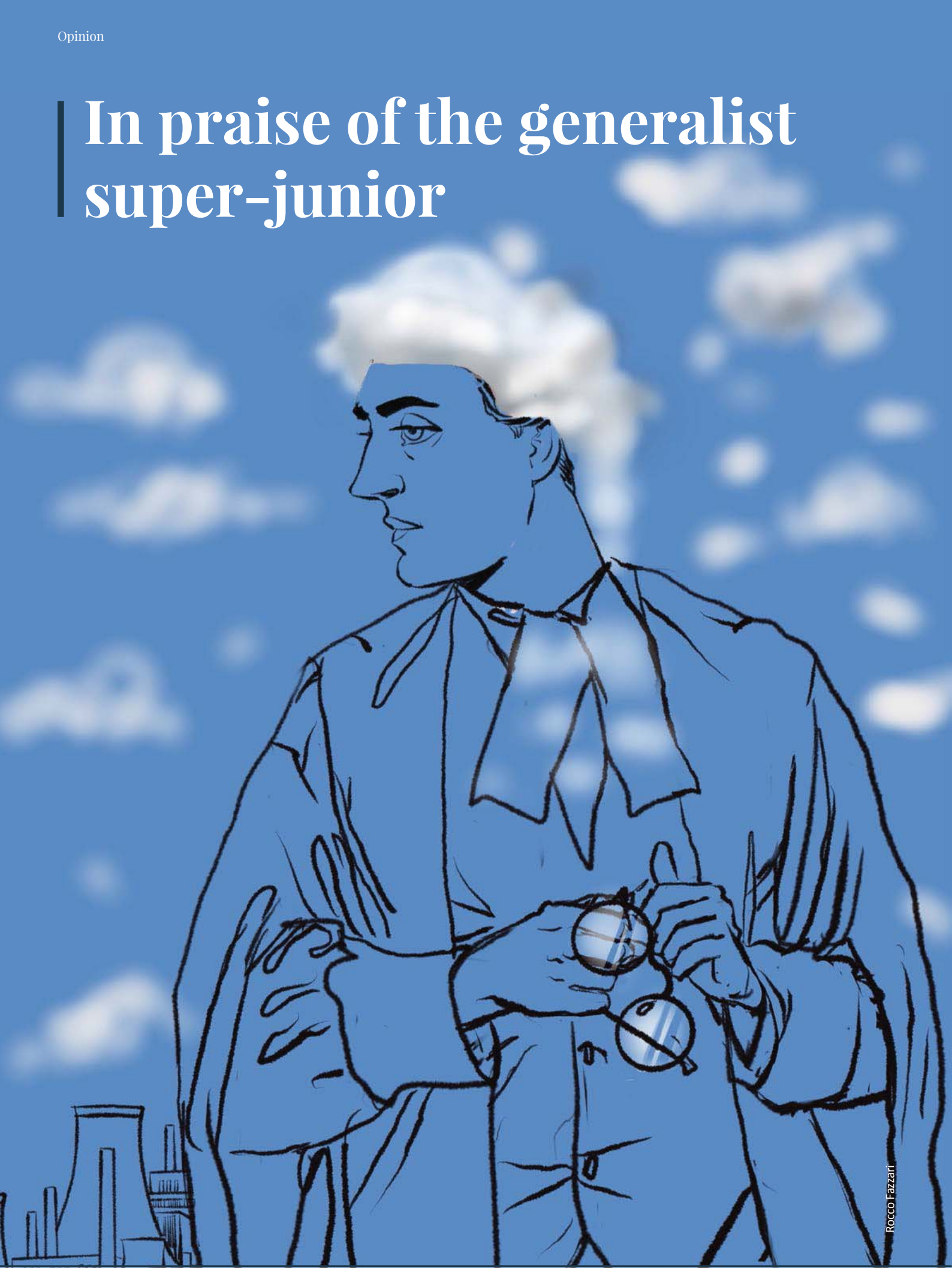
In praise of the generalist super-junior



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There are some very clever barristers out there. During my pupillage in London, I sat at a desk in my pupilmaster's chambers and he was one of them. At that time, being prior to the internet, the main (and often sole) legal research tools were the Law Reports index (red and apparently pink, which I always thought was due to fading in the harsh London sun) and my pupilmaster. Colleagues would regularly visit him to ask about a particular point of law. He would cite the name of the relevant case and then walk over to one of his shelves, take down the relevant volume of the law reports that contained the case and present it to the colleague. His advices were written out in longhand to be sent for typing, with rarely any correction or crossing out. My brain is somewhat more higgledy-piggledy, with corrections, deletions and arrows across multiple drafts, all of which are now hidden by computer word processing. While my pupilmaster was clearly very intelligent, I consoled myself with the thought (completely unfairly) that he needed to get out more.

There are many instances of clever barristers raising points I do not think would ever have occurred to me, such as the destruction of the Corporations legislative regime in *Re Wakim* (1999) 198 CLR 511 or establishing that the Federal Minister for the Environment owed a duty of care towards Australian children for the consequences of global warming in deciding whether to approve an extension of a coal mine (*Sharma v Minister for Environment* (2022) 400 ALR 203, even if this was overturned on appeal (2022) 291 FCR 311).

While clever arguments have been brought to me by juniors, solicitors or clients, most seem to have been singularly unsuccessful (see for instance *PPK Willoughby Pty Ltd v Baird* [2021] NSWCA 312 (on damages arising out of a profitable venture), *Cappello v Roads and Maritime Services* (2019) 100 NSWLR 259 (on challenging compulsory acquisition notices), *Banerjee v Commissioner for Police* (2018) 98 NSWLR 730 (on inconsistency between a State Act and the Corporations Act) and *Coshott v Parker* (2019) 268 FCR 288 (on the effect of the *Limitation Act* on a general retaining lien).

I have never been particularly good at remembering case names, let alone the citation or even the facts involved, but I try at least to have an awareness of relevant principles and that there are cases (the names of which escape me) in which those principles are set out. This does mean that I am easily reduced to feelings of imposter syndrome when my opponent and the judge swap case names beyond the scope of the written submissions.

Having said that, I have probably exacerbated this problem by my steadfast determination to retain a practice in several different areas (as demonstrated by the snapshot of cases set out above). I prefer to describe this as the practice of a multi-specialist rather than a generalist, but this distinction is driven by more than semantics.

While I have never done a migration case, I have always enjoyed the variety of practising in different areas. I have found that doing a run of similar cases in the same area (whether for a time or on a more permanent basis) can leave one too comfortable, if not indeed jaded and lacking in inspiration. It can encourage a cookie-cutter, or bowl-the-arm-over, approach to litigation.

On the other hand, a variety of work leaves me feeling stimulated and energised, albeit amplified by a slight terror of always feeling on the edge, if not outside, of my comfort zone. The ability to import concepts and judicial learning from other areas of law can also provide an advantage; and the notion of coherence across different areas of law is one that can be lost if each area of law is treated as a separate, self-contained area of jurisprudence.

As one example of importing ideas from other areas, Brereton JA in *Steinmetz v Shannon* (2019) 99 NSWLR 687 suggested a check as to the adequacy of provision for the purposes of the *Succession Act* 2006 by reference to what the applicant might have received as a financial adjustment order under the *Family Law Act* 1975 (Cth) had a claim been made in the testator's lifetime (albeit that this suggestion was not adopted by White JA and Simpson AJA). Further, some cases simply do not divide themselves neatly into one area: for instance, cases involving issues of family law, estate law, trusts, corporations, insolvency and tax are far from unknown.

Some areas of specialisation operate as something of a closed shop: populated by barristers who were previously solicitors in that area, with solicitors who brief only those barristers. That perpetuates an elitism (not in the good sense of those with the best ability) and a club mentality with jobs for the boys (and girls). It does not reward excellence, but rather connections. As such, it is anathema to equal opportunities. There are many good junior barristers who would excel and thrive in an area if only they were given the opportunity.

When I took my silk's bows in the Family Court, we were encouraged to appear in that jurisdiction even if we had no relevant knowledge or experience: if we needed that, it could be gained from a good solicitor or a good junior.

There is no reason why the same could not be applied to the junior bar. A good junior may not be an expert in a particular field, but may have good (and sometimes exceptional) skills in a barrister's work of research, analysis, presentation and, perhaps most importantly, exercising good judgment. Those skills can be deployed to good effect in any area. The legal knowledge can be obtained from a good solicitor, a textbook, the plethora of electronic resources or more experienced colleagues.

A breadth of practice can also provide practice protection when external forces intervene, for instance allowing a pivot to insolvency work in a recession.

Listening to the Ms Junior speech at the recent Bar and Bench dinner, I was struck by the description of 'the super-junior' by reference to various areas of specialisation. It seemed to me that what was missing was a recognition of the junior who is super in the skills of a barrister, albeit that they may not be the junior of choice or a member of the club in a particular area of specialisation. *Generalist* these days is often used as a term suggestive of a practitioner who is not quite good enough in any one area and not as good as a specialist.

There are many junior barristers, however, who, particularly if they are not part of a specialist club, struggle to establish themselves and to obtain a regular flow of work at all, let alone in one particular area. They often possess the skills that a barrister needs to succeed, but are waiting for the opportunities and luck that most of us need to establish ourselves. They may be generalists or aspiring specialists, but they are still super juniors.

I was heartened at the recent retirement ceremony for Justice Brereton to hear of his encouragement for practitioners to work in and for smaller and regional firms, which provide a greater and broader experience. His practice at the bar, in both breadth and depth, was extraordinary and yet it seems to be regarded as an anomaly rather than something to which at least some barristers can and should aspire.

This is not to say that we should all be multi-specialists or even generalists, but rather that there is a place for practitioners who aspire to such a description. Those who demonstrate exceptional skills in the work of a barrister should be recognised and celebrated as super-juniors, regardless of the area or areas of law in which they may practise. BN