

“Ethics and efficiency: a modern legal dilemma”

Commencement of the Legal Year 2014

3 February 2014

Great Hall, University House

Chief Justice Murrell

Introduction

Good morning and welcome to the procession and celebration ceremony to welcome the new legal year.

I acknowledge the traditional custodians of the land on which we gather and I pay my respects to their elders, past and present.

The commencement of the law year provides the opportunity for lawyers, including the judiciary, to reflect on our professional aspirations and values and to recommit to ethical service of the rule of law before we launch into the hurly burly of a busy year of practice.

The central question of ethics is: What ought one to do?

“Whenever we are faced with this question, we are dealing with ethics. Although this question is straightforward, it is often very difficult to answer. ... It is the process of trying to answer this question, of reflecting on difficult situations, of being true to the idea of who we are and what we stand for, and developing a well-informed conscience that makes us ethical.”

Reflection and the questioning of our place in the greater scheme of things is not the sole province of youth, although in our youth it seems to take a higher priority. For that reason, it may be helpful to look back and recall what it was that motivated us to become a lawyer.

Why did you make that choice? Perhaps you admired Gregory Peck's Atticus Finch in *To Kill a Mockingbird*. Perhaps you were moved by the story of Hurricane Carter, the African American boxer who fought wrongful conviction for a serious crime and was immortalised in Bob Dylan's song *Hurricane* (the man who "one time could-a-been the champion of the world"). Perhaps you fancied yourself as Reese Witherspoon in *Legally Blonde*. Or perhaps you were just better at English than at maths.

I suspect that many of you were inspired to study law because you saw it both as a vehicle to serve others and as a means to earn a comfortable living. And there lies the seed of a conflict.

It is trite to say that a hallmark of any profession is that it seeks to provide a public service. "The practice of the law is a noble calling and not just a job". It is a vocation.

Our professional rules are vitally important. They express the profession's collective judgment as to the standards expected of its members. They serve as a standard of conduct in disciplinary proceedings, as a guide for action, and as a public statement of the profession's commitment to integrity and public service.

However, professional rules are not exhaustive of lawyers' ethical responsibilities. Ethics demands more from us than mere

compliance. It requires a commitment to the spirit of the principles that underpin the rules.

Both at a personal level and at an institutional level there lies a tension between the practice of the profession for profit and the fulfilment of professional responsibilities or ethics. But, as the NSW Chief Justice Tom Bathurst remarked (21.4.12 Commonwealth Regional Law Conference):

... conflict between mercantilism and professional obligations (has) been present since the time of the first legal practitioners ... commercialisation is not inherently bad or evil; it is a different set of means and ends, which both complement and conflict with the means and ends of professional legal practice.

Both within the profession and in a broader and constantly changing public context, we need to recognise and discuss the tension between professional responsibility to public service and business performance.

This tension exists in the government sphere as much as in the private sphere. We are becoming very familiar with government “efficiencies”.

“Public service” does not mean satisfying the demands of legal consumers (including government) or the public at large.

In the words of the former chief Justice of NSW Supreme Court, Jim Spigelman:

[The legal profession]... is not simply the provision of services to the consumers. The consumer/service provider model of economic activity has become a feral metaphor. Its

unthinking application to the legal profession could have serious consequences for the rule of law in this country, unless the centrality of independence of the profession is kept firmly in mind throughout the process.

These days, “efficiency” is often sought to be achieved by requiring an ever diminishing pool of professionals to perform an ever expanding volume of work. It is obvious that critical points will be reached where the quality of life of the professional workers and the quality of their professional work will suffer.

Senior practitioners should accept responsibility for the well being of their junior colleagues, and should not exploit them for profit. Our own physical and mental well being and that of our colleagues must be a high priority.

This year will be my first full year as Chief Justice, provided that I survive.

This year the Court will be trialling new listing initiatives, including central criminal listing, and new civil case flow management practices. I also hope that the New Year will see a strengthening of the Court’s independence.

I encourage you to enter the Year with a renewed commitment to law as a vocation (not just a job), to professional responsibility, and to upholding the independence and integrity of our legal system.

Look after yourselves, look after your colleagues and enjoy your practice of the law.

