

Ceremony for Admission of Lawyers
Speech delivered by Chief Justice Terence Higgins
on 15 December 2006 at 11am (Group 3)

Ladies and gentlemen, congratulations to all of you who have now been admitted as lawyers of the ACT Supreme Court before my brethren, Justices Crispin and Connolly, and myself. Be proud of this achievement. From today you are entitled to obtain a practicing certificate allowing you to offer your professional skills to the community as a lawyer.

Your admission today has given each of you a new role in the community. As lawyers, you are now charged with the task of being the link between all people and their legal rights. At different times you will be called upon to be an advocate, a problem-solver, a freedom fighter, a project manager, an investigator, a counsellor and an advisor. You will be asked to do so, in part, because you are a member of a profession that by reputation is comprised of independent free-thinkers with specialist legal knowledge. This is a badge of honour. It can, at times, be a burden. Let me elaborate.

Being a lawyer may impose conditions upon the way in which a person exercises their democratic freedoms. For example, both legislatures and law societies set onerous ethical and pragmatic obligations in relation to lawyers and legal practice. But quite separate to those formal obligations is a moral responsibility to ensure that the public is kept well-informed about the basic tenets of our law and our legal system.

Why does this moral responsibility exist? Simply because that is what being a lawyer involves. Lawyers, or judges for that matter, should not be accused of straying over the hypothetical line between law and policy by speaking extra-judicially about topical issues even where there is no apparent link to a so-called “legal issue”. Let me provide two reasons for this.

Firstly, because a person does not sign away their right to participate in Australian democracy when they become a lawyer or a judge.

Secondly, because there is no such line between “legal issues” and what might be described as “political issues”. The law has so permeated every area of public and private life that almost every political issue involves some issue of law. Such topics are legitimate matters of judicial and legal concern. For example, the topic of indigenous welfare and reconciliation is inextricably linked to the topic of indigenous justice. The topic of women’s rights and gender equality, or lack thereof, helps explain the low rates of female participation in senior legal ranks, including the judiciary.

Incidentally, I note that of the 93 lawyers admitted today, 67 are female. This has been the trend at admissions ceremonies for many years. Hopefully this will translate to a higher representation of women in senior legal ranks, including the bench. And, no doubt, the federal Attorney-General’s department as well.¹ It is mainly to you that I direct these words.

Executive action that attempts to side-step the Constitutional protection of having a separate legislature and judicature should be scrutinised with caution. It might be said that by allowing David Hicks to wallow in conditions designed, unsuccessfully, to avoid regulation under any Western constitution, the Executive tells the world that it does not care for the Legislature, the Courts and the *Constitution*. This is why the Law Council has felt the moral responsibility to speak out on that topic.

Similar issues arise with the processing of refugees by DIMA off-shore. Or knowingly allowing our youth to carry illicit drugs from Australia to a jurisdiction where they will face death as a penalty imposed by a foreign court under foreign law.

The examples of lawyers and judges speaking extra-judicially on so-called political matters to date are weak examples of the doctrine of separation of powers being breached. For stronger examples, look to how the States and Territories regulate the

¹ Most of the lawyers admitted in this ceremony were at the time employed by that department.

administrative activities of their courts. Speaking for this Court alone, our structural integrity and independence is threatened by the fact that we are administered as a sub-branch of an executive department. The minutiae of our business, such as the hiring and training of staff or judicial education and travel, are each subjected to up-front departmental approval. Judicial decision-making ought not be constricted by or distracted from by red tape. Federal courts are good examples of strong models under which they may be kept accountable for their corporate decision-making whilst still having autonomy about their decision-making processes.

In a moment, you will be leaving this courtroom, and for the first time enter into the community as a lawyer. My congratulations to you on that achievement. Take with you pride in the knowledge that your years of study have culminated in recognition by this Court that you are entitled to participate in the legal profession as a lawyer. And also take with you an understanding of both the privileges, and the responsibilities, that you now bear.

I wish you all a merry festive season and all the best for your future careers no matter where they take you.