

Admission of Lawyers Ceremony

20 October 2017

Supreme Court of the Australian Capital Territory

Justice Michael Elkaim

1. The Court acknowledges the traditional custodians of this land. We pay our respects to their elders, past and present.
2. The Court today is constituted by the Honourable Justice Burns, the Honourable Justice Mossop and I.
3. Today is a day of change. There will be change for all of you as new lawyers because a gate in the path to your future has just opened. There will be change for the people around you, like family and friends, who will now take pride in your new status and look upon you as having reached a milestone you have been marching towards for some time. It is a change for me because I have been listening to the same case for the last 4 weeks and desperately need the change.
4. Having passed through the gate there are many roads now available to you. Some of you will become solicitors, some barristers and others work in the public service or perhaps within corporations as legal experts. Some of you may have nothing more to do with legal studies.
5. It doesn't really matter which path you follow because whichever one it is you will take with you the benefit of a legal training. Your training, I hope, has taught you to be familiar with the law, to know where and how to find it and to apply its fundamental principles whenever you need them. I hope you have not endured many years of rote learning trying to remember the names of hundreds of cases. I am often asked how I remember the many cases that appear in my judgments. The answer is simple. I don't. I ask my associate to find them.
6. There is actually another way to find cases and it reflects the very essence of our legal system. Australia follows what is called an adversarial system. This is different to an inquisitorial system which is found in many countries in Europe.
7. Under an adversarial system the role of a Judge is to decide between 2, or more, opposing parties. The judge, unlike in the inquisitorial system, does not do any

investigating. When the parties put forward their respective cases they do so obviously with the view to putting their best case forward. They know however that there are limits to the case they are able to present. Not only must it be viable but it must also be honest. If it is not honest it will be rejected and the lawyer who puts it forward will lose the respect of the court.

8. This is why judges rely on lawyers to refer them to the right cases and to conduct themselves in an appropriate manner. The lawyer that loses the respect of a court will find it very difficult to get it back. Please keep that in mind when you enthusiastically submit to a court that the injured plaintiff that you represent will never work again.
9. Returning to the inquisitorial system for a moment, there are elements of it which I actually quite like. As I am hearing a case about what happened at a fabulous location I often think how helpful it would be for me to go to that location and have a chat, perhaps over a cup of coffee, with the locals and enjoy the atmosphere that the plaintiff was enjoying before, for example, the awning came crashing down on his or her head.
10. If I am hearing a case about contractual negotiations that took place in London, Paris and New York I am firmly of the view that in order to understand the negotiations it is important for me to breathe in the atmosphere that surrounded the contracting parties. How can one understand what was going through their minds if one is sitting in a stale courtroom. Anyway we don't have that system so I will continue to dream.
11. I'm not sure when the next admission ceremonies take place. I am also not sure when the new courthouse will be completed. This courtroom is, with respect, old and tired. It has seen and heard many battles and has probably had enough of lawyers at war, forgetful witnesses and distressed members of public. It has seen more than its fair share of the victims of drug addiction and the victims of the drug addicts.
12. I have no doubt however that as it has made its way through the years it has always been revived by ceremonies of this nature. The ceremonies refresh not only the ranks of lawyers but the spirit that exists in every courtroom. This spirit is a vibe that thrives on justice and the capacity of our legal system to produce new lawyers who will enhance the creation of just results.
13. To those of you who will not be practising in court, I hope you will retain the same sense of the need for justice. When you negotiate on behalf of a client or put forward an amendment to a contract I hope you will do so with the attitude firmly

set in your minds that you are being honest, being fair and endeavouring to achieve a just result.

14. And if your careers take you away from the law, please don't forget the law is not a just a lot of rules and regulations but rather a formula for regulating society fairly and guiding our everyday lives.
15. Some people will suggest that we live in a nanny state, or Territory, where the law is overprotective and interferes with our basic rights by telling us when and where we can do things, where we drink, where we drive, what we buy and so on.
16. A lot of these laws may be seen as overbearing. But just imagine if we didn't have them. Coming to work you might decide that being a Monday you should drive on the right side of the road and only stop for green traffic lights. Or why shouldn't we park where there is a space and why should we pay for the privilege of parking in a particular spot. Ultimately there is always a balance and when confronted with the chaos and horror that would attend upon an absence of many regulatory laws, then the overall picture changes.
17. In your career as lawyers, or otherwise, you will often be confronted with issues of the balance between over-scrutiny and the freedom to do what one wishes. In commercial transactions for example, you may confront situations where being 'a bit cute' with the truth may be commercially advantageous.
18. My advice to you in achieving the right balance is to look at the most fundamental law of all. That is, whatever the issue confronting you, decide what it is just and fair. I think if you apply that law you will generally arrive at the right answer to whatever quandary faces you.
19. I hope you will all be able to celebrate your achievement in one way or another. If it involves alcohol please don't drink too much, and definitely get someone else to drive, preferably on the left hand side of the road.