in the past he has always been present. Those here who have given a paper in Graham's presence or introduced him at a conference or function will know that Graham could not help commenting about what you were saying. I recall on one such occasion, when referring to the fact that he graduated in the 1960's his comment for all to hear – "it's not that long ago."

He also didn't really like hearing about himself or his achievements. When introducing him as a guest speaker at a Law Society dinner, I can recall him saying as I was reading out his CV – "that's enough Cannon, they came to hear me not to hear about me."

If not commenting on what you were saying about him or the topic you were discussing Graham would be nodding his head with apparent approval or disconcertingly shaking his head with disapproval.

I can vividly recall the last paper I gave in his presence at the TIA stamp duty symposium in Adelaide, the month before Graham's untimely death. The relief I felt when looking out at the audience and seeing Graham nodding his head with approval. I guess I was cheating a little however. The topic was stamp duty and I have had the privilege for the past twenty years or so of assisting Graham with keeping his stamp duty book up to date, so I suppose I had a good idea beforehand of his views on the matters about which I was speaking.

Now Graham would not want me to be too serious in paying tribute to him this evening. I thought therefore that I would deal with a couple of less serious aspects of Graham's life before singing further praises about him.

### *Other Interests*

Let's examine first his sporting prowess. He would say it was NIL. He really didn't have any interest in sport. At one point I thought that might have changed. While in London with him on one occasion, for a whole week that we were there preparing for a Privy Council case, Graham and I would walk from Knightsbridge where we were staying to different restaurants in central London for dinner. I found that walk rather challenging for the first few nights. Graham seemed to walk so quickly. I could hardly keep up. Then on about the third night Graham said to me as we were walking along – "Bill you walk very quickly". I said "Graham; I am just trying to keep up with you." We then realized we were each walking more quickly to keep up with each other.

Graham was perhaps not known and, had no interest in being known, for outstanding dress sense. He did not wear expensive suits. He generally wore the right clothes to suit the occasion. I say generally because of another experience I had with Graham while with him in London in the 1980s. One evening he suggested we go to the theatre. Graham said he would call by my room when ready to go. I assumed we would wear a suit but when he called and I opened the door there was Graham in leather jacket and jeans. He looked at me and said "why have you got a suit on. No body knows us here in London". I stood there not knowing what to do and he continued. "Well, one of us will have to change and its not going to be me".

He always wore his leather jacket and jeans to conferences, at least in winter. That is until his elevation to the bench when he thought he should wear a suit.

Graham's attitude to food and drink were similarly subdued. He was himself a good "cook" and he enjoyed fine food and wine but couldn't see the sense in spending excessive amounts of money on food or drink. If we went out to lunch in Sydney we would often end up at Doyles at the Fish Market, one of his favorite spots.

At the conference in Potsdam, I must admit I really did enjoy eating out with Graham and the other attendees at the various small restaurants within walking distance of our hotel. Good food, good surroundings and good company were more important to Graham than the best food and wine money can buy.

Graham also did not consider that he possessed finely honed joke telling skills. That's not to say that he did not have a good sense of humor. But he did not consider that being funny came naturally to him. The one consolation he had, we both agreed, whenever we discussed this topic was, when it came to humor, at least I made him look and sound good.

He did have a great sense of irony however. On returning from the African safari on which he embarked a few years ago, I asked him – wasn't it dangerous? "No, not really" he said. "There was only one tourist and one guide killed (presumed eaten by a lion or other similar man eating exotic animal) while we were there. You just had to make sure you didn't need to go to the toilet at night."

*Life as a Judge – It can be lonely at the top*

On a more serious note, Graham, like many judges, felt the loneliness and isolation that can go with being elevated to the highest rank in the legal profession. Graham was explaining to me once at a Blake Dawson Waldron alumni Christmas function that people don't know what to say to a judge. He had just returned from a hiking expedition in South America and he said the thing he enjoyed the most about it was that no one there knew he was a judge and everyone therefore treated him in the same way as everyone else.

At that point one of the newer younger partners in the firm who did not know Graham came up to us and I introduced Graham with his title as judge. Immediately I could see what Graham meant. After a nervous exchange of pleasantries, my colleague took her leave. Graham turned to me and said – "see what I mean!"

Graham because of his involvement in teaching and interest in tax law was perhaps able to deal with this aspect of judicial life more easily than many others. However, it is something which could weigh heavily at times even on someone with so many professional friends as Graham.

### *Generous "Giving Back"*

Finally I would like to turn to consider what I regard to be the most outstanding aspect of Graham's life. When I originally thought about this, I asked myself the question, what was it about Graham that endeared him to so many people? He was a very private person. All those who have spoken about him since his death have said that. But the remarkable thing about Graham was that I cannot recall there being any occasion when I asked him to do something for me when he said no. In my experience he never thought of himself on such occasions. He never thought, or at least never gave any indication that he thought about himself or whether what you were asking him to do was in his interest. If at all physically possible he would do it.

That's the reason we are paying tribute to him at this conference this evening. At least since this conference commenced to focus on GST, Graham became its unofficial patron. The fact that he was willing to attend conferences such as this would itself be sufficient reason for needing to thank Graham. But he was not only willing to attend, but also to help organize, and whenever possible write and give a paper. One might think that as he wrote so many such papers, it was probably easy for him. But all these things take time and it was of his time that he so generously gave and of which we have been the beneficiaries. Not only for ATAX but the Taxation Institute, Law Council, International Fiscal Association, the Universities and many others.

All this, all of his professional life. Quite extraordinary, when you think about it. I personally and, I know many of you here this evening would readily admit, that you too owe a huge personal debt to Graham for the time he has been willing to spend with us – helping us when it was not necessarily in his interest to do so. He never looked for thanks and, I suppose, one regret that I have is that the circumstances of his death have denied us the opportunity of thanking him personally and appropriately for this help he has given us over the many years we have had the privilege of knowing him.

### Conclusion

By way of conclusion I would just like to say that although Graham was not a religious person, he always respected the views of those like me who believe that this life is only a testing ground for the life hereafter and, that we will all be called by our maker to give an account of our lives when we pass on. In Graham's case, as the pages of the book of his life are reviewed, no doubt as with us all, there will be pages containing mistakes and things that could have been done better. But these, I am confident, will be more than outweighed by those many pages filled with the acts of generosity and unselfish giving to others for which, I am sure, of all his achievements, Graham would wish to be most fondly remembered.