

Address to the Law Society of the Australian Capital Territory 75th Anniversary
Dinner by Master David Harper of the Supreme Court of the Australian Capital
Territory at the High Court of Australia on Wednesday 14 May 2008

Tonight we celebrate the 75th anniversary of the foundation of the Law Society of the Australian Capital Territory.

In 1933, Canberra was still a very small town. It had been founded in 1913, but its development was interrupted by the First World War, and it was not until 1927 that the Commonwealth Parliament sat here for the first time. There had been a flurry of construction activity in Canberra. As well as the provisional Parliament House, now Old Parliament House, East and West Block, the Hotel Canberra, the Kurrajong Hotel and the Albert Hall date from that period, as do the Sydney and Melbourne buildings and the Kingston shopping centre. Residential development was no further than Girrawheen Street Braddon in the north, and Flinders Way Red Hill in the south. The population of the Australian Capital Territory by the beginning of 1927 was less than five thousand.

Cyril Walter Davies, born in Melbourne in 1889 and admitted in 1913, came to Canberra in 1924 to open a branch office of the Commonwealth Crown Solicitor's office within the Attorney-General's Department. He left the Crown in 1927 to open a private practice, initially in Mort Street and a little later in Northbourne Avenue.

The Wall Street crash of 1929, which was followed by the Great Depression, further interrupted the growth of the new capital. By 1933 a number of Commonwealth

departments had been moved from Melbourne to Canberra and the population was growing slowly. William Dickson and Stanley Phippard had commenced practices in Canberra, and a number of Queanbeyan solicitors offered their services across the border, including Henry Deane, FP Woodward and Rex Boardman. A Court of Petty Sessions was established in 1930. The only court available to hear appeals from the Court of Petty Sessions, and to determine matters outside its jurisdiction, was the High Court of Australia, and it is a matter of legend that Sir Owen Dixon once presided over a murder trial exercising that jurisdiction. The present High Court building includes a Courtroom with a jury box to provide for the unlikely event of such a thing happening again.

On the 12th of April 1933, a meeting of the solicitors practising in Canberra resolved to form a society to be called the Law Society of the Territory for the Seat of Government. Its objects were the improvement of legislation in the Territory and the facilitation of the course of professional business. The membership fee was agreed at five shillings per annum. FP Woodward of Queanbeyan was elected president, Cyril Davies vice-president, and WHB Dickson honorary secretary and treasurer. One of the Society's first acts was to seek an appointment with the Attorney-General, Sir John Latham, to urge the establishment of a Supreme Court for the Territory. A bill for the Supreme Court of the Federal Capital Territory was introduced in the Parliament in October 1933 and assented to in December, sitting for the first time in February 1934, an occasion which will give rise to anniversary celebrations early next year.

The Society can take credit for another change in relation to which its role is little remembered. The members of the Society took the view that the title of the Territory, the Territory for the Seat of Government, was clumsy, and that the title Australian Capital Territory was more appropriate than its rival the Federal Capital Territory. As a result of representations made by the Society, the Commonwealth Parliament in 1938 amended the Seat of Government Administration Act to change the name of the Territory to the Australian Capital Territory, and in December 1940 the members of the Society agreed to change its name to the Law Society of the Australian Capital Territory, the name by which it has been known since.

The growth of Canberra remained slow, interrupted again by the Second World War, and the growth of the legal profession in Canberra reflected this. In 1936 CW Davies had become President of the Society, a position which he held continuously until 1964. We can say with some confidence that this record will not be broken, as the Society's Constitution now effectively imposes a three-year maximum term for presidents. In practice most find two years quite enough.

RG Bailey joined Davies in partnership in 1945, and served as secretary and treasurer of the Society from 1949 to 1956. He left the partnership in 1957 to go to the Bar, although the firm name Davies Bailey & Cater continued until 1980. Bill Bailey, now 95, continues to enjoy his retirement in Canberra although I understand that he has given up tennis within the last year or two.

A story is recorded in the history of the Law Society, *Ethos & Ethics* by Susan Mary Withycombe, published in 1993, of a conversation between Cyril Davies and the

President of the Law Society of one of the states of India. Mr Davies asked how many members there were in his society, and the answer was about 3000. The Indian President asked Mr Davies how many members there were in his society, and he replied six. The Indian seemed quite impressed, “six thousand?” he asked “no, no” said Cyril Davies “six members”.

Both Canberra and its legal profession grew more rapidly during the 1950s and 60s. David Crossin came to Queanbeyan in 1952 and later moved to Canberra. Neil McPhillamy came to Canberra in 1956. By the end of the 1950s the population of Canberra had passed 50,000. By the end of the 1960s it had grown to 130,000. These were years of great expansion of the city and of the profession. Firms grew larger, and a number of Sydney firms established branch offices in Canberra.

John Gallop joined Norm Snedden and Allan Hall in 1962 to form Snedden, Hall & Gallop, which I think is the only firm still practising under the same name from that era.

In 1964 Cyril Davies was succeeded as President of the Society by Bryan Meagher, the father of our present Bryan Meagher of Senior Counsel. He served as President until 1967, when he was succeeded by Kevin O’Leary. From time to time solicitors have come together in partnership in something analogous to an unstable chemical compound which under minimal change in pressure or temperature breaks up into its component parts giving off great heat if not a lot of light. Kevin O’Leary was at about that time a partner in one of those firms Martin, Crossin, O’Leary & Barker. A firm with such a name was unlikely to last long and indeed did not, like the later firms of

Colquhoun Murphy Constance Phillips and Vandenberg Reid Pappas & McDonald or my own old firm of Abbott Tout Creer & Wilkinson. The lesson seems to be to restrict your firm's title to fewer than four surnames or egos.

By the end of the 1960s, although there had been a Supreme Court in existence for more than 30 years, there was no roll of practitioners, and there were no practising certificates. The right to practise as a lawyer in Canberra depended upon one's name being on the Register of Practitioners of the High Court of Australia. There was no local legislation regulating practice as a solicitor. The Legal Practitioners Act, 1898, of New South Wales, as amended up to 1913, had some application but there was no local regulatory body. The Society was concerned about persons other than lawyers carrying out legal work in Canberra, and wanted this made an offence. Neil McPhillamy drafted a legal practitioners ordinance in 1963. Staff of the Commonwealths Attorney-General's Department developed further drafts. In late 1966, agreement between the Society and then Attorney-General Billy Sneddon seemed close, but following the election at the end of that year Mr Sneddon was replaced by Nigel Bowen, a former President of the New South Wales Bar Association. Mr Bowen was concerned at the prospect that the Law Society might have regulatory power over barristers, a concept which was anathema to a man brought up in the New South Wales tradition of a divided profession with the Bar as the senior branch. In late 1967 he circulated a draft ordinance which would have restricted membership of the Law Society to solicitors with current practising certificates. This would have excluded a number of then members of the society including barristers, academic lawyers, government lawyers and service lawyers. Attorney-General Bowen remained unmoved. By June 1968 the Attorney General and

the Society were at loggerheads. The position of the Council of the Society was overwhelmingly supported by a special general meeting of members that November. The Attorney-General was not prepared to compromise or to negotiate. The Legal Practitioners Ordinance was gazetted on the 2nd of April 1969.

Bryan Meagher and Kevin O'Leary spoke to the Leader of the Opposition in the Senate, Senator Lionel Murphy. A motion was passed by the Australian Capital Territory Advisory Council, a partially representative but toothless body at that time, expressing support for the Society's position. The ACT was represented at that time by one member in the House of Representatives, and he expressed his support. On the 15th of May 1969 Senator Murphy gave notice in the Senate that on the next sitting day he would move that the Legal Practitioners Ordinance 1969 be disallowed. The motion came on for debate late on the evening of the 21st of May. After the Senate adjourned at 11pm, Bryan Meagher and Kevin O'Leary mingled with a few of the Senators and talked for some time outside Parliament House before going home. They agreed to meet at Parliament House on the resumption of the debate the following morning. That did not happen. Bryan Meagher suffered a massive heart attack and died that night. When the debate resumed the following afternoon, Senators from both sides paid tribute to Mr Meagher. After further debate the disallowance motion was passed twenty-nine Senators to twenty.

A further draft ordinance was prepared within the Department and sent to the Society in September 1969, but events overtook this draft, the Don's Party federal election being held at the end of October that year. Mr Bowen became Minister for Education and Science and a new Attorney-General was appointed, Mr TEF Hughes of Queens

Counsel, another senior member of the New South Wales Bar. A further draft ordinance was provided to the Society. This ordinance, in the face of further objections by the Society, was gazetted on the 13th of August 1970. The new President of the Law Society, Mr John Ellis, immediately called on Senator Murphy to seek his assistance in having parts of it disallowed. On the 29th of October the Senate passed a further disallowance motion, twenty-five Senators to twenty-three.

Another ordinance was gazetted on the 27th of November 1970, but this was again unacceptable to the Society, which was not recognised by the ordinance and was given no regulatory powers. Mr Ellis called on Attorney-General Hughes, who said that he accepted the depth of feeling in opposition to the ordinance and that he was prepared to consider amending it. An amending ordinance was brought into effect by Attorney-General, Senator Ivor Greenwood, in February 1972, giving the Law Society almost complete responsibility in matters concerning the profession. Thus culminated the most turbulent episode in the history of the Society, then or since.

I came to Canberra in August 1970, to work in the Canberra office of Abbott Tout Creer & Wilkinson. The partner in charge of the Canberra office was John Ellis, next month to become President of the Law Society, later for many years a judge of the Family Court of Australia. My assumption was that my posting in Canberra would be for a duration for two or three years. Over the ensuing period of almost thirty-eight years I have learned the danger and unreliability of assumptions, and no longer make them in the absence of compelling evidence.

John Ellis's term as President concluded in September 1973. A year later I was elected for the first time to the Council of the Society, during the presidency of Jim

O'Neill. He was succeeded in 1976 by John Gallop, and I was elected, I think unopposed, as Junior Vice-President. I had a reasonable expectation of three years as Junior Vice-President and three years as Senior Vice-President, to learn the ropes before putting myself forward for the Presidency. In the event, the Senior Vice-President, Maurice Cummins, decided not to stand again after one year, and I found myself Senior Vice-President in September 1977. At least, I thought, I have three years of on the job training for the Presidency. Again, this was not to be. In March 1978, Attorney-General Bob Ellicott offered the President, John Gallop, an appointment as a Judge of the Supreme Court of the Northern Territory and of the Federal Court of Australia. I could hardly criticise him for accepting, but it meant that I found myself President at the age of thirty-four, after a year and a half as Vice-President and only three and a half years as a member of Council. I had to make immediate arrangements to replace the President as leader of our society's delegation to a conference of law societies in Auckland later in the same month, to which I was accompanied by the then Secretary of the Society, Mr Rod Barnett. As you will see, Rod has had the benefit of a great deal more training and experience than I had before assuming the Presidency. It is approaching thirty-three years since Rod first became an officebearer of the Society, about my age when I became President.

The major issue during my term as President was Legal Aid. Until 1978, the profession operated a workable system of Legal Aid, run on a shoestring budget. A Legal Aid Committee which include David Crossin, John Button and Terry Higgins determined applications for Legal Aid and allocated them to solicitors who seemed happy enough to do the work at very modest rates. The money came from interest on trust accounts. In 1978, as part of a lengthy process which commenced with the

Australian Legal Aid Office, an initiative of Senator Murphy as Attorney General in the Whitlam Government, legislation was passed in the States and Territories establishing Legal Aid Commissions. The ACT Commission was to be funded partly by the Commonwealth and partly from interest on trust accounts. The first Chairman of the ACT Commission was Justice Rae Else-Mitchell and the first Director was Peter Sharkey. Regrettably both adopted a confrontational stance towards the legal profession and the Society. Relations between the Society and the Legal Aid Office were poor in those early years. Fortunately they have improved significantly since. I had the privilege of serving as a member of the Legal Aid Commission for a number of years and would mention in particular Chris Staniforth as Director and Ron Bannerman, Robert Todd and Dennis Farrar as Presidents of the Commission, as having been responsible for particularly good relations with the Society and the profession.

At the conclusion of my term as President in September 1980, I remained on the Council, probably overstaying my welcome, for a number of years. I was lucky enough to be re-elected from year to year and remained a councillor until I took up my present appointment in May 2003. All in all I spent more than twenty-eight years as a councillor. It would probably be a good thing for the Society if no one in the future were to make an attempt to break that record.

In those years I served under Presidents David Crossin, John Faulks, Greg Stretton, Chris Crowley, Michael Phelps, Russell Miller, Chris Chenoweth, Anne Trimmer, Robert Clynes, Greg Burnett and Dennis Farrar. The Presidents since I left the Council have been Bill Redpath, Greg Walker and the present incumbent Rod Barnett.

Others over my time who have given distinguished service to the Society have included Bill Baker, who was treasurer during my term as President, Jim Constance, who was secretary during that period, Stuart Pilkinton who was Secretary for a number of years, the late Betty McNee who would undoubtedly have been an outstanding President had fate permitted, Brian Loftus and Louise Vardanega, an officebearer of the Society for the last sixteen years and still in office.

During my early years the Society maintained a small full-time office staffed by Elspeth Bodley and Dorothy O'Donnell. Elspeth pursued legal studies later and has practised as a solicitor at Dickson for many years now. The first Executive Director employed by the Society was Phillip Brown in 1990. By that time ACT self government had come and the demands on the Society had become too much for officebearers and councillors to manage in their spare time. Phillip was succeeded briefly by Tom Holden, then in 1986 by Rob Whitten followed by Christine Harvey, before the engagement of the present Executive Director Larry King whose experience and qualities have been of enormous benefit to the Society.

To adopt an overworked cliché, the Society has punched above its weight at the national level. Since 1975 four former Presidents have gone on to serve as Presidents of the Law Council of Australia: Kevin O'Leary, John Faulks, Michael Phelps and Anne Trimmer. This is quite extraordinary considering that the population of the Australian Capital Territory represents only about 1.5% of the population of the nation, and the members of this Society a similar percentage of the total members of the constituent bodies of the Law Council. On a pro rata basis we could reasonably

expect that our Society might produce a President of the Law Council once or twice in a century.

Perhaps even more noteworthy is the record of the Society in producing, from its presidents and vice-presidents, chief justices and judges. Kevin O'Leary reached the pinnacle of his career as Chief Justice of the Northern Territory. John Faulks is now Deputy Chief Justice of the Family Court of Australia and John Ellis by the time of his retirement was its longest serving judge. John Gallop by the time of his retirement was the longest serving judge of both the Federal Court of Australia and the Supreme Court of the Australian Capital Territory, and acted as Chief Justice of both courts on occasions. Terry Higgins, the present Chief Justice of the Supreme Court of the Australian Capital Territory, is a former vice-president of the Society. It is a record the Society can take pride in.

I have been a member of the Law Society of the Australian Capital Territory for thirty-eight years, a little more than half its existence. For almost the whole of that period, the Society has been a very important part of my life. There is no question in my mind that I have got a great deal more out of my involvement with the Society than I have put into it. It has been a great privilege to have been part of the Society for so long, and a great honour to have been invited to share something of the Society's history with you this evening. In a moment I shall be asking you to stand whilst I propose a toast to the Society and its future. Would you please stand for that purpose.