What is a question of law?

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The distinction between fact and law has application not merely in the context of general questions of statutory construction, but more broadly, such as in circumstances where an error of law establishes a statutory ground of appeal. In Australia, it also has a constitutional dimension, underpinning the principles of the separation of judicial power and strong form judicial review of administrative action. This article discusses attempts to answer the perennial question of "what is a question of law?"

Graham Hill was a judge of the Federal Court of Australia based in Sydney from his appointment in 1989 until his untimely death in 2005. I moved to Sydney to join the Bar in New South Wales in 1990, and for the next 10 years, I spent much of my time as a junior barrister appearing in the Federal Court in Sydney, mostly before either Justice Hill or Justice Daryl Davies. Those appearances were not exclusively in cases about taxation, but if customs, excise and sales tax are included in that description, they were mostly in cases about taxation. To the extent those cases had any further unifying theme, it was that they mostly turned on framing and resolving a "question of law": for the purpose of establishing a ground of appeal to the Federal Court from the Administrative Appeals Tribunal under s 44 of the *Administrative Appeals Tribunal Act 1975* (Cth); for the purpose of establishing a ground of review under s 5(1)(f) of the *Administrative Decisions (Judicial Review) Act 1977* (Cth); or for the purpose of founding a conclusion of what has now become known as "jurisdictional error" under s 39B of the *Judiciary Act 1903* (Cth).

The title of this article is in the form of a question I never got to ask Justice Hill. But I did get to ask Justice Davies. He spoke in the early 1990s at a seminar for barristers in the administrative law section of the New South Wales Bar Association organised by Alan Robertson – now Justice Robertson of the Federal Court. He spoke about what were then recent developments in administrative law. At the end of his talk, he took questions from the floor. "There is just one question I have always wanted to ask", I said. "What is a question of law?" He told me, in his firm but good-natured way, that I was being impertinent. He did not give an answer.

Justice Hill gave an answer shortly afterwards in reasons for judgment he wrote in a case about diesel fuel rebate, which for a time in the mid-1990s formed a sub-specialty of my customs practice. Justice Hill's answer displayed his characteristic intellectual integrity as well as his characteristic legal scepticism. "I do not wish to add to the confusion surrounding the issue whether, in a particular case, there is or is not a question of law", he commenced, before going on to reprise his endorsement in an earlier case of what he had described as the "unfortunate truth" to be found in a suggestion made by Justice French when still a relatively new judge of the Federal Court that the categories of fact and law could well be included in the class described by Professor Stone as "categories of meaningless reference".[1]

Justice Hill had been a student of Professor Stone. In endorsing the suggestion made by Justice French, Justice Hill undoubtedly understood "meaningless" in the particular non-semantic sense in which Professor Stone had used it when he coined the expression "categories of meaningless reference": not in the sense that the words employed to define a legal category have no meaning at all, but in the sense that the words employed to define that legal category have no meaning which can be related in logic to the decision which a court purports to derive from their application. Where the

* Justice of the High Court of Australia. This article is an edited version of the National Conference of Tax Institute Justice Hill Memorial Lecture presented by his Honour in March 2014.

[1] *Cowell Electric Supply Company Ltd v Collector of Customs* (1995) 54 FCR 1 at 10, referring to *FCT v Roberts* (1992) 37 FCR 246 at 252 (Hill J); 23 ATR 494; *Nizich v FCT* (1991) 91 ATC 4747 at 4752 (French J); (1991) 22 ATR 438.

"category of reference" is "meaningless", Professor Stone put it, the "real determinant of the decision must lie elsewhere".[2] The "creative act [of the court making a decision] proceeds, well or ill, while the verbal formulation bemuses all concerned".[3]

It is significant that Justice Hill gave his answer shortly after, and with reference to, the heroic attempt by the Full Court of the Federal Court to distil from the numerous cases a number of general principles to determine when a question of law will arise in *Collector of Customs v Pozzolanic Enterprises Pty Ltd*.[4]

The Full Court commenced by observing that "[d]istinctions between a question of fact and a question of law can be elusive". It went on to state that "[t]he proper interpretation, construction and application of a statute in a given case raises issues which may be or involve questions of fact or law or mixed fact and law". It said that there were, nevertheless, "general propositions which emerge from the cases".[5]

The *Pozzolanic* propositions, or principles, were five in number. There was a qualification to the fifth principle and a qualification to that qualification. The first *Pozzolanic* principle was that the question whether a word or phrase in a statute is to be given its ordinary meaning or some technical or other meaning is a question of law. The second was that the ordinary or non-technical meaning of a word is a question of fact. The third was that the meaning of a technical legal term is a question of law. The fourth was expressed as being that the "construction or effect" of a term, once its "meaning" is established, is a question of law. The fifth was expressed as being that "[t]he question whether facts fully found fall within the provision of a statutory enactment properly construed is generally a question of law".[6] The qualification to the fifth principle was said to arise "when a statute uses words according to their ordinary meaning and the question is whether the facts as found fall within those words".[7] The qualification was: "Where it is reasonably open to hold that they do, then the question whether they do or not is one of fact".[8]

Justice Hill was later to suggest that the fifth proposition, and its qualification, were better seen as two separate and related propositions.[9] The first, which might be labelled *Pozzolanic* proposition 5A, was that whether or not it is reasonably open to hold that the facts found fall within a word or a phrase used in a statute is a question of law. The second, which might be labelled *Pozzolanic* proposition 5B is that, if it is reasonably open to hold that the facts as found do fall within the statutory word or phrase, then the question whether the facts do or do not fall within that statutory word or phrase is one of fact.

The "qualification to the qualification"[10] to the fifth proposition as stated by the Full Court in *Pozzolanic* concerned the use in a statute of ordinary English words according to their ordinary English meaning to refer to a relationship or standard incapable of application other than by reference to the purpose of the statute. The Full Court in *Pozzolanic* put it this way:

> Although the words of the statute are construed according to their ordinary English meaning, that does not mean that their application to a set of facts is simply described as the matching of that set of facts with a factual description. There is necessarily a selection process involved. The range of relationships to which the words apply for the purpose of the Act depends upon a judgment about that purpose … In the end this is not a process of fact finding. The facts are found. What is left is a value judgment about

[2] Stone J, *The Legal System and Lawyers' Reasoning* (1964) p 241.

[3] Stone, n 2, p 246.

[4] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280.

[5] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 287.

[6] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 287.

[7] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 288.

[8] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 288.

[9] *Sharp Corporation of Australia Pty Ltd v Collector of Customs* (1995) 59 FCR 6 at 16.

[10] So described by Carr J in *Cowell Electric Supply Co v Collector of Customs* (1995) 54 FCR 1 at 21.

> the range of the Act and that is a question of law.[11]

To have to contend with a qualification to the fifth of five legal principles directed to answering a single question is difficult for any lawyer. To have to contend with a qualification to a qualification to the fifth of five principles is enough to make even a tax lawyer blush. The need to introduce the qualification to the qualification might be thought to call into question not only the expression of the underlying principle but also the utility of the overall exercise of which the distillation of that principle forms part. Justice Hill used understatement when he said of an attempt by another judge of the Federal Court sitting with him as a member of a Full Court to apply the qualification to the qualification that it "indicates the subtlety of the distinction which can arise".[12] That case provided the immediate context for Justice Hill, in his own reasons for judgment (referred to above), to reprise his earlier endorsement of the suggestion that the categories of fact and law could well be categories of meaningless reference.

When the High Court came to consider the *Pozzolanic* principles shortly afterwards, in *Collector of Customs v Agfa-Gevaert Ltd*,[13] it gave them at best muted endorsement. The High Court recorded that "[s]uch general expositions of the law are helpful in many circumstances",[14] but said that the principles were of limited utility when sought to be applied to the particular complex phrase with which it was concerned,[15] "silver dye bleach reversal process", which it ultimately held to be a composite phrase properly construed by reference to the trade or technical meaning of "silver dye bleach process" and the ordinary meaning of "reversal".[16] The High Court doubted the fourth *Pozzolanic* principle, which it thought was based on an "artificial, if not illusory" distinction between the "meaning" of a term and its "effect or construction".[17] The High Court went on in substance, however, to adopt the first *Pozzolanic* principle, albeit formulated in slightly different terms, when it accepted that whether a statute uses a word or phrase in any sense other than that which it has in "ordinary speech" is always a question of law.[18]

The High Court has since returned to the meta-question of what is a question of law in any detail only once, in *Vetter v Lake Macquarie City Council*.[19] There it made no reference to *Pozzolanic* and only passing reference to *Agfa-Gevaert*. Three members of the court explained the underlying principles sufficiently for the purposes of the case at hand, which concerned the scope of an appeal confined to a question of law from a trial court exercising workers compensation jurisdiction, when they stated:

> Whether facts as found answer a statutory description or satisfy statutory criteria will very frequently be exclusively a question of law. To put the matter another way … whether the facts found by the trial court can support the legal description given to them by the trial court is a question of law. However, not all questions involving mixed questions of law and fact are, or need to be susceptible of one correct answer only. Not infrequently, informed and experienced lawyers will apply different descriptions to a factual situation.[20]

They concluded:

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[11] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1980) 43 FCR 280 at 288-289.

[12] *Cowell Electric Supply Company Ltd v Collector of Customs* (1995) 54 FCR 1 at 10.

[13] *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389; 35 ATR 249.

[14] *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 396.

[15] *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 396.

[16] *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 402.

[17] *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 396-397.

[18] *Collector of Customs v Agfa-Gevaert Ltd* (1996) 186 CLR 389 at 397, quoting *NSW Associated Blue-Metal Quarries Ltd v FCT* (1956) 94 CLR 509 at 511-512.

[19] *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439.

[20] *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439 at [24].

> [W]hen it is necessary to engage in a process of construction of the meaning of a word (or phrase) in a statute a question of law will be involved, but … the question may be a mixed one of fact and law … [A] question exclusively of law arises … if, on the facts found only one conclusion is open.[21]

That formulation accords in substance with the fifth of the *Pozzolanic* propositions as re-stated by Justice Hill. That is not surprising given that the three members of the High Court in *Vetter* and Justice Hill, in restating the fifth of the *Pozzolanic* propositions, both explicitly drew upon a common source: the frequently cited distillation of principle by Sir Frederick Jordan in 1940 in *Australian Gas Light Company v Valuer-General*.[22] That distillation of principle by Sir Frederick Jordan had concluded as follows:

> [I]f the facts inferred by the tribunal from the evidence before it are necessarily within the description of a word or phrase in a statute or necessarily outside that description, a contrary decision is wrong in law. If, however, the facts so inferred are capable of being regarded as either within or without the description, according to the relative significance attached to them, a decision either way by a tribunal of fact cannot be disturbed by a superior Court which can determine only questions of law.[23]

That conclusion was explained by Sir Frederick to follow from four propositions he had himself extracted from the cases, the fourth of which was to the effect that a finding of fact by a tribunal that a particular set of facts comes within "an ordinary English word or phrase as used in a Statute" is one of fact which:

> can be disturbed only (a) if there is no evidence to support its inferences, or (b) if the facts inferred by it and supported by evidence are incapable of justifying the finding of fact based upon those inferences or (c) if it has misdirected itself in law.[24]

Yet embedded within Sir Frederick Jordan's fourth proposition, that a finding of fact may be based on a misdirection of law, is a further qualification to the generality of the fifth of the *Pozzolanic* propositions even as restated by Justice Hill. The further qualification is that, even if it is reasonably open to hold that the facts as found do fall within the statutory word or phrase with the result that the question whether the facts do or do not fall within that statutory word or phrase is one of fact, the resolution of that question of fact may involve still a question of law at least in the sense that the question of fact may be one that is required by statute to be determined through the application of a correct legal test. The same notion may well lie behind the reference in *Vetter* and in the introductory passage in *Pozzolanic* to "mixed questions of law and fact".

That further qualification has been illustrated by decisions of the Full Court of the Federal Court, before and after *Pozzolanic*, which emphasised that a decision of fact could still be vulnerable on an appeal limited to a question of law on grounds applicable in applications for judicial review under s 39B of the *Judiciary Act* such as failure by the tribunal of fact to provide procedural fairness or to take into account a relevant primary fact.[25]

The complexity is then only increased by the more recent explicit linking of the grounds applicable in applications for judicial review under s 39B of the *Judiciary Act* to the concept of jurisdictional error and by the more recent explicit decoupling of the concept of jurisdictional error from the concept of legal error.[26] Not every error of law is a jurisdictional error and not every jurisdictional error is or involves an error of law. Conversely, not every finding of fact is a finding within jurisdiction. Some facts are jurisdictional facts, and to purport to exercise jurisdiction in the absence of a jurisdictional fact is, without more, a jurisdictional error.

To accept as did Justice Hill that "a question of law", when used as a label, is incapable of providing the criteria for its own application is not to deny the existence within our legal system of a category of legal questions.

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[21] *Vetter v Lake Macquarie City Council* (2001) 202 CLR 439 at [27].

[22] *Australian Gas Light Company v Valuer-General* (1940) 40 SR (NSW) 126.

[23] *Australian Gas Light Company v Valuer-General* (1940) 40 SR (NSW) 126 at 138.

[24] *Australian Gas Light Company v Valuer-General* (1940) 40 SR (NSW) 126 at 138.

[25] For example, *Sharp Corporation of Australia Pty Ltd v Collector of Customs* (1995) 59 FCR 6 at 12.

[26] *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002* (2003) 77 ALJR 1165.

At the level of constitutional principle, the existence of a discrete category of legal questions has traditionally been seen not only to provide a justification for the separation of judicial power on the one hand from legislative and executive power on the other hand, but also to provide justification for the strong form of judicial review of administrative action that has prevailed in Australia.[27] The duty and jurisdiction of a court is in each case emphatically and authoritatively to "say what the law is",[28] a duty and jurisdiction which presupposes that the court will in each case be able to differentiate those questions which are legal from those questions which are not and presupposes also that the court will in each case be able to achieve that differentiation through the transparent and predictable application of legal principle. At a more prosaic level, the statutory imperative which exists in many cases for courts to be satisfied of the existence of a question of law for the purpose of establishing a statutory ground of appeal limited to questions of law or for the purpose of establishing a statutory ground of judicial review for error of law creates a practical imperative for courts to develop and maintain workable work-a-day principles to determine the existence or non-existence of questions. Cynicism, as Professor Aronson once put it "is simply not an available option".[29]

To recognise the limitations inherent in the *Pozzolanic* attempt to derive from the cases enumerated principles of general application is therefore not to deny the necessity within our legal system to strive to identify coherent and consistent criteria by which some but not all questions are assigned to the category of questions of law. Nor is it in any way to devalue the lessons to be learned from various ways in which different courts have from time to time determined different questions to be within or outside that category. One English commentator observed in that respect:

> Looking at the devices courts have used to address the problem is like looking into the average toolbox. There is a lot of clutter that could have been cleared out long ago. There are one or two baffling gadgets with no readily identifiable function. And there are a few old, sturdy, and serviceable tools that do all the work. It would be a mistake to think that the toolbox is useless, just because it is messy.[30]

Amongst the devices that commentator was inclined to regard as "clutter" was the notion that a question of law can be seen to be a question on which a "trained lawyer" could give only a single correct answer.[31] Amongst the "gadgets" the same commentator was inclined to regard as "baffling" was the notion of a "mixed question of fact and law".[32] "[T]alk of ordinary versus technical language", he said, was "obsolescent" and "[t]he no evidence rule plays no role in solving the problem".[33] "One surprisingly consistent set of techniques", he suggested from his survey of cases, "does the work":

> These techniques treat a question of application as a question of law in a clear case of the application of the statutory term (a case in which the law requires a particular answer to the question of application), and as a question of fact in an unclear case (a case capable of decision either way). We can call this a reasonableness test, as the courts sometimes do, as long as we see that the sense in which the tribunal must act reasonably (if it is not to be held to have erred on a question of law) is that it must not decide that the statutory term applies when it clearly does not, or that it does not apply when it clearly does.[34]

The commentator associated the techniques to which he referred most prominently with the speech of Lord Radcliffe in the House of Lords in 1956 in *Edwards (Inspector of Taxes) v Bairstow*.[35] Were he looking to the Australian cases, he might perhaps have associated them most prominently with the virtually contemporaneous reasons for judgment of Kitto J in the High Court in 1956 in *NSW*

[27] *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35-36.

[28] *Marbury v Madison* 5 US 87 (1803) at 111 as quoted in *Attorney-General (NSW) v Quin* (1990) 170 CLR 1 at 35.

[29] Aronson M, "Unreasonableness and Error of Law" (2001) 24(2) UNSW LJ315 at 339.

[30] Endicott T, "Questions of Law" (1998) 114 LQR 292 at 297.

[31] Endicott, n 30 at 298-299.

[32] Endicott, n 30 at 300-301.

[33] Endicott, n 30 at 306. See also Aronson, n 29.

[34] Endicott, n 30 at 306.

[35] *Edwards (Inspector of Taxes) v Bairstow* [1956] AC 14 at 32.

Associated Blue-Metal Quarries Ltd v FCT[36] which, as subsequently applied in *Hope v Bathurst City Council*,[37] formed the basis of the fifth of the five *Pozzolanic* propositions.[38] He might perhaps more appropriately have associated them with the earlier distillation of principle by Sir Frederick Jordan in *Australian Gas Light Company v Valuer-General*. But even shorn of any threshold requirement that the statutory words have their ordinary English meaning and absent any further qualification, it would still be an overstatement to describe the single test of "reasonableness" in an "unclear case" as doing "all the work". Leaving to one side the absence of guidance for distinguishing the clear case from the unclear case, there would remain questions of law, thrown up by the Australian cases, which were incapable of being swept up even in the unclear case in a single test of reasonableness. Were the tools in the box to be tidied, leaving that test alone would be too blunt an instrument.

Writing in the *Modern Law Review* in 2011, another commentator suggested a more refined "holistic" approach to the identification of a question of law.[39] That approach was suggested to lie in an appropriation of the view propounded in the United States by Professor Monaghan in 1983. Professor Monaghan explained what had come to be characterised in the United States as "judicial deference to agency 'interpretation' of law" as "simply one way of recognising a delegation of law-making authority to an agency".[40] He continued:

> To take a very modest example, Congress may, within limits, expressly authorize an agency to define "employees" within the labor acts through the exercise of substantive rule-making power. Precisely the same kind of law-making delegation is achieved if, instead, Congress mandates judicial deference on that issue to either an "interpretive" agency rule or to the results of agency adjudication having "a reasonable basis in law". In each instance, the crucial judicial question is the scope of the authority delegated to the agency.[41]

Professor Monahan pointed out that this was no "novel conception" and that the essential point had been put "accurately long ago" when it had been said:

> The duty of the courts in reviewing the administrative decision for error of law is to see that the agency has stayed within the bounds for the exercise of discretion fixed by Congress, and that it has applied the statutory standards and no others. As long as the agency does so, the courts are not to substitute their judgment … [T]he function of the reviewing court in determining the "law" in this field is to search for legislative intention, which of course would include an intention to vest the administrator with discretionary power, and then to decide whether the administrative ruling is consistent with it.[42]

In a passage quoted by four members of the High Court in 2000 in *Corporation of the City of Enfield v Development Assessment Commission*[43] as applicable to the judicial review of administrative action within the Australian constitutional context, Professor Monaghan went on to conclude that there has never been "an all-encompassing judicial duty to supply all the relevant meaning [to] statutes".[44] Rather, the judicial duty is "to ensure that the administrative agency stays within the zone of discretion committed to it by its organic act".[45]

Much the same approach to that of Professor Monaghan had been advocated in the Australian context in 1967 by Professor Whitmore when he had said:

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[36] *NSW Associated Blue-Metal Quarries Ltd v FCT* (1956) 94 CLR 509.

[37] *Hope v Bathurst City Council* (1980) 144 CLR 1 at 7-8.

[38] *Collector of Customs v Pozzolanic Enterprises Pty Ltd* (1993) 43 FCR 280 at 287.

[39] Daly P, "Deference on Questions of Law" (2011) 74(5) *Modern Law Review* 694.

[40] Monaghan HP, "*Marbury* and the Administrative State" (1983) 83(1) *Columbia Law Review* 1 at 26.

[41] Monaghan, n 40 at 26.

[42] Monaghan, n 40 at 27 quoting Stern R, "Review of Findings of Administrators, Judges and Juries: A Comparative Analysis" (1944) 58 *Harvard Law Review* 70 at 106-107.

[43] *Corporation of the City of Enfield v Development Assessment Commission* (2000) 199 CLR 135 at [43].

[44] Monaghan, n 40 at 33.

[45] Monaghan, n 40 at 33.

> There seems to be little purpose in insisting that where the statutory term is of common meaning the question whether facts fall within it is merely one of fact – particularly when the courts are prepared, in any event, to review that question of fact. Surely it would be simpler and more logical to hold that a question of law is presented in every such case but that the administrator or administrative tribunal should be permitted to make law within permissible limits indicated by the courts.[46]

The development of such an approach within the Australian context, were it to occur, would start at the same starting point implicitly adopted by all of the Australian cases: that the legal meaning of statutory language is a question of law which only a court can have jurisdiction conclusively to determine. It would accept, however, that statutory language on its proper legal meaning as determined by a court might or might not operate explicitly or implicitly to confer on a decision-maker (which need not be a court) the capacity, subject to explicit or implicit conditions which might or might not require reasonableness, to determine how, if at all, that statutory language has application in a specific factual context. The purported application of such statutory language by the decision-maker in a specific factual context would then involve a further question of law only to the extent of determining whether or not the decision-maker complied with an explicit or implicit condition of conferral.

The circumstance covered by the qualification to the fifth *Pozzolanic* proposition – that of a statute using words according to their ordinary meaning in which the question becomes whether the facts as found fall within those words – would be an illustration of the phenomenon of statutory language, on its proper legal meaning, implicitly conferring on a decision-maker the ability to determine how, if at all, those words apply in a specific factual context subject to an implicit condition of reasonableness. The illustration would not exhaust that phenomenon: a range of possible applications might implicitly be left to a decision-maker even by the use of technical words. And even within that illustration there would be no reason in principle why reasonableness would need be the only implicit condition. The qualification to the qualification to the fifth *Pozzolanic* principle would be unnecessary. The inquiry into the existence and scope of questions of law in each case would begin and end with an inquiry into the legal meaning of the statute.

The sceptic might object to such an approach that would answer the question of whether a particular question falls within a category of meaningless reference (a question of law) through the application of a category indeterminate reference (the implicit legal meaning of statutory language). The pragmatist might respond that we would at least have advanced: indeterminate is better than meaningless.

Justice Hill, in a published address he gave to the Taxation Institute of Australia in 1995, reiterated the criticism he had expressed judicially of the constant need in taxation appeals to distinguish between questions of fact and questions of law. He said:

> It is true that appellate jurisdiction has long been expressed by reference to the distinction, but this does not make the distinction easier to apply in difficult cases. Considerable time is taken in a quite large percentage of cases to argue whether there is a question of law and thus a right of appeal.[47]

Not entirely incidentally, he went on to say:

> As the highest court in the land the High Court necessarily has the highest expectations cast upon it. Often these expectations will be unrealistic.[48]

True as that is, one realistic expectation is that a Justice of the High Court addressing a topic extra-judicially will say nothing that might compromise his or her ability later to address the same topic judicially.

What is a question of law? Fidelity to the legal system, not to mention our self-respect as lawyers, compels us to have an answer. Despite the promise of an answer that might be thought to be implicit in having the question as the title to this article, institutional prudence, if not self-preservation, impels me to refrain from attempting to give one now.

[46] Whitmore H, "O! That Way Madness Lies: Judicial Review for Error of Law" (1967) 2 *Federal Law Review* 159 at 176.

[47] Hill G, "What Do We Expect from Judges in Tax Cases?" (1995) 69 ALJ 992 at 994.

[48] Hill, n 47 at 1000.