

Admission of Lawyers Ceremony

10 December 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 Justice Refshauge, the Honourable Acting Justice Robinson and I.
3. Today is a gateway into your future.
4. From here you will take one or more of a number of different paths. Some of you will become solicitors, some of you will be barristers, some will go into private practice and others into public entities, like Legal Aid or a prosecution service. There will also be, I am sure, some of you that will have nothing to do with the law in the future.
5. Whatever your paths may be, you can all be very proud that you have reached this stage. It reflects the achievement of completing a lot of study, a lot of learning and the even greater satisfaction that you will never have to consider a lot of it ever again.
6. Some of you will remember the law that you have studied. There are some cases that with particular and usually entertaining facts, are difficult to forget. But in general the details of all your study will fade over time. This is not a bad thing because the real benefit of your study was not the rote learning required to pass assessments and examinations. Rather it was training to become familiar with the law, to know your way around statutes and precedents and the ability to find whatever legal principle you may be searching for.
7. I am often asked how, as a judge, I can possibly remember all the laws that I am supposed to apply. I don't. What I do know is how to find the relevant law. I ask my associate.
8. I also have another very valuable asset. In Australia we have an adversarial system. This is different to many countries, like France for example, where there is an inquisitorial system under which the court will often take its own investigative role.

9. Under the adversarial system, the judge is deciding between the cases presented by opposing sides. There is no difference if the case is criminal or civil, although of course, the standard of proof will be different. But as far as the judge is concerned, there are two or more sides putting their respective positions and the judge makes a decision as to which one is correct. In doing so he or she relies on the submissions made by the parties.
10. This means that the lawyers become the primary source of the law and the Court will depend on the lawyers for their assistance. This is why lawyers must always remember they have a duty to the Court to ensure that what the Court is told about the law, or about the facts in the case is, as best as can be ascertained, accurate.
11. Whatever you do in the future, whether working in the law or not, one principle that I suggest you can take with you is the behaviour of the reasonable person.
12. Often when I travel to London, I take the No. 35 bus from London Bridge to Clapham Junction. It is a pleasant and interesting ride but that is not why I take it. I take it because I am looking for the reasonable man. This man is said to ride on the Clapham Omnibus. He was born during the reign of Queen Victoria but, according to a recent English Supreme Court case, remains in "vigorous health".
13. I don't restrict my observations to men but generally search for the reasonable person. When I see a likely candidate I ask that person a question hoping to get a reasonable answer.
14. So far I have not met the reasonable person, that is the person who can tell me how to drive safely and at what time intervals the grapes that have fallen from a supermarket fruit stand should be picked up.
15. Despite this I am still inspired, not only to find this person, but to act like this person. You see, being reasonable means being prepared to see both sides of an argument and being prepared to compromise; whether it be in commercial negotiations or about the height of a neighbourhood fence. In practical terms it means being fair and being just. And if you take nothing else into your futures other than a capacity to be fair and just, you will have succeeded already.
16. So I wish you well today and into your future. And when you travel home, hopefully after a celebratory morning tea or lunch, if you go by bus, look around you and if you do see the reasonable person please try and behave exactly as that person does.