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## IN THIS ISSUE

Lawyer psychology  
with **Noah Riordan**

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**Chris Parsons:** the tell-tale  
signs of depression

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"Undoubtedly the high  
point of my career"  
Former CEO **Gavin Bell**  
reflects on the merger

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## THE HONOURABLE MARGARET STONE

Australia's  
Inspector-General of  
Intelligence and Security  
gives us all access

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**ALUMNI**

matters

2016

Margaret Stone was a partner with Freehill, Hollingdale and Page (legacy) from 1993 until 2000 when she was appointed as a Judge of the Federal Court of Australia. Following her retirement from the Federal Court after a 12-year career at the Bench, Margaret was appointed as inaugural Independent Reviewer of Adverse Security Assessments. In 2015 she was appointed to her current role as Inspector-General of Intelligence and Security, for a five-year term.

## Not partying, studying

When Margaret started studying philosophy at the University of Sydney in the mid-1960s, she didn't tell her parents. The lectures were at night and rather than tell her parents that she was going to lectures, she told them she was going out with her friends: "My parents didn't really approve of girls going to university. They thought it would handicap them for their real purpose in life which was to be a good wife and mother and an ornament to their husband, which, I have to say, I am."

During the day, Margaret worked in the University's Brain Research Unit, "I became very adept at fine surgery on cats. I can cannulate a small cat vein with flair." It was there that Margaret met her husband, Jonathan Stone, who worked in the same department (now, Professor Jonathan Stone, Physiology, Medical Sciences, University of Sydney). "I was a better surgeon than he was but he's a better neurologist," she says.

They married towards the end of her arts degree and moved to Chicago a year later; Margaret following Jonathan with their two week old baby girl, Emily, carried in a "shopping basket". They returned to Australia in 1971 as Jonathan had accepted a fellowship with the John Curtin School of Medical Research at the Australian National University (ANU). They now had two small daughters, Emily and Adrienne.

Margaret's decision to further her career and study law was not a simple one. "I considered doing a doctorate in philosophy, which, as a student I had really enjoyed. I loved the theoretical debates and that you could have a powerful debate without repercussions. On the other hand,

I thought for a lifetime's work, perhaps some practical consequences would be desirable and my husband suggested I study law, something I'd never thought of. At my school, the range of careers was very narrow: only teaching, nursing or secretarial work were regarded as appropriate careers – but law sounded far more interesting."

Aside from the encouragement of her husband, Jonathan (son of Julius Stone, the legal philosopher and writer), Margaret says that what really attracted her to law was "the fact that there was a good theoretical discussion, that it embodied the study of principles, and the application of the principles was important as well".

Margaret devised methods for keeping her daughters entertained during lectures. "At that time, I suppose women were maybe 15% of the law intake and certainly trailing around with two little children was unusual. But I occasionally took them to lectures, one on either side armed with a packet of Smarties, with strict instructions: they were not to start eating them until the teacher in the front started talking." When studying, she often had one child either side of her and they were allowed to colour in the O's on the law school notes whilst Margaret read them. "It was a race to see who finished their task first." During the course of her law degree, Margaret gave birth to their third daughter, Elizabeth.

## Jumping into deep water

Margaret graduated from ANU with first-class honours and shared the Supreme Court Judge's prize for the most distinguished student on graduation. She then studied her Masters at Yale University, completing a dissertation entitled "Civil Rights without a Bill of Rights". Returning to Australia, she taught in the law school at the University of New South Wales (UNSW) for 15 years, including as Sub-Dean for seven years.

How does an established, highly esteemed academic leave the career trajectory she is on to work in private practice? "I love the theoretical side, but I also like the practical side. One of the things I hated was the assumption, implied but also quite often expressed, that if you're an academic and you hadn't practised, it was thought



somehow you weren't up to it. Plus I don't like being told I can't do things." Margaret spoke with a Freehills partner and colleague of hers, Don Harding, who in turn spoke with Brian McFadyen, the staff partner at the time. Margaret says that deciding to make the leap from academia to private practice was "a bit like holding your nose and jumping into deep water".

Her attraction to Freehills partly arose from years of watching students go to summer clerk interviews and work at various law firms. "The feedback I got about Freehills was always positive and made me warm towards the place. It struck me as being more human and this is not to denigrate any of the other great law firms, but it felt less hierarchical."

Margaret found the transition from academia to Freehills initially challenging. "It was the most difficult change I've ever made because I came in with a reputation of having a certain expertise...it was harder than going from Freehills to the Bench." However, she says she was fortunate to be working with an excellent group, run by Brian McFadyen whom she describes as exemplary. "He is a knowledgeable, lateral thinking, kind man and he was an enormous help to me." Margaret, in turn,





was consulted widely: "They would come to me and ask, 'Legally, do you reckon we can do this?' And I could really put them on the right track very quickly, as I had taught a lot of subjects which was unusual for an academic, including equity, property, constitutional law, administrative law, legal history, jurisprudence, commercial law and commercial financing. I had a good overall view which I think stood me in great stead."

How did Margaret find Freehills as a place to work? "It was a warm, not particularly hierarchical place. It had its full range of eccentricities and egos but basically there was a kindness that permeated the place, and in my view, a sense of what was really important."

### On the Federal Court Bench

Margaret admits she had no ambition to go to the Court: "I had no inkling that it was ever a possibility. It wasn't anything I thought about until one day I got a call from the Attorney General's office which came out of the blue."

In her swearing-in speech upon her appointment to the Federal Court Bench, Margaret commented on the very public role of a judge: "When I started at Freehills I could make my mistakes in my office with the door closed. Here it is very public

and it's a bit like a theatre in that every performance, not only in court but also with the publications of reasons for decisions, is subject to intense scrutiny and analysis."

In writing her judgments, Margaret says the foremost consideration for her was to see it as a process, not an outcome: "The proper way is to work through the material and judge the arguments based on the facts established by the proper processes of evidence that's admissible." She found it fascinating to hear litigants say, "I think we've got the judge on our side," because 95% of the time she did not know herself and did not want to know: "I didn't want to have made up my mind without really thinking it through; it is the writing that makes you think it through."

As to her legacy? "I don't think a judge should approach a judgment with the aim of developing a law. I wanted to deliver careful, reasoned and informed judgments that were clearly expressed and truly addressed the issues of the case."

### Becoming Inspector-General of Intelligence and Security

Margaret described her career until that point as comprising three chapters. First, as a student at ANU and an academic at

UNSW: "I have spent much of my time thinking and analysing what judges do." Second, as a practitioner at Freehills in which "the focus shifted to anticipate what judges might do". The third, "and perhaps most daunting chapter is wondering what judges or at least this judge should do". Margaret has yet to decide how to characterise the fourth chapter, following her appointment as Inspector-General of Intelligence and Security (IGIS), though reveals there was "nothing natural" about transitioning to this role.

In her current role, Margaret's legislated responsibility to consider "propriety" as well as "legality" gives her a wide remit: "There are all sorts of questions you can ask about propriety even where the action is undoubtedly legal." She has spent a lot of time getting to know the agencies: "I have a very strong view that I shouldn't just police their activities; I need to understand what they're trying to achieve and the pressures they're under so I can, if necessary, try to help them comply with regulatory requirements without lowering standards."

The IGIS has received a favourable reception from the intelligence agencies and IGIS has proactive briefings from the agencies in particular where a new process or new

action is being proposed. Margaret works with the intelligence agencies to identify issues of concern and, as far as possible, anticipate any problems. "They have a really important job to do, and in the present climate it's never been more important. So I want to exercise my powers in a way that will be a rigorous and independent oversight of their activities, but which interferes to the least extent possible with what they have to do".

Margaret has also found that the intelligence agencies often self-report their breaches which she describes as "very healthy". For her, the role of IGIS "is not just trying to catch them out, it's a co-operative role, but one where you at all times maintain the standard of what you require".

Due to the sensitive nature of the information she handles, often Margaret cannot be as forthcoming as she would like. She cannot discuss the detail of her work outside of her office. Margaret and each of her 16 staff members have the highest security clearances but, even at that level, intelligence is shared only on a need-to-know basis. "Because we oversee the full range of the agencies' activities we need to know quite a lot. However some intelligence is for my eyes only."

Under the IGIS Act, Margaret (and her staff) cannot disclose anything learnt by reason of their office other than when acting in the performance of their functions under the Act. This applies to any person, even to a court. "It's frustrating because all these fascinating things I learn, I'd like to go home and tell my husband but I can't."

## The rule of law

Margaret's dissertation, "Civil Rights Without a Bill of Rights", considered the issue of how a society, such as Australia, fares without a Bill of Rights, as exists in the US Constitution. "I think there are a number of pillars on which the proper protection of human rights rests, and one is the rule of law."

Margaret found that despite the US Bill of Rights, the Communists during the McCarthy-era had their human rights "trashed" by the House Un-American Activities Committee. Similarly, in Stalinist Russia, the constitution was "a model document...you'd think this place would be a paradise to live in. Completely ignored!" Margaret says, "unless you have a strong commitment to the rule of law and a culture that supports it, you can have all the human rights you like written into law, as in Stalin's constitution, but it won't get you anywhere".

For Margaret, the rule of law has been the guiding principle throughout her career and she firmly believes that it is "what makes a peaceful society". At times, the rule of law has required Margaret to deliver difficult judgments. For example, as a Federal Court judge, finding that the decision of the Refugee Tribunal was correct in its refusal to allow a Sri Lankan family to stay in Australia.

The family sat in the court with their two girls of about eight and 10 years of age, wearing "immaculate white dresses, shiny shoes, white socks, white bows in their hair, looking at me with their liquid brown eyes". Margaret had been given what was strictly "irrelevant" material. The material described how well the children were performing at school and had fitted into the community. However, the only thing she could decide was whether there had been a legal error: "I couldn't find an error of law. Sometimes when you judge, the outcome seems really harsh."

## Final thoughts

Margaret's motivation stems from "curiosity, interest and self-indulgence": "I've enjoyed everything I've done. It doesn't mean I've enjoyed every minute of every day, but it has been fulfilling." She includes having children in this: "I liked making birthday cakes for my children. I liked drawing zippers on their bananas when they took them to school so they knew where to open them." The search for fulfilment has sustained Margaret: "I don't regard my career as separate from my life. I was lucky to have three fantastic daughters who are my best friends and they're part of it."

It is because of liking the things she does that Margaret says she "can't really claim to have a work ethic...I guess I don't stop when the work gets hard". She feels strongly about keeping her commitments: "Whatever you're doing at the moment, try and do it really well. Don't let it slide if you don't like it. Have the courage to make the decision to move."

As for what is next for Margaret, she will be the Inspector-General until mid-2020 when her five-year term expires. There are unlikely to be any memoirs featuring this chapter given the obligations of secrecy upon her, but a more fulsome account of the first three chapters of her career would certainly make an excellent read.



## INSPECTOR-GENERAL OF INTELLIGENCE AND SECURITY (IGIS) QUICK GUIDE:

IGIS is an independent statutory office (that is, not subject to general direction from the Prime Minister or other Ministers) established by the Inspector-General of Intelligence and Security Act (Cth) 1986 (IGIS Act). The office oversees the activities of the Australian intelligence agencies to ensure that they are conducted legally, with propriety and in a way that is consistent with human rights.

There are six intelligence agencies in Australia: Office of National Assessments (ONA); Australian Security Intelligence Organisation (ASIO); Australian Secret Intelligence Service (ASIS); Australian Signals Directorate (ASD); Defence Intelligence Organisation (DIO) and Australian Geospatial-Intelligence Organisation (AGO).

The IGIS has strong coercive powers (as well as immunities and protections), including the power to compel the production of information and documents, to enter premises occupied or used by a Commonwealth intelligence agency, to issue notices to persons to attend before the IGIS to answer questions, and to administer an oath or affirmation when taking such evidence.

As an independent agency, the IGIS reports through an annual report to Parliament. The Inspector-General also appears before Senate Estimates Committees and the Parliamentary Joint Committee on Intelligence and Security.