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Tribute to Michelle

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TRIBUTE TO MICHELLE

DUNCAN BENTLEY*

The world has lost one of its leading experts in multilateral dispute resolution in tax matters. We mourn the loss of Professor Michelle Markham, but celebrate her life well lived.

I am honoured to bring a short reminiscence of her contribution to international tax scholarship and practice; to the development of learners from diverse backgrounds; and her passionate humanity, always laced with a delightful sense of humour.

I well remember her coming into my office at Bond University (Bond) for the first time in 1994, newly arrived from an impressive career in practice in South Africa. She loved the intellectual challenge and rigour of academic scholarship and moved swiftly through her Masters and doctoral degrees, carving out a specialty examining the rapid development of advance pricing agreements (APAs) in transfer pricing.

It was a critical time in Australia and internationally, as Apple Computer Australia Pty Ltd had in 1991 concluded a historic transfer pricing agreement with both the Australian Taxation Office (ATO) and the United States Internal Revenue Service (IRS). It was the first bilateral Advance Pricing Agreement (APA) and spawned an industry, with intense regulation and dispute, which Michelle made a focus of her life's work.

Michelle's seminal work, *Advance Pricing Agreements: Past, Present and Future*,¹ was quickly recognized as a leading authority as it examined the history of the implementation of APAs and their evolution. Her incisive analysis of the advantages, disadvantages and her recommendations for future improvement were based in her review and synthesis of all protagonists. Her work consistently and impartially represented the most promising of those views, which meant that many of her recommendations were adopted either directly or indirectly over time in the development of the processes for APAs and dispute resolution that resulted.

Michelle was a passionate scholar who loved to share that scholarship and enliven it in the classroom. It was a great privilege and joy to have an inspiring thinker and innovator as a critical member of our tax team at Bond. She helped to design and shape the curriculum to ensure that it reflected the latest thinking in tax scholarship and tax practice both domestically and globally.

Michelle organized leading practitioners and thinkers to bring into the classroom their debates and insights. Her students over the years have reflected on the powerful impact that had on their thinking and subsequent careers. For those less interested in tax as a career, they were drawn to classes that developed their critical thinking, sharpened their ability to articulate cogent arguments during fierce debate, and stimulated their curiosity.

The ability to engage students so effectively in learning meant that Michelle was sought after as a teacher of the foundational legal subjects, particularly in the corporate and commercial areas. She applied for a position at Bond as an Assistant Professor, some years after she graduated. The

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¹ Michelle Markham, *Advance Pricing Agreements: Past, Present and Future*, Wolters Kluwer (2012).

outstanding reviews she received for her legal and business classes for fashion students at Queensland University of Technology, leapt from the page. We knew that here was someone who could bring the complex and often dry material to life so that students from any background could embrace and use that knowledge.

Innovation in her teaching stimulated her enthusiasm for the diverse range of subjects she taught. She was a passionate supporter of the Bond Legal Skills program and championed the development of legal skills ranging from mooted to alternative dispute resolution. To these she brought her own significant experience as a practitioner and researcher, collecting the latest developments from her research into global dispute resolution, and bringing them to life in her classroom on the Gold Coast of Australia. Her pithy observations and quick humour endeared her to students and colleagues. She accompanied her commitment with an incredible work ethic.

I remember well her enthusiasm to co-teach Contemporary Issues in Law and Society, a flagship core course offered to students across the university. She was part of the development team that ensured bright minds from so many disciplines were schooled in addressing the most pressing global challenges, adopting what was often a confronting legal perspective. Her awards for teaching were always among her proudest achievements.

Michelle was an outstanding researcher and speaker. She was sought after for her technical expertise by practitioners and government domestically and globally. It was this use of her work by the primary international agencies in her field that demonstrates how much impact she has had in her areas of expertise, particularly global dispute resolution in APAs. The importance of this work ensured that it influenced developments in the law to combat Base Erosion and Profit Shifting.

In recent years her work focused on the Mutual Agreement Procedure (MAP) used to resolve transfer pricing and profit shifting disputes. From her early works, she was an advocate for arbitration as a viable alternative to use of the MAP.² Her advocacy for more effective mechanisms for dispute resolution through arbitration aimed both to protect jurisdictional revenue and provide taxpayers with greater fairness and certainty.³ Many of her recommendations have come to fruition through international work on Base Erosion and Profit Shifting.

She reflected on this progress in one of her most recent articles, *The Quest for Tax Certainty: Improving Multilateral Dispute Resolution*,⁴ which recognises the significant development in MAP arbitration. However, she continued her call for broader multilateral cooperation mechanisms so that APAs, MAP, and arbitration can operate seamlessly within inclusive frameworks. Only in this way, she argues, can we achieve an appropriate balance between jurisdictions and taxpayers using mechanisms that are fair, efficient and effective. Without such an approach, the application of complex treaties will become practically less realistic. Her 2024 analysis of OECD statistics and initiatives supports her arguments, as it shows persistent deficiencies in MAP timeliness, consistency, identifies unfilled implementation gaps and a failure to enforce MAP minimum standards.⁵

² M Markham, 'The Resolution of Transfer Pricing Disputes through Arbitration', (2005) Intertax 33 (2): 68-74.

³ M Markham, 'Mandatory binding tax arbitration-is this a pathway to a more efficient mutual agreement procedure?' (2019) Arbitration International, 35(2), 149-170. <https://doi.org/10.1093/arbint/aiv070>.

⁴ (2024) Tax Notes International 113(5), 525-545.

⁵ M Markham, 'The Search for Certainty in Dispute Resolution in International Tax: An Evaluation of OECD Statistics and Initiatives', (2024) Bulletin for International Taxation, 78(9/10), 360-367. <https://doi.org/10.59403/3abqq31>.

Michelle's research and work remain relevant to contemporary developments. Her principled approach ensures that whatever changes are made to law and practice her insights will continue to help frame the practical application and validity of solutions. This timelessness in relevance of research is the hallmark of academic quality and rigour.

Michelle will be remembered for her contribution to tax policy and its implementation. She will be remembered fondly by her students and colleagues. She was driven by her faith and drive to make this world a place better for her being here. She succeeded. We miss her.