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TRANSCRIPT OF PROCEEDINGS

O/N H-200706

**FEDERAL COURT OF AUSTRALIA**

**CEREMONIAL SITTING OF THE FULL COURT FOR THE**

**SWEARING IN AND WELCOME OF**

**THE HONOURABLE JUSTICE PAGONE**

**THE HONOURABLE JAMES ALLSOP AO, CHIEF JUSTICE**

**THE HONOURABLE JUSTICE MARSHALL**

**THE HONOURABLE JUSTICE NORTH**

**THE HONOURABLE JUSTICE KENNY**

**THE HONOURABLE JUSTICE GORDON**

**THE HONOURABLE JUSTICE DODDS-STREETON**

**THE HONOURABLE JUSTICE PAGONE**

**MELBOURNE**

**9.31 AM, FRIDAY, 21 JUNE 2013**

PAGONE J: Chief Justice, I have the honour to announce that I have received a commission from Her Excellency, the Governor-General, appointing me a judge of the Federal Court of Australia. I now present my commission.

ALLSOP CJ: Thank you. Madam, District Registrar, would please read aloud the commission.

DISTRICT REGISTRAR: Commission of appointment of a judge of the Federal Court of Australia. I, Professor Marie Bashir, AC CVO, administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council and under section 72 of the Constitution and subsection (6)(i) of the Federal Court of Australia Act 1976 appoint the Honourable Gaetano Tony Pagone, a judge of the Supreme Court of Victoria to be a judge of the Federal Court of Australia, assigned to the Melbourne Registry, beginning on 21 June 2013 until he attains the age of 70 years. Signed and sealed with the great seal of Australia on 13 June 2013. Marie Bashir, Administrator by Her Excellency’s command, Mark Dreyfus QC, Attorney-General.

ALLSOP CJ: Thank you. Justice Pagone, I now invite you to take the affirmation of office.

PAGONE J: I, Gaetano Pagone do solemnly and sincerely promise and declare that I will bear true allegiance to Her Majesty Queen Elizabeth II, her heirs and successors, according to law, and that I will well and truly serve her in the office of Judge of the Federal Court of Australia and that I will do right in all manner of people, according to the law, without fear or favour, affection or ill will.

ALLSOP CJ: Thank you. I now invite you to subscribe the affirmation that you have taken. Madam District Registrar, could you please take his Honour’s commission and the subscribed affirmation and place them in the records of the court. Justice Pagone, welcome. On behalf of all the judges of the court I would like to extend the warmest of possible welcomes to you. I am sure that you will enjoy the work of the court and the whole court is very happy to see you here and I congratulate you from both myself and all the members of the court.

PAGONE J: Thank you, Chief Justice.

ALLSOP CJ: Ms Glanville.

MS L. GLANVILLE: May it please the court. First, may I acknowledge the Wurunderi People of the Kulin nation, the traditional owners of the land on which we meet and pay my respects to their elders past and present. The Attorney-General, the Honourable Mark Dreyfus QC MP regrets that his ministerial commitments have prevented him from attending this special ceremonial sitting however, he has asked me to convey to you his warmest congratulations, as do I, on accepting this role. It is

a privilege for me, on behalf of the Australian Government, to welcome you as a judge of the Federal Court of Australia. On this special occasion I would also like to convey to you the heartiest congratulations and best wishes of the people of Australia.

I also acknowledge the presence here today of the Honourable Justices Kenneth Hayne AC and Susan Crennan AC of the High Court of Australia, current and former justices of the Federal Court of Australia, justices of the Supreme Court of Victoria, judges of the Federal Circuit Court of Australia, Mr Marco Cordella, Consul-General of Italy, Mr Seyit Mehmet, Consul-General of Turkey and distinguished guests. I know that many of your family and friends, including your wife, Margaret, your son, Richard and your daughter, Clara are also here today to share this special occasion with you. I understand your parents championed your entry into the legal profession, however, I am informed that your Honour’s initial preference was more towards political science.

To the legal fraternity’s collective benefit you’re enduring passion for the law was soon ignited. In the law you discovered a worthy outlet to challenge your inquiring mind and fulfil your strong desire to contribute to the public good. In 1972 you were awarded a Commonwealth scholarship to study Arts/Law at Monash University. In 1976, having graduated with a Bachelor of Arts you began life as a teacher in the Humanities Department at Lilydale Technical School while simultaneously completing a Diploma of Education. After nearly two years in the classroom you returned to full-time studies at Monash University, graduating in 1979 with a Bachelor of Laws. Between 1979 and 1980 you served as an Articled Clerk at the Melbourne firm of Frederick Owen & Associates under the tutelage of David Owen.

Then followed roles as senior tutor and tutor in the Legal Studies Department at Melbourne State College and at Monash University. As a recipient of the Monash Law School’s tutor scholarship you completed a Master of Laws at Cambridge University in 1982. You graduated from Cambridge in 1983 with First Class Honours, however, your connection with this institution continues. You served as a Herbert Smith visiting Professor between December 2009 and February 2010 and then again in May and June last year. You signed the Victorian Bar Roll in March 1985 and were appointed as a Queen’s Counsel in 1996. During your career at the Bar you specialised in Taxation Law but practised widely in Commercial Law, Administrative Law, Constitutional Law, Public and Human Rights Law.

Your contribution to shaping the culture and internal workings of the Victorian Bar is well recognised and appreciated by your peers. So too is your Honour’s active participation in legal professional organisations, such as the Law Council Business Law Section Executive and Tax Institute of Australia’s State Council. I understand that other speakers will expand upon your considerable achievements in these areas. You were first appointed as a Judge of the Supreme Court of Victoria in 2001, however, the following year your recognised expertise in Taxation Law led to an appointment to the newly created position of Special Counsel to the ATO, the Australian Taxation Office. In 2001 you received a distinguished Alumni Award

from Monash University for your professional achievements in many legal jurisdictions, your commitment to the principles of individual rights and your leadership in a range of multi-cultural and humanitarian organisations.

This is a fitting tribute to you and acknowledgement of the breadth of your continuing contribution to law, to cultural awareness and to social justice. In 2004 you returned to the Bar, however, judicial office once again beckoned and you were invited to return to the Victorian Supreme Court in 2007. This re-appointment to the bench reflects the very high professional regard in which your Honour is held. Your Honour is acknowledged by your peers as a visionary, adept at problem solving and an ability to motivate those around you. Among your many achievements are innovations in teaching methodologies and creating alliances between organisations to improve education outcomes, so quite a strategic bent.

While serving on the Victorian Supreme Court you held the position of judge in charge of the Commercial Court between 2009 and 2012. You were also instrumental in making organisational improvements to court practice, including Commercial Case Managements enhancements and the establishment of a Commercial Court User’s Group. Your departure from the Supreme Court of Victoria will be a sad loss for that court, with your Honour having served on it with distinction for nearly seven years. As a visiting professor at Cambridge in 2010, you authored Tax Avoidance in Australia. This text was commended by former Chief Justice of the High Court, Murray Gleeson AC QC as an excellent study of a difficult and important aspect of Revenue Law.

Such is your Honour’s eminent contribution to Taxation Law scholarship that you have been recognised as the leading expert in Australia on the anti-avoidance provisions in the Income Tax Assessment Acts; a notable achievement in this complex area of law. Your knowledge of and experience in Taxation Law will serve this court well and will enhance its reputation in this critical area of jurisdiction. Former students fondly recall you as a flamboyant Constitutional Law lecturer with a rather unusual array of hats and scarves, sweeping down the main aisle of the lecture theatre. Your Honour’s ability to charm and to motivate – a skill used to such great effect in your days as an advocate – would immediately draw in even the most reticent of students. It is testament to your charisma that you managed to provoke interest and ignite debate in Taxation Law, an area of law renowned for its often perplexing technicality.

You are a prodigious contributor to the body of legal knowledge generally, a noted author and editor. You have published a myriad of articles in respected legal journals and delivered over 100 public lectures and speeches. The quality of the analysis and the breadth of subject matter in your published works is testament to your academic prowess. However, your contribution to academia extends beyond your various publications. Throughout your legal and your judicial careers, you have not only lectured and tutored in Taxation Law, but also in an array of other areas, including civil remedies, Constitutional Law, copyright, legal process and procedure and, of course, Administrative Law.

Your affiliation with the University of Melbourne saw you appointed as a Professorial Fellow in 2002 and that association continues until this day. It is perhaps a little known fact that your Honour is not paid for the significant work you do for the University of Melbourne Law School. Such is your passion for social equity that in lieu of payment, you have generously established a scholarship to enable students to study at the University of Cambridge. This will be a lasting legacy for Australian students and one that will be appreciated by generations to come.

Any account of your legal career would not be complete without some reference to the Human Rights and Civil Libertarian dimension of your work. In this respect, I note the role played by you in the Victorian Council of Civil Liberties, your membership on the then Victorian Equal Opportunity Board and service to the Victorian Executive Committee of Amnesty International. Your Honour is energised and inspired by your Sicilian heritage. As President of the Sicilian Association of Australia, the Italian Welfare Association and the Italian Community Services Fund, you are dedicated to preserving Sicilian cultural heritage and, more broadly, promoting the role of ethnic identity in shaping modern Australia.

A fringe benefit of your affiliation with the Sicilian Association is access to delectable Italian food, to which, I understand, you are particularly partial. As a lover of all things Italian, I understand your Honour is also somewhat of a coffee connoisseur; a close friend recounts becoming acutely aware of your discerning interest when early in your friendship, he presented you with a cup of coffee, to which you responded with an incredulous, “What’s this?” Shortly thereafter, you generously donated and installed a small coffee machine – the self-confessed reason being to ensure you could get a decent cup of coffee when visiting.

Notwithstanding this initial setback, I am told the friendship continues to flourish. I understand that in your days as senior counsel, you referred your junior counsel to the writings of Machiavelli and sent them extracts with passages underlined. If I may end with a quote from Machiavelli: it is not titles that honour men, but men that honour titles. Your Honour’s wealth of experience, incisive legal mind and demonstrated pursuit of social equity will honour the title and responsibilities being conferred on you today. On behalf of the Commonwealth of Australia, I congratulate your Honour heartily on your appointment and welcome you to the bench of the Federal Court of Australia. May it please the court.

ALLSOP CJ: Ms McLeod.

MS F. McLEOD SC: May it please the court. I appear on behalf of the Australian Bar Association and in particular the Victorian Bar to congratulate your Honour on appointment to this court. Michael Colbran QC, the President of the Australian Bar Association, has asked me to present his apologies and pass on his personal congratulations and best wishes to your Honour. This is a particular pleasure for me, your Honour, because I served with you on the Victorian Bar Council for the best part of three years and also on the Ethics Committee for a year. At your Honour’s

welcome to the Supreme Court, on the occasion of your Honour’s first appointment to that court, you said in response – and I quote:

*The hazard of receiving from Mr Redlick what amusingly he referred to as a welcome has been something that has been concerning me for the last few days.*

I very much hope your Honour has not lost sleep over the prospect of my welcome. Your Honour’s passion for the law of taxation is well known and your many friends at the bar rejoice with you in your appointment to this court. As has been noted, your Honour signed the Bar Roll in March 1985. You came to the bar under the academic reading rules, under which the readers’ course was not required and read with Allan Myers. Your Honour’s passion for things Italian is perhaps equally well known. One might have thought your Honour would have affected the style of many suave Italian young men of the day, to be found sauntering around Carlton in an Alfa Romeo or Maserati. It seems not.

Your Honour’s car of choice as a young Don was a Fiat 500, fittingly named a bambino for its size and you were often found with a beaming smile, in a line of track, banked up in Canterbury Road, as you crawled along, spewing smoke on three cylinders. Your Honour’s move from the legal academy to full-time practice at the bar was a gradual one. You remained a full-time lecturer in law at Monash in 1987, then a part-time lecturer and senior lecturer through 1992, seven years after completion of your reading. Your Honour established a general commercial law practice with particular expertise and increasing eminence in Taxation Law and soon became one of the Commissioner’s advocates of choice.

Your Honour was only three years out of your reading when, in February 1989, you appeared in the High Court, led by the late Brian Shaw QC, in the case of John v Federal Commissioner of Taxation. Your Honour had three readers: Fergus Farrow, Dr Jane Hendtlass and Fiona Phillips. Your service to the community of the bar was substantial. You served on the Bar Council for six years and on numerous Bar Council Standing Committees, most notably seven years on the Ethics Committee, eight years on the Academic and CLE Committee and nine years as a bar representative on the Federal Court Users’ Committee. You took Silk in 1996.

Now, Ms Glanville spoke of your Honour as a connoisseur of fine coffee. Perhaps it could be said your Honour was the barrister barista. Your instructing solicitors, clients and fellow counsel all enjoyed the quality of hospitality in your chambers and you established a weekend Italian-speaking morning-coffee group, one that I was too nervous at the time to attend, alas, despite your kind invitations and gentle insistence that the coffee and company were good, whatever the quality of the conversation. From 1993 to 2000, you were a sessional member of VCAT and Victorian Equal Opportunity Board, translated across to VCAT on the taxation list, the general list and the anti-discrimination list.

Your Honour was appointed to the Supreme Court in October 2001 in the Common Law Division of the court. You resigned after nine months and took appointment as

special counsel to the Australian Taxation Office, returning to full-time private practice at the bar in 2004, and in 2006, your Honour was re-elected to the Bar Council and became the President of the Tax Bar Association. Those terms were cut short, however, by your reappointment to the Supreme Court, in May 2007. Jeremy Ruskin, speaking at the 2007 bar dinner at which your Honour was an honoured guest, the second time around, described your Honour as Phoenix J, and I quote:

*Now I’m not going to say a word about the rise and rise of Phoenix J, except to say, “Welcome to the new job,” or is it the old job? Or is it the new Tony? Or is he, as I’ve often suspected, a covert Italianate Doppelganger?*

John Kaufman QC, who is here in court this morning, on this, your Honour’s third judicial appointment, added that your Honour has proven that the soufflé does rise three times. That, however, may be payback for you making him play Royal Tennis with you because, as you said, you wanted someone who you could beat. Your Honour was, between 2009 and 2012, the judge in charge of the newly established Commercial Court of the Supreme Court of Victoria. Working with Justice David Byrne, the principal judge of the Commercial and Equity Division of the court, your Honour created the Commercial Court and you developed it, and the tried and true Pagone strategies of personal charm and coffee were engaged.

Your Honour instituted Friday, 9.30 am morning coffee and cake for the Commercial Court judges before the 10 o’clock directions hearings. There was a personal coffee mug for each judge with his or her colour photograph emblazoned upon it. Justice Croft’s likeness was framed by a star in recognition of his Honour’s outstanding work in revising the Green Book. Now, it’s said that getting judges to meetings is like herding cats, but these weren’t meetings, they were morning coffee and painlessly you all exchanged ideas, what each judge was doing, whether to swap cases and effortlessly developing a common approach to issues arising across your individual dockets.

Your Honour got things started, such as, for example, the now annual Commercial Court conference in the Banco Court and then handed them on to your fellow Commercial Court judges. Your Honour also involved the profession in the Commercial Court Users’ Group. Beyond the Commercial Court, your Honour sat from time to time as an acting judge of appeal and in that capacity you sat on panels hearing criminal appeals. You heard a variety of civil matters, for example, restrictive covenant, defamation and vexatious litigant cases. From the Victorian Supreme Court, your Honour returned to Cambridge as Herbert Smith, distinguished visiting professor, to research and start writing your now two published books on Taxation Law and practice: Tax Avoidance in Australia, published in 2010, and Tax Effective Writing, launched just a month ago. You returned to Cambridge first in the depths of the English winter from December 2009 to February 2010 and then, in perhaps what might be called the depths of summer, from May to June last year. Not very long after publication of Tax Avoidance in Australia, the Full Court of this court delivered a number of decisions that significantly changed the taxation landscape.

It’s rumoured, alas, that your Honour’s 2010 book has now been remaindered at half its original price. However, the prospects for your 2012 book have significantly improved now that your Honour will be, presumably, sitting at tax cases in this court and will surely be required reading for all who present cases to your Honour. Now, your Honour and your wife, Margaret, were in the late 1990s the proprietor of a restaurant, the Sicilian Vespers, in Drummond Street, Carlton. It’s said that the food, Italian cuisine in the Sicilian style, was excellent. However, as a business venture, all that could be said of it is that it was incredibly and painfully tax effective.

The sort of venture for one who would derive some sort of perverse pleasure getting a whole wad of thousand dollar bills and tossing them into the air to be carried away in the breeze. Perhaps the Sicilian flag, proudly flying at entry to your Olinda property, is a fond reminder of those impetuous times. As I’ve said, your Honour’s many friends at the Bar rejoice with you in this appointment to this court, the jurisdiction of which encompasses your passion for the law of taxation. On behalf of the Australian Bar Association, constituted by all of the independent Bars of Australia and, in particular, on behalf of the Victorian Bar, I wish your Honour a long, distinguished and satisfying service as a judge of this honourable court. Bocca al Lupo. May it please the court.

ALLSOP CJ: Mr Bowyer.

MR G. BOWYER: May it please the court. I appear on behalf of the Law Council of Australia and, in particular, on behalf of the Law Institute of Victoria and the solicitors of this state to congratulate your Honour on your appointment to this court. Michael Colbran QC, in his capacity as President of the Law Council of Australia, Mr Colbran also wears the double crown as President of both the Australian Bar Association and the Law Council of Australia, and Reynah Tang, President of the Law Institute of Victoria, have each asked me to present their apologies and to pass on their personal congratulations and best wishes to your Honour. As we’ve heard, your Honour served articles with David Owen of Frederick Owen & Associates.

This was a modest firm of three partners, a couple of managing clerks and staff. It specialised in conveyances and mortgages and general commercial work to with I had many dealings as a younger, suburban practitioner. Although you remained with that firm as an employee solicitor for a couple of months, you maintained a practicing certificate and continued part-time as a solicitor on your account for about 20 months to December 1981, through your time as senior tutor in Legal Studies at the State College and through your first year as a tutor at the Monash Law School. In the late 1980s, as your Honour was starting to establish a practice at the Bar and after you had cut back your Monash Law School teaching to part time, two of the several standing committees on which your Honour served were joint committees of the Bar and the Law Institute. One was the joint Ministry of Law committee, the other was the joint committee on Legal Professional Privilege.

Also around that time, between 1989 and 1990, you obtained admission to practice in every other Australian jurisdiction. This laid the ground for the truly national

practice you were working to develop. For although there was mutual recognition for interstate admission, there was not yet the framework based on a uniform model statute that we have today of admission as an Australian lawyer. One had to apply and actually get admitted in each jurisdiction. It was also around this time in 1991 that your Honour was elected to Victorian State Council of the Taxation Institute of Australia. You served on that council for the best part of 10 years, also chairing for several years the Education and Conferences Committee, responsible for all seminars, lectures and other educational activities and conferences throughout Victoria, and representing Victoria on the National Education Committee.

You were invited onto the Taxation Committee of the Business Law section of the Law Council of Australia in 1992 and served on that for nearly 10 years. You were elected to the executive and chaired the Business Law section for more than two years. The solicitors who briefed your Honour, both in the private sector and for the Commissioner and other government agencies, speak highly of your careful attention to detail and your commitment to their work. Your Honour, on the Committee of the Victorian Council for Civil Liberties, now known as Liberty Victoria, for the best part of 15 years in the 1980s and 90s, including a secretary and vice president. And you returned to the Committee again in 2006 until your reappointment to the Supreme Court. You also served on the Victorian Executive Committee of Amnesty International, and on the Victorian Executive Committee of the International Commission of Jurists, and on its National Council.

With the late Ron Castan QC, you were a founding trustee of the Alan Missen Foundation. The late Alan Missen was a Liberal Senator who believed in the value of individual human rights and civil liberties. Amnesty International and Liberty Victoria worked with the Foundation on sponsored orations. In addition to serving on the committees, your Honour did appearance work in that connection, for example, appearing for the International Committee of Jurists as amicus curiae in Minogue v Human Rights and Equal Opportunity Commission as Silk with two juniors, and appearing for Amnesty International in the Tamper case. Whether the party of a litigation is like Minogue, serving a life sentence for the murder of a police woman in the Russell Street Police Headquarters bombing, or, as in the Tamper case, asylum seekers, your Honour has a strong commitment to the rights of the parties to have their case heard and determined in a fair manner. Ms Glanville has touched on your Honour’s service in the Italian community in Melbourne. CO.AS.IT is a non-profit organisation with a charter that states, and I quote:

*To provide culturally and linguistically appropriate services for Italian migrants and their descendants to enable them to achieve their full potential in the wider Australian society.*

It is a leading welfare agency, servicing Italian migrants, also fostering education, Italian culture and the preservation of the history of the Italian migration to Australia. Your Honour served on the committee for some 16 years, including as Honourary Secretary, and as President for 4 years from 2006 to 2010, succeeding Justice Bernard Bongiorno, who retired last year from the Victorian Court of Appeal. Your

Honour also served on the committee of the Melbourne branch of the Dante Alighieri Society. You were a foundation president of a Sicilian Association of Australia and you are patron of the Franco Schiavone scholarship, established in 2002 to promote Italian language culture and history in Australia. As a judge, your Honour has, since 2009, the Australian Coordinator of Australian judges who belong to the International Association of Judges.

In 2011, you were one of two reporters to review and report on the application of a Mongolian Association of Judges for membership. Members were not scrambling for this gig. You visited Mongolia in July last year. You were impressed by the Mongolian judges and you and your fellow reporters recommended admission. However, your hosts on the visit, being thoughtful and considerate, took you to Western dining places, like an Irish pub. Only on the last day of your visit did they give into your entreaties to be given traditional food. You were treated to a traditional Mongolian feast, including milk tea made with mare’s milk, regarded there as a great delicacy but one could still smell the horse.

Nor was the fatty lamb dish slow-cooked on hot stones culinary high art but one consolation that you were introduced was to Mongolian vodka, a welcome distraction from everything else on offer but more on that, your Honour has continued since then to import Mongolian vodka at horrendous cost. A more refined pleasure was the invitation by Justice Tom Gray of the South Australian Supreme Court for you to meet and introduce Justice Antonin Scalia at an advocacy conference at the University of Adelaide in 2011. You were asked because of your shared Sicilian heritage and interest in advocacy. Your Honour’s carefully researched and crafted introduction is available on the web. However, it was never delivered. Justice Gray introduced you to Justice Scalia just a few minutes before you were to speak. Scalia was blunt and forceful: “Tony, don’t go on. There’s an inverse relationship between the importance of the person being introduced and the length of the introduction. Ladies and Gentlemen, I present to you the President of the United States. Nothing more need be said. Nothing more should be said. I’m sure you understand.”

On behalf of the Law Council of Australia and, in particular on behalf of the Law Institute of Victoria and all the solicitors of this state, I wish your Honour long, satisfying and distinguished service as a judge of this court. May it please the court.

ALLSOP CJ: Justice Pagone.

PAGONE J: Thank you Chief Justice. Chief Justice, your Honours, Justices Hayne and Crennan, justices from the court that I just left, Justice Osborn representing Chief Justice Marilyn Warren, distinguished guests and friends. Thank you all for sharing this occasion with me today. Thank you all but particularly the three speakers for their dubiously accurate, frequently misleading but warmly received words of welcome. Obviously Justice Scalia was right in saying that there was an inverse relationship between the importance of the person and the length of the speech because the three speeches you have just heard were very long. I shall resist the

temptation to respond to the very many errors of the speakers, and will deal with my so-called friends privately for some of the remarks that have slipped through.

I am sure that my new Chief Justice will understand if my first words as a member of this court are about my last Chief Justice and the court that I have just left. The decision to leave the Supreme Court of Victoria was not easy. That court, under her Honour, is a rewarding place in which to work as a judge. Its jurisdiction is broad and it attracts some of the most interesting and engaging legal controversies ranging across most areas of law. It has attracted to its current bench some of the most talented, and I might add congenial, jurists in Australia. The court has moved with the times, and in some respects ahead of them, in ensuring that litigation is conducted efficiently and fairly. Litigants to that court can, and do, feel confident in the secure knowledge that their cases are managed well and fairly, and are decided by judges and associate judges who are rightly respected for their ability to apply the law.

This is obviously not the occasion to dwell upon the Supreme Court or its Chief Justice but it would be wrong if I did not acknowledge my gratitude to Marilyn. I served on that court both during and before her appointment as Chief Justice and I know how much the court today is in her debt. It is difficult to explain to outsiders the role played by the Chief Justice in creating an harmonious environment and in the development of the court as a whole. I am sure that many Chief Justices, if not all Chief Justices sometimes, feel that managing a court is much worse than herding stray cats each with a serious attitude problem. Judges come from fiercely independent professional backgrounds and as judges they need to continue to be fiercely independent. Managing such a group of people cannot be easy.

Chief Justice Warren has led the Supreme Court with vision, with courage, skill and with hard work. It has been done with a great deal of innovation, some of which I have been connected with, in relation to the Commercial Court. The Supreme Court will no doubt continue in its development and will continue to provide a standard against which other courts in this country may come to be measured. It has been an honour to have been part of that court for the last six years and I will miss being part of its future. I will also miss a lot of the invisible staff in that court; the cleaners, the security guards; those that do much hard work and always with a friendly face.

The Federal Court is no less alluring for judicial office. For me that is in part because so much of my time as a practitioner was spent in this court and indeed, some of it, in this very room. The bulk of my practice as a barrister was in the Federal Court where I came to make deep and lasting friendships. My battle stories, which my associates sometimes politely endure, at least the first time, are almost always in this setting. Walking into the building was like walking back home and brought back some fond memories as well as memories of the occasional irritating loss. Indeed, one of my last cases as a silk before going to the Supreme Court (leading Jennifer Davies SC as her Honour then was) was before a bench including Justice Edmonds and my current Chief Justice, Justice Allsop which I lost resoundingly.

It was the case of Indooroopilly; I lost it resoundingly. My second silk, the junior in that case, was one Jennifer Davies SC, who put the argument on which we lost most brutally. The fact that we’re both going to this court does not mean that we should try to remedy or overturn that event. We were lightly dealt with. And of course, in this court there is also that area of law with a three letter ending in X. Of course I mean tax. Tax is not the only thing I did in practice; indeed, there were a lot of other things but I did do a lot of practice in tax. As the late Graham Hill would constantly remind non-tax lawyers, and he was right, tax lawyers are really generalist lawyers who apply the tax consequences after they need to work out the non-tax law components upon which the tax will depend.

And of course, in this court there is also that area of law with a three letter ending in X. Of course I mean tax. Tax is not the only thing I did in practice; indeed, there were a lot of other things, but I did do a lot of practice in tax. As the late Graham Hill would constantly remind non-tax lawyers, and he was right, tax lawyers are really generalist lawyers who apply the tax consequences after they need to work out the non-tax law components upon which the tax will depend.

I have been fortunate to have had a rich and deep exposure to tax law in practice at every level within the Australian community, ranging from such issues as the consequences of tax deductibility of building a tailings dam for some mining operation in what seemed to me like the middle of nowhere (where good coffee was very difficult to find), to whether the owner of a brothel is taxable as an employer of sex workers who hire rooms casually (and as you would doubtlessly appreciate, that all depends upon the control test). The opportunity to continue working in that field in this court was just too tempting to let slip by. I hope that I may make some modest contribution in that field.

I have been most fortunate in my career, more fortunate than most, so may I take this occasion to acknowledge, in particular, a group of people who I see here today. The Italian community is represented here in part by some friends that I have made only in recent times. I was surprised, when I was first appointed to judicial office, to discover how much my appointment seemed to matter to people within the Italian community. My only connection with some of those people was a common background as being Italian migrants. People of my generation often spend so much time assimilating to form part of the broader community that we forget our past, our origins, but worst of all we forget those within our community who have not been so lucky.

I soon came appreciate the pride that individual Italians felt and expressed from the fact that one of theirs had achieved public office. The achievement was tangible evidence that the once struggling, and perhaps disliked, unwanted, migrant newcomer had so far integrated into the broader Australian community that they had become part of the system. It is important for all parts of the community to feel they belong and to have a sense of ownership in the way our system is governed and administered. The lesson for me was the importance of participation in office of public importance to people that are, and who see themselves, as outsiders. I look forward to the day, I hope soon, when the most recent wave of migrants and refugees will feel themselves included into the broader Australian community by some of their members sitting in this chair.

I must, of course, thank my family for their support, their encouragement, and most of all for their tolerance over now many years. The Italian word which looks most like the English word “support” has more of the sense of “putting up with” than does the English equivalent. It seems appropriate, as one coming from a genuinely bilingual family, that the combination of the Italian and English senses of the word “support” covers the field to describe the debt to my family; support and putting up with. I am particularly pleased that my three sisters were able to be here today, together with their husbands and some of their children. My immediate family, however, deserve special thanks and particularly, my wife, Margaret for her support over many years; and also my children, Clara and Richard, each of whom is here today, for their increasingly patient disposition to their increasingly irrelevant father. Finally, I should acknowledge the particular role of Professor Ann O’Connell in ensuring that I continue my interest in tax. And, as I am all that stands between you and a cup of tea, I thank you all again. Thank you, Chief Justice.

ALLSOP CJ: The court will now adjourn.

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