

Ceremony for Admission of Lawyers

Speech delivered by Chief Justice Terence Higgins

On 16 October 2009

Court 1, 10am

Ladies and gentlemen, newly admitted practitioners,

First of all some apologies and disclaimers. My apologies for the cramped conditions of this courtroom, it's the biggest one we've got and we can't make it any bigger but we are hopeful that at least before this century ends there may be some further facilities made available. That's the first apology and disclaimer. The second is may I congratulate those been admitted on the ease at which their names may be pronounced.

Now that we have completed the formalities I would like to extend a warm congratulations to each of you on behalf of this court and its Judiciary, represented here today by myself and the honourable Justice Gray. There are only two of us today because the others are busy.

I also begin by paying my respects to the Ngunnawal people, the traditional owners and continuing custodians of the land on which we gather this morning. That is particularly important when you consider the nature of our legal structure because the British Crown took possession of this land subject to the rights of the native peoples. It is in acknowledgment of that, that we offer this acknowledgment of the traditional custodians of the land upon which we gather. Now addressing once more the newly admitted practitioners.

Today marks the closing of one chapter of your lives and the start of a new one. As you walked through the doors of the Supreme Court this morning, no doubt after having removed from you all sharp objects and other contraband, you may

have noticed a garbage bin on your left. That's for you to dispose of your concerns about passing the litigation exam, addressing all issues in an ethics essay (and I hope none of you cheated) or getting the trust account to balance for those fictitious characters. After 5 years or so of much blood, sweat and tears, you have made it and those concerns can safely be disposed of. You leave this court this morning as practitioners of the law, and with the ultimate "essays" and "exams" in life awaiting you.

Unfortunately, I suppose these days, there is increased public concern about a lack of access to justice, high costs, long delays and unhappily getting longer and the way in which legal practices impact on these issues. You are now being sent out into a community which has larger expectations of the legal profession but a diminishing expectation of the likelihood that they will be fulfilled. The gap between the law and the community seems to be growing wider and accordingly, the legal profession is under "unprecedented scrutiny."¹

Unlike the relatively straightforward legal system of days gone by, and you probably remember reading about trial by battle from which there was no appeal I understand, it is apparent a massive shift in legal culture has occurred. We don't need to look far to find fierce media attention, irrespective though of the view taken by the Canberra Times as to which matters are noteworthy and which are not, we don't have to search hard to find sharply divided public opinion. Today, lawmakers at all levels are subject to intense scrutiny from various groups in wider society including but not limited to the Auditor General: to issues such as climate change, euthanasia, the financial crisis or genetic engineering. Does that stir up any emotion in any of you? In the coming years, these and other issues will become more pressing for lawmakers and lawyers alike.

It can be difficult, pesky even, being constrained by the ethical and other rules that govern our collective profession. But thank goodness for them. By all means, in

¹ F Shiel, 'Push for Ethics Advisers at Law Firms', *The Age* (Melbourne), 6 September 2002, 7. See also J Cain and K Hammond, 'Tending the Bar: Lawyers are Expected to Act Ethically. Whose Job is it to Ensure They Do?', *The Age* (Melbourne), 18 August 2002, 16.

the conduct of your profession, pursue nothing less than excellence and settle for nothing less. In doing this, be intimately aware of the standards of ethics that govern our conduct as legal practitioners, and I say ours because it governs judges as well, and maintain the level of your own conduct far beyond the minimums required by our disciplinary rules.

The traditional rules of legal ethics and fair play are even more relevant today as legal practice becomes more and more commercially stressed. A tension exists between the traditional features of the practice of the law as a learned profession, and the dictates of modern business practices which impose on lawyers of today obligations to address cost factors and the so-called “bottom line” considerations sometimes referred to as billable hours.

This was reflected many years ago by Sir Gerard Brennan who stated:

The first, and perhaps the most important thing to be said about ethics is that they cannot be reduced to rules. Ethics are not what the barrister knows he or she should do: ethics are what the barrister does. They are not so much learnt as lived. Ethics are the hallmark of a profession, imposing obligations more exacting than any imposed by law and incapable of adequate enforcement by legal process. If ethics were reduced merely to rules a spiritless compliance would soon be replaced by skilful evasion. There is no really effective forum for their enforcement save individual acceptance and peer expectation. However, among those who see themselves as members of a profession, peer expectation is sufficient to maintain the profession's ethical code. Ethics give practical expression to the purpose for which a profession exists, so a member who repudiates the ethical code in effect repudiates membership of the profession.²

You will face many ethical dilemmas throughout your career in the law, those faced by this court are no less onerous. Recently I heard, and rejected, an

² Brennan, Sir G., ‘Ethics and Procedure’, an unpublished paper presented at the Bar Association of Queensland Conference at Noosa, Qld., on 3 May 1992, at 1-2.

application brought by ACT Health to allow doctors to stop providing nutrition and hydration, beyond what was necessary for palliative care, to a 69 year old, mentally-ill man who was starving to death. Parties such as these are your prospective clients.

On a brighter note, your education serves as a passport to endless opportunities; it arms you with “one of the ultimate portable skills”³ and opens doors to rich and varied career paths. The responsibilities of the law are great, but equally so are its rewards and satisfactions. As one of our trans-Atlantic colleagues put it, and I will not try an American accent:

I started in life with the belief that our profession in its highest walks afforded the most noble employment in which any man [or woman] could engage and I am of the same opinion still ... To be a priest and possibly a high priest in the Temple of Justice; to serve at her altar and aid in her administration, to maintain and defend those inalienable rights of life, liberty and property upon which the safety of society depends, to succour the oppressed and to defend the innocent, to maintain constitutional rights against all violations whether by the executive, by the legislature, by the relentless power of the press, or, worst of all, by the ruthless rapacity of an unbridled majority. To rescue the scapegoat and restore him to his proper place in the world - all this seemed to me to furnish a field worthy of any man's [or any woman's] ambition.⁴

With those words, I will finally comment on one of the most important ingredients to your legal education and what has contributed significantly to bringing you all here today. That of course is the love and support of your family and friends. Many are present, not only in the back of the courtroom but practically hanging from the ceiling, this morning and I am sure they take great pride in the step you

³ J Flood, ‘Legal Education, Globalisation and the New Imperialism’ in F Cownie (ed.) *The Law School – Global Issues, Local Questions*, Ashgate, Aldershot, 1999, 131

⁴ Joseph Choate – 21st President of the Chicago Bar Association

have just taken. I congratulate you all once again on your admission and wish you all the very best in your chosen careers.