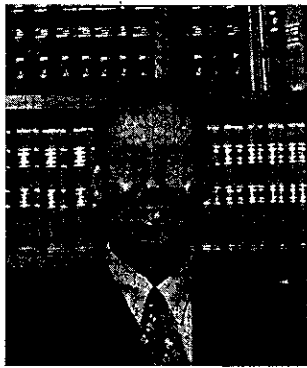


# Obituary

## DONALD GRAHAM HILL

1938-2005



The sudden death, on 24 August 2005, of Graham Hill deprived Australia of the undisputed leader of its tax profession, and saddened friends and colleagues alike. With Ross Parsons and Neville Challoner, Graham shaped the course of tax law and the careers of tax practitioners throughout the second half of the 20th century; their writings and teaching had a profound effect, guiding both the preservation and development of basic principle and the interpretation of tax statutes.

During his judicial career, Graham gave 240 reported taxation judgments on the Federal Court, which, as the High Court has repeatedly told us, is "ordinarily the final court of appeal in taxation matters". Twice his first instance decisions were not ultimately upheld; five times the High Court (to his chagrin) reversed him. On three occasions he dissented on the Full Court, and his dissent was twice upheld on appeal. Otherwise his views prevailed. It is an extraordinary record.

In the "battler" western suburbs of Sydney during and after the Second World War, a career in income tax – so much of which is a contest between the Commissioner and those wealthy enough to have tax problems – would have seemed an unlikely prospect. Graham's father died when he was 15, his mother before he was 20. An only child, he was a product of the State education system, progressing from an academically selective primary school to Fort Street High School, also selective, and then into tertiary education with the aid of scholarships. Law appealed to him as a career, as much for its ideal of doing justice as for its intellectual challenge, but the world of legal practice in the 1950s was a closed and clubby one, and those without connections found it difficult to secure the articles of clerkship which were an essential prerequisite of admission. Notwithstanding an outstanding leaving certificate result, Graham found that many applications for clerkship were passed over in favour of others with school or family links to prospective master solicitors, before Parish Patience took him in.

Graham made the most of the chance. In a Sydney University Law School graduating class of a quality unmatched in its history – graduates who were elevated to judicial office included Jane Matthews, David Hodgson, Brian Tamberlin, Bryan Beaumont and not least Michael Kirby and Murray Gleeson – he secured the University Medal. On a Fulbright Scholarship to Harvard for a Master's degree, he repeated his leading performance. A postgraduate scholarship from Sydney University took him to the London School of Economics, where he studied with the doyen of British tax lawyers, Professor Wheatcroft. On his return to Sydney in 1965, three years after his admission as a solicitor, he was invited to join Parish Patience as a partner – an elevation to that rank at a speed improbable today.

In 1970 Graham joined Dawson Waldron, and in 1976 he went to the Bar. He was then most widely known as the author of the standard text on New South Wales stamp duty, but his expertise traversed the field of revenue law and, as was necessary to be a successful tax lawyer, the whole field of commercial law and equity. His practice as junior counsel took off with such vigour that, within eight rather than the normal 12-14 years, he was appointed Queen's Counsel. He was established as one of the leaders of the revenue Bar nationally. Many readers of this journal will have known and briefed him as counsel of choice during his practice as senior counsel.

What to Graham was particularly satisfying about practice as a silk was the opportunity it gave to shape the development of the law. Judges do not make law alone; it is a product of interaction between the court and those who choose, prepare and present the cases which it falls to judges to decide. By selecting and framing the issues tendered to judges for decision, a leading counsel such as Graham then was can play a role in guiding the growth of the law, both the body of judicial precedent and the interpretation of statutes. It gives, as Graham said, a chance to "get the law right".

"Getting it right" was an abiding passion with Graham. He saw it as his role, not only as a practitioner himself, but also as a member of professional associations and as a teacher. On his return to Australia, he offered to play such role in the affairs of the Sydney University Law School as might be useful, an offer which was promptly taken up. He became a part-time lecturer and eventually the Challis Lecturer in Taxation, a post he filled on a nominally part-time basis (the hours devoted to preparation of lectures were closer to those of a full-time lecturer) from 1967 until his death, possibly the longest occupation of a single academic position in Australian academic history. Regrettably, the constraints of university hierarchy prevented his accession to the post of adjunct professor which his service and capacities amply deserved, but his contribution was recognised with the conferral of the degree of Doctor of Laws (Honoris Causa) in 2002.

The opportunity to teach, to pass on the techniques of legal analysis and the accumulated store of legal knowledge to succeeding generations of students and to imbue them with a love of the law and a desire to see the rule of law preserved and extended, was one of the great pleasures of Graham's life. He extended his tutorial role by accepting some of the best students as his associates on his appointment to the Bench. But it was not simply his own enjoyment which led him to devote his time to teaching and lecturing, it was a belief that, as he repeatedly told graduating students, those who had received from a university such as Sydney the benefit of a legal education had an opportunity and an obligation, to use that benefit to "make a difference" and to give back to the university something in return.

It was that sense of obligation, coupled perhaps with an invitation from Sir Nigel Bowen framed in such terms that it "couldn't be refused", which led Graham at the age of 50, and at the start of what would ordinarily have been the most productive and fruitful years of his career as a silk, to accept a position on the then still relatively new Federal Court. To do so meant giving up counsel's six-and-a-half days working week, no doubt an enticing prospect (although, as he was soon to discover, judicial office did not materially diminish his working hours), but it also meant reducing his income by some 85%. A weekend's deliberation resulted in his advising Sir Nigel that he would accept the post if it were offered. And so we acquired the outstanding tax judge of the century.

Possibly the government which appointed him did not anticipate the judicial warrior they were choosing. Readers will know Justice Hill as a tax lawyer, but his tax judgments accounted to less than a quarter of his reported judgments, and a yet lower proportion of the cases he was to decide. He brought to judicial office his firm conviction that one of the most important roles, not only of the court but also of legal practitioners, was to stand between the citizen and the unjust impositions of government. He was very conscious of having sworn an oath, on his appointment, to do justice in his office. Graham's passionate defence of civil liberty endeared him neither to the government which appointed him nor to its present successor, which may explain their failure to take any opportunity to appoint him to the High Court.

To say that Graham saw himself as a bulwark between the citizen and the bureaucracy is not to say that he favoured justice over law; rather that he saw the law, administered properly, as affording justice. His personal views did not overtake his respect for the law. More than once he was persuaded to a conclusion contrary to that for which he had previously expressed a preference. He showed a great respect for constructive – and ingenious – argument, although little patience for time-wasting or for counsel who had not properly prepared a case. He confessed to being an "interventionist" judge, and it was a standing wager among the relatively small group of tax silk who regularly appeared before him whether opening counsel would be allowed to address for three or five minutes before there came a judicial comment such as "your problem, I suppose, is this".

Graham loved to debate the law: in court, with counsel for both sides (often to the confusion of clients, who thought he had changed his mind over lunch); and among his professional peers. He played a leading role in several professional bodies, most notably the Taxation Institute of Australia, of which he rose to be National President in 1984-1985, as well as serving as a councillor for 16 years. His first involvement with the Institute was as a stand-in member of a panel of "experts". He so demonstrated his expertise, by not being asked any questions (and so getting no answers wrong), that he was asked back, beginning a long and happy relationship.

Those who knew Graham through the Institute came to see another side of the man: not the colourless, besuited tax lawyer but one clad in a leather jacket and driving a Porsche, joining the

throng around the piano late into the night (and morning) at State conferences. He was a worthy contender for the Terrigal Trophy, an object whose dubious provenance made it unsuitable for public display but fairly reflected the endeavour required to win it. His appointment to the Bench brought a forced end to Graham's participation in discussion groups, but he was always available – and sought after – as a speaker at conferences, no mean contribution taking into account that preparing a paper for a conference was like taking on an extra major judgment, and he was always willing to attend and if needed to speak at annual discussion group dinners and other special occasions. In doing so, he continued to pursue his vocation of sharing knowledge and skills with others.

We will all miss his contribution to case law on income tax, but it is likely that his passing will more keenly be felt by his students and by those who have missed the opportunity to join their ranks. Those who, like us, knew him more closely – as the journalists who persistently referred to him as “Justice Donald Hill” did not – will miss him as a person; his humour, his generosity, his kindness and compassion. His family and friends enjoyed his support in sad and trying times and his congratulations in times of achievement. We will not forget him.

*Tony Slater QC  
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