

Admission of Lawyers Ceremony

19 August 2016

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 Chief Justice Murrell, the Honourable Justice Burns and I.
3. This is a very exciting day. It is exciting for you because you have reached a gateway to your future. It is exciting for your family and friends because of the pride they have in your achievements. It is exciting for me because I have never done this before.
4. When I say it is a gateway to your future I recognise that many of you will take different paths when you leave the court today. Some of you will work as solicitors, some as barristers, some in private practice and some in public service. In addition, some of you will work within companies as legal experts and there may be some of you that will have nothing to do with the law ever again.
5. Whatever the case, today reflects the achievement of completing a lot of study, a lot of learning and the great satisfaction that you will never have to consider a lot of it ever again.
6. I will however say this about all the learning you have done to become lawyers. The important thing is not that you have learnt any particular law, about an assault or a tort, or a commercial transaction, or a bit of the Constitution, but rather that you have become familiar with the law, that you know your way around the statutes and precedents and if you wish, you can find whatever relevant legal principle you may happen to need.
7. As a Judge I am often asked how I can possibly know all the laws relating to matters that come before me. I do not. What I do know is how to find the relevant law.

8. Of course the best way to find out the law in any particular case is to ask the lawyers. We have in Australia an adversarial system. Unlike some countries where there is an inquisitorial system, the court does not conduct any investigation of its own. An example of an inquisitorial judge was recently in Lebanon when you would have noticed in the 60 Minutes kidnapping story that the judge carried out his own investigations and even decided on the charges to be brought.
9. The court decides on arguments between two sides. Therefore the court relies on the lawyers in the two, or more, sides to present the conflicting arguments as best they can.
10. That is why I say that the primary source of the law is the lawyers. To those of you who are going to be lawyers, whether practising as solicitors or barristers, you must always bear in mind that you have a duty to the court to ensure that what you tell the court about the law, and also about the facts in a case is, to the best of your ability, correct. That is why you have taken oaths to be responsible officers of the court.
11. To those of you practising out of the court system, your obligation is the same, to be fair and to be accurate. The law means different things to different people. To some people it is a thing to be avoided. To others it is the source of their livelihood. To many people however it is the template upon which they live their lives. In one sense it may be thought that there are too many laws. We often see references to a 'nanny state'. This is derived from laws which tell us what to do about lots of things, all of the time.
12. Some people say the law is being overprotective and interfering with our basic rights by telling us when and where we can do things. Where can we drink, where can we drive, who can we mix with and what can we say. At the most extreme is it is suggested we don't need any of these laws.
13. Imagine if we could choose which side of the road to drive on and could treat red lights as merely advisory. 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.
14. 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.

15. 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.

16. As you all go off now to celebrate, by having lunch together, or in some other way, don't drink too much, or get someone else to drive on the left hand side of the road, but certainly have a lovely time.