

SEPTEMBER 7, 2023



## Justice David O'Callaghan

### Greetings, Wiggin Alumni!

We are pleased to bring you this Alumni Spotlight on Justice David O'Callaghan, one of our most interesting and illustrious alumni. Justice O'Callaghan (known informally to colleagues as "DO'C") practiced law in Victoria, Australia, before receiving his LLM at Yale Law School in 1984. He worked briefly with Sullivan & Cromwell in New York, and then returned to Victoria, where he became a barrister in 1986. He came back to Yale Law School as a Visiting Lecturer from 1996-1998 and spent the next two years working at Wiggin and Dana. He returned to Melbourne in 2000, where he held numerous positions of honor in the Victorian Bar. He was appointed to the Federal Court of Australia in 2017 and continues to serve on that Court.

We caught up with him recently, to ask about his career and his experience at Wiggin.

### Who did you work with at Wiggin?

I worked primarily with Shaun Sullivan, Jack Dunham, Mark Kravitz, and Jonathan Freiman, focusing on appellate matters. I became very close with Mark; I still have a photo of him in my chambers. Mark later came to Australia to teach at the law school in Melbourne, where he became well-known among the faculty, members of the bar, and local judges. *The Victorian Bar News* wrote about him when he passed away in 2012.

### What did you take away from your stint at Wiggin?

The time I spent practicing at Wiggin had a significant influence on me throughout my career. In particular, Mark Kravitz and Jack Dunham helped me develop the skills needed to be an effective legal writer. Litigation in Australia then was conducted much more through oral advocacy; working with Mark taught me not only critical written advocacy techniques, but also how much time, effort, and discipline it takes to write well. Those lessons have been invaluable to me both as a barrister and as a judge.

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**JUDGE DAVID O'CALLAGHAN** | SEPTEMBER 7, 2023

**As a judge in Australia, do you rely on U.S. precedents in your decisions?**

Rarely, other than citing Restatements for basic, black-letter principles. The more recent trend is in the opposite direction, citing foreign authorities – even cases from England and New Zealand – less frequently. I do recall, though, that when I was at Wiggin, Mark and I cited an Australian High Court decision in a Connecticut Supreme Court brief, and we were pleased that the citation made it into a footnote in the Supreme Court's decision. (For those inclined to check, see *Meaney v. CT Hosp. Ass'n, Inc.*, 250 Conn. 500, 511 n.9 (1999).)

**Tell us a bit about your work on the Federal Court of Australia?**

One of the pleasures of being a Justice on the Federal Court is the enormous diversity of cases we handle. The Court has very broad jurisdiction over nearly all civil matters arising under federal law. If any party pleads any claim that has a colorable federal issue, the entire case becomes a federal matter, and it remains in the Federal Court even if that claim is dismissed. Also, Justices handle both civil bench trials and appeals heard by the Court, adding to the breadth of experience we get.

**What types of cases have you handled that have garnered significant public attention?**

The Court has seen a growing number of major class actions, including cases in which outside funders have a stake in the outcome. In addition to overseeing the litigation of those cases, we review proposed settlements, which can involve difficult decisions about how much of the total settlement should go to the attorneys and outside funders.

Perhaps the most highly public case before the Court this year was tennis star Novak Djokovic's challenge to the government's cancellation of his visa, which precluded him from remaining in the country to compete in the Australian Open. I was on the panel that heard the case. While it generated a lot of publicity, the decision itself was quite limited. We did not review the wisdom of the Immigration Minister's decision to cancel Djokovic's visa for reasons of public health and safety; we held only that the Minister's decision was not irrational or unlawful.

*Thank you to Justice O'Callaghan for participating in this Alumni Spotlight. If you would like to suggest a Wiggin and Dana alum for a future Alumni Spotlight, please submit your suggestion [here](#).*