

Ceremony for Admission of Legal Practitioners

Friday 17 February 2006

Speech by Chief Justice Terence Higgins

Welcome, and congratulations. Today you are admitted as Legal Practitioners of the Supreme Court of the Australian Capital Territory before my brother Crispin and myself. From today you are entitled to apply to the Law Society for a Practising Certificate entitling you to hold yourself out as a solicitor. Just be careful about advertising your legal services in NSW, since that legislature has decided to live in denial of having any lawyers in their population at all, let alone the world's highest density of lawyers. However, do not interpret that to mean that NSW has Australia's densest lawyers.

As I look around the courtroom I notice several things. Firstly, that for once the air-conditioning in this courtroom is almost working. I am obliged to point out that this building was state-of-the art at the time it was built, but then so was the Titanic. Until we receive funding for significant upgrades we will have to weather the building's quirks and deficiencies.

Secondly, I am heartened to see that your friends and loved ones have come to share today with you. I am sure that they are very proud. Take today as an opportunity to consider all the people who have supported you throughout the course of your law education. You are now called upon to serve those same people as an adviser and advocate for their legal rights. If at any point of your career you are faced with an ethical dilemma, or lose confidence in why you embarked on a legal career, remember them and ask what they would expect from you. Of course, if you need professional guidance on how to act you also have the support of the Law Society and your fellow practitioners. Do not be afraid to call them.

During admissions speeches I typically take a critical look at one contemporary issue. If I were to continue that theme, then an obvious topic would be Australia's wheat

deals in Iraq. However, given that we have much of the year ahead of us, I would like to revisit the topics I have considered in my speeches last year and see how they have progressed.

It is no secret that I have always been an ardent supporter of the *Human Rights Act*. I have been vocal in expressing my desire for other jurisdictions to follow the Territory's lead and enact their own human rights legislation. So far, only Victoria has announced an intention to do so. Some other jurisdictions, at least, are considering the issue.

It is a misconception that Human Rights legislation must take the form of an overarching Bill of Rights in order to have teeth. Last year I held that an Act could be interpreted as inferring that a young man had a right to be heard as to whether he would be subject to a Protection Order. The effect of the order would have been to restrict his freedom of movement, and on its face the legislation did not allow the young man to speak in his defence. At first instance he was denied that opportunity. However, by reference to the *Human Rights Act* it was possible to read the legislation in a way that permitted the young man to have a fair hearing before becoming subject to such an order.

Australia's failure to have national human rights legislation puts it behind every common law and western country we traditionally rely upon as exemplars for developments in our domestic law. At least here in the ACT practitioners are slowly working out how to use the *Human Rights Act* for the benefit of their clients. As lawyers you should be confident that this court has always fought hard to protect individual rights. You should never shy from doing the same.

Another topic I am frequently heard to speak about is the War on Terror. I regret to say that as time goes on the more I am vindicated. It is over two and a half years since President George W Bush declared "Mission Accomplished" in Iraq, an action that confused Hollywood with reality. Weapons of Mass Destruction was a lie, had WOMDs existed in Iraq then Australian Wheat Board bribe money would have contributed to their funding, as had the US for Iraq's initial supply for the war on Iran. Many Australians have forgotten David Hicks and some would be surprised to learn

that we still have troops in Afghanistan. And all the coercive anti-terror legislation that we have did not prevent drunken surfies from harassing law-abiding citizens on Australian beaches. Nor would that legislation prevent the publication in Australian press of the anti-Muslim cartoons that have provoked violence elsewhere.

The last theme I will leave you with is this. This week, in Indonesia, it was decided that Australians will pay for their involvement in drug smuggling with their lives. Meanwhile, here in Canberra, it has been announced that a new prison with world-class rehabilitation facilities will be built. There will no doubt be sections of the community who believe that death or life imprisonment is fair punishment for traffickers, and will criticise Canberra's new prison as being a holiday resort.

I would urge a reconsideration of that point of view. Although punishment and public deterrence are important factors in sentencing, it can be forgotten all too quickly that the offender is a human being. Quite often, offending behaviour is a cry for help. We would be disgusted if a doctor decided that it would take less effort to let a patient suffer or die rather than treat him. Why should the law respond to an offender's cry for help by locking him away and throwing away the key? We can be more compassionate and more protective of society's long term interests by encouraging rehabilitation whilst imposing appropriate penalties.

Once more, congratulations on your admission today as legal practitioners of Supreme Court of the Australian Capital Territory. No matter where you find your skills employed, you are now part of a privileged community. My further congratulations to your family, friends and colleagues for successfully supporting you in your achievement. I wish you well for what now lies ahead.