

Legal Practitioners Admission Ceremony

Speech delivered by Justice Penfold

Friday 17 October 2008

On behalf of the Court, I congratulate the newly admitted practitioners. I also acknowledge the traditional owners of this land, the Ngunnawal People. As I am sure you are aware, as a result of today's ceremony, you are now entitled to obtain a practicing certificate and, on doing so, to offer your professional skills to the community as a lawyer. Legal practitioners are, of course, officers of the Supreme Court and we sit, Chief Justice Higgins and I, if not technically as a Full Court, certainly in a full court, to emphasise the fact that this is an important occasion for the court, as we trust it is for you and those who have come to share the occasion with you.

By your admission today you have become members of the legal profession and accepted the privileges and responsibilities the profession attracts. You have attained the goal toward which you have been working for some years. You are entitled to feel very proud, as no doubt do your families and friends. Indeed, that pride may be exceeded only by your relief, and the relief of your family and friends. As the mother of a current law student, and in the lead up to exams, I speak from the heart.

You enter the legal profession at an interesting but challenging time, and at a time when there are more career options than ever before for those with legal skills. This is just as well, because most of you also belong to a generation that, because of demographic and economic changes, as well as changes in expectations, will have to work far longer than your parents and grandparents ever contemplated. However, most of you will have several careers during that extended working life, and you will not need to abandon your legal training in order to do that.

Last week was Mental Health Week in Australia, and it is an appropriate time to point out that from several perspectives, mental health may be a more important theme in your careers than most of you might imagine now.

Every year, in every state and territory, many people with mental illness find themselves involved with the criminal justice system. A 2001 NSW Inmate Health Survey, conducted by the Department of Corrective Services, revealed the following statistics:

- 54% of women and 39% of men in NSW prisons have at some point in their lives been diagnosed as having a “psychiatric problem”;
- 25% of female and 13% of male prisoners are on psychiatric medication; and
- 25% of female and 34% of male prisoners have been admitted to a psychiatric hospital.¹

The reality of the mental health needs of prisoners is likely to be even more dramatic – for many other prisoners, the lack of a diagnosis or treatment will reflect the lack of proper psychiatric assessment rather than the absence of any psychiatric problems.

Dealing with offenders with mental illness presents significant challenges for the criminal justice system. Lawyers may lack the tools necessary to meaningfully assess and diagnose the cause of their client’s offending behaviour. Clients may be unwilling to engage with the counselling and support required to address their problems. Sentencing judges may find in some circumstances the “safest” choice is to sentence mentally ill offenders to full-time imprisonment. Quite apart from any need to protect the rest of the community, the judge may feel that, while incarcerated, an offender has at least some chance of receiving some form of medication or other assistance.

As a result, many defendants with mental illnesses continue to pass through the criminal justice system again and again, going through a “revolving door” from street to court to prison and back again. No one wins when this occurs — not the defendants, not police, not courts, not victims and not communities. If you hope to work in the criminal justice field, you will want to familiarise yourself with a variety of information about mental health, including the many services available for offenders

¹ Butler and Milner, *The 2001 Inmate Health Survey* (2003), pp94-101

with mental health issues. The knowledge and assistance of such services can be invaluable, even while many of them are routinely under-resourced and struggle to find qualified staff.

Mental illness is not relevant only to the criminal system, however. A surprising proportion of civil litigation also involves mental health issues, although often more indirectly. Putting aside the cynical view that no-one of sound mind would ever voluntarily subject themselves to the processes of our courts, it is the case that many civil litigants come to the courts directly or indirectly as a result of mental illness. Members of the class sometimes identified as “querulous” litigants or “morbid complainants”, many of whom are self-represented, make considerable demands on both the court system and on other parties. It is not clear that our current systems and procedures are well-adapted to ensure that justice is done for those litigants, and those on the other side of their matters, in the most efficient and effective way. As well, of course, mental health issues not uncommonly arise in personal injuries matters.

So, a continuing general knowledge of issues and developments in the mental health sphere will certainly stand all of you in good stead in the years to come, as you use your legal skills to serve the community.

Service to the community is one of the great traditions of the legal profession. The service ideal is sometimes obscured by the many other demands placed on lawyers, whether those demands are related to billable hours, efficiency dividends, continuing legal education or other things. Also, as lawyers, you will find that people turn to you, often in times of personal crisis, for your advice and support. You may be surprised at how readily they trust you. They may expect you to be confidant, friend and champion.

Whether because of all these demands or for other reasons, it seems that one of the other traditions of our profession, sadly, is a high level of susceptibility to mental health problems, especially depression. A recent survey of 10 Australian professions found that lawyers were the most

likely to suffer from depression, with 15.2% of lawyers surveyed reporting depressive symptoms.² Recently on the ABC law report, a Sydney-based GP, observed that “the majority of people who need to go to a lawyer are in some form of crisis...and often in some sort of emotional state. So unless the lawyer is capable of some sort of emotional detachment from the client’s emotional state, they can end up taking some of [it], and that of course is not healthy for them.”³ In your work as a lawyer, you may well find yourself, willingly or not, taking on the emotional burdens of others, as well as the direct pressures imposed on you by the varied demands I have already mentioned. It is vital that you do not neglect your own mental health.

It is becoming more common for law firms and other employers to focus on the mental health of their employees, for instance by providing training on how to identify and deal with depression. Those at the private bar, of course, must look to other sources of support, including their professional bodies. Wherever you work, however, if you find that you are having difficulties balancing the many competing demands, I strongly encourage you to seek advice or help from others. In particular, you should never forget that another of the great traditions of the legal profession is that of supporting each other, even while acting on behalf of opposing parties, or competing for work. It is no accident that the proper way of referring to another lawyer in court is “my friend”.

On behalf of the Court, I congratulate you again on your admission today. I hope that your future careers will bring you success, but more importantly that they will bring the personal satisfaction and fulfilment that comes from a feeling that you are, in some small way, making the world a better place.

² Thomson, “Beating the Blues”, (September 2007) 45 *Law Society Journal* 8 p18

³ ABC, “Lawyers and Depression”, *The Law Report*, 25 March 2008, <<http://abc.net.au/rn/lawreport/stories/2008/2195243.htm>> at 15 October 2008