



Supreme Court
of New South Wales

IN THE SUPREME COURT OF NEW SOUTH WALES BANCO COURT

ADMISSION OF LAWYERS*

1. Now that the formal part of the proceedings has ended, I would like to warmly welcome you to the Supreme Court of New South Wales. Present with me on the Bench today are two other Justices of the Supreme Court. Together, we constitute the Court that has, in exercise of its jurisdiction, admitted you to practice.
2. As we gather here today, I would like to begin by acknowledging the traditional custodians of the land on which we meet, the Gadigal people of the Eora nation, and pay my respects to their Elders, past, present and emerging. We recognise the longstanding and enduring customs and traditions of Australia's First Nations, and acknowledge with deep regret the role our legal system has had in perpetrating many injustices against Aboriginal and Torres Strait Islander peoples.
3. To all the new lawyers here today, welcome to the legal profession. Today is a day for celebration. You have all worked extremely hard to get here, through caffeine-fuelled nights and obscure problem questions, reading countless wafer-thin pages of textbook and more cases than you can hope to remember. You have entered the world of eggshell skulls, encountered the mysterious "reasonable person" and have understood that the Constitution consists of so much more than "the vibe of the thing".
4. In becoming a lawyer, you have today joined a centuries-old profession with ancient origins.¹ The custom of advocates swearing an admissions oath

* I express my thanks to my Research Director, Ms Rosie Davidson, for her assistance in the preparation of this address.

dates back to the twelfth century.² This Court first admitted lawyers to practice in 1824,³ and by 1830 the names of lawyers were entered onto rolls in this state.⁴ You have now become part of this tradition, almost 200 years later. Perhaps for some of you, or for your family and friends, that is how long it feels like you have been studying. On that note, I am also pleased to welcome those with you today or watching on the live stream. For many of you, the support of your family and friends has been invaluable. No doubt, they have also often been on the receiving end of your finely polished skills of argument and persuasion. I encourage you to take the time to thank them.

5. The oath or affirmation you have made today is a serious one and deserves solemn regard. Whether you work in private practice, at the bar, in a community legal centre or in an entirely different field, you should be known for your honesty, your integrity and your commitment to justice. It is in acknowledgment of this weighty responsibility that we observe today's unique formalities, including the moving of lawyers, swearing of oaths and even our unusual ceremonial robes. On a lighter note, on one occasion some years ago a young member of the audience asked if we were doing Santa photos after the ceremony. Regrettably, we were not.
6. However, although we mark this occasion with formality and tradition, not everything in the legal profession remains unchanging. You will be unsurprised to hear that last year, we had to adapt quite a bit. COVID-19 meant a rapid shift to increased use of virtual courtroom setups and technology, to ensure access to justice continued in the midst of a pandemic. Things didn't always go smoothly, as those with me on the bench can probably attest to. There have been real difficulties to grapple with in terms of

¹ Carol Rice Andrews, 'The Lawyer's Oath: Both Ancient and Modern' (2009) 22(1) *Georgetown Journal of Legal Ethics* 3, 4, 10.

² James A Brundage, *The Medieval Origins of the Legal Profession: Canonists, Civilians, and Courts* (The University of Chicago Press, 2008) 295-300.

³ *Sydney Gazette*, 20 May 1824, 2, available at <<https://trove.nla.gov.au/newspaper/article/2182899>>.

⁴ J M Bennett, *A History of Solicitors in New South Wales* (Legal Books, 1984) 48.

open justice, effective communication and fairness to participants.⁵ And occasionally, a lawyer might even get stuck behind a Zoom kitten filter. But for all the challenges we faced, the impetus is greater than ever before for us to prioritise flexibility and accessibility. Better use of technology and increased working from home arrangements have profound implications for how our legal system interacts with many people, including those in rural or remote areas, those with a disability, medical conditions or carer's responsibilities. As the newest members of the profession, you are at the forefront of innovation in the law, and have a unique opportunity to see through changes so that justice is done openly and equitably.

7. There are, of course, other changes that deserve attention. When we think of the diversity of the legal profession, we encounter the duality that we have come very far, and that much still needs to be done. Though women were originally not permitted to practice, since 2018, women have made up more than half of all solicitors with a practicing certificate in New South Wales,⁶ and currently make up 63% of solicitors under the age of 30.⁷ Women occupy many of the most senior positions in the law, including, of course, the Chief Justice of Australia. However, women continue to face challenges of representation, including amongst judges of this Court⁸ and amongst barristers in speaking roles before the High Court.⁹ It is heartening to see that

⁵ New South Wales Law Reform Commission, *Open Justice: Court and tribunal information: access, disclosure and publication* (Consultation Paper 22, December 2020) [12.10]-[12.19].

⁶ '2018 National Profile of solicitors', *Law Society of New South Wales* (Report, 17 July 2019) 7 <<https://www.lawsociety.com.au/sites/default/files/2019-07/2018%20National%20Profile%20of%20Solicitors.pdf>>.

⁷ 'Practicing Solicitor Statistics', *Law Society of New South Wales* (Web Page, 30 September 2020) <<https://www.lawsociety.com.au/sites/default/files/2020-11/202009%20Practising%20Solicitor%20Statistics%20-%20Sep%202020.pdf>>.

⁸ 'Judicial Gender Statistics', *Australasian Institute of Judicial Administration* (Web Page, 30 June 2020) <<https://aija.org.au/wp-content/uploads/2020/07/2020-JUDICIAL-GENDER-STATISTICS-v3.pdf>>.

⁹ Winsome Hall and George Williams, '100 Years of Speaking: Gender Equality among Barristers before the High Court' (2020) 94 *Australian Law Journal* 960.

the Local Court of New South Wales has almost achieved gender parity amongst magistrates,¹⁰ but we must not be complacent about these issues.

8. There are other noticeable diversity concerns that we must face head-on. Aboriginal and Torres Strait Islander peoples¹¹ and people from diverse cultural backgrounds continue to be alarmingly underrepresented in the legal profession – and particularly within the judiciary and the ranks of Senior Counsel. We must also be alert to barriers to the profession for people from less privileged backgrounds. Law should not be a profession for the wealthy,¹² and the idea that students may be dissuaded from studying law by the cost of a law degree, which this year has again increased,¹³ or because of other systemic issues¹⁴ is troubling. Not just this, but we will only achieve a truly diverse profession when barriers to advancement are broken down, and people from different backgrounds are properly supported in a collegiate and inclusive environment free from harassment and discrimination. These issues are fundamental to a just and transparent legal system, and to the legitimacy of the rule of law. We need diverse representation amongst advocates and judges so that all people who become involved in our justice system can be properly heard and fairly engaged with by a system reflective of our broader community.

¹⁰ Michaela Whitbourn, “Deep reservoir of local talent’: Women now make up almost half of local court magistrates’ *Sydney Morning Herald* (online, 4 February 2021) <<https://www.smh.com.au/national/nsw/deep-reservoir-of-legal-talent-women-now-make-up-almost-half-of-local-court-magistrates-20210201-p56yf1.html>>.

¹¹ ‘2018 National Profile of solicitors’ (n 6) 1, 10.

¹² See Kate Allman, ‘A profession for the wealthy? The enduring problem for diversity in the law’ *Law Society Journal* (online, 1 December 2020) <<https://lsj.com.au/articles/a-profession-for-the-wealthy-the-enduring-problem-for-diversity-in-law/>>.

¹³ ‘Humanities degrees set to double in price as Parliament passes higher education bill’ *ABC News* (online, 8 October 2020) <<https://www.abc.net.au/news/2020-10-08/university-changes-pass-parliament-for-more-expensive-degrees/12743916>>; Lisa Visentin, ‘University fees are changing. How will it affect you?’ *Sydney Morning Herald* (online, 17 October 2020) <<https://www.smh.com.au/politics/federal/university-fees-are-changing-how-will-it-affect-you-20201009-p563ib.html>>.

¹⁴ See Allman (n 12).

9. Despite these challenges, there is real scope for change. There is far greater diversity of background amongst junior lawyers than those who have been around for as long as me – and you only need to look around this courtroom, and then at the paintings on the walls, to see so. You are in a unique position as new lawyers who are entering the profession at a time when, more than ever, your words and actions are having an impact for good. You are being heard and taken seriously when you agitate to correct injustices, whether it be speaking out about unsustainable working cultures, sexual harassment or bullying within the profession, unfair laws or systemic failings affecting our society's most vulnerable. I urge you to continue to speak up for the things that matter. You are the future of the profession and will steer the direction it will take.
10. As a lawyer, you will also need to make difficult ethical decisions at times. With regards to our personal characteristics, lawyers have been the butt of jokes for centuries. Some would say there are, of course, only a handful of lawyer jokes – the rest are true stories. Jokes aside, you must use the tools you have developed to think critically, and not compromise on your fundamental duties to the court and the administration of justice, and other ethical duties you must uphold.
11. Now that you are lawyers, you can get paid to argue, instead of just arguing for free. Of course, there is a lot more to it than that – you are an advisor, a problem solver, a mediator, and an advocate for the marginalised. As you go about your day to day work, remember that you are not merely dealing with the law in a vacuum, but law as it applies to people's lives. For this reason, you must strive to deliver legal services competently and fearlessly, with courtesy and integrity. Justice Gageler, before he was a High Court judge, once said: "You must be prepared to give the same answer to the same questions for the same reasons, no matter who asks the question or for what

purpose or in what context the asking may occur.”¹⁵ This is foundational to upholding the rule of law.

12. For those of you who will practice law, the way you communicate information to others will have profound consequences for access to justice. For a non-lawyer, law is often incomprehensible. One of your roles as a lawyer will be to make law accessible to others, sometimes by deciphering legal complexities, other times by deciphering poor legal drafting, and sometimes both. One thing you will regrettably strike throughout your career is legislation which seems carefully crafted with the object of ensuring that no one can understand it. Your task is not just to understand it, but to explain it clearly to those whose rights and interests are affected by it.
13. As lawyers, we must not keep the law locked up as something knowable only to us. We must come down from the ivory tower. A client reading your advice should be empowered to understand your meaning, not mystified and confused. So, be clear and concise, in your writing and your speaking. Plain English is powerful. Consider: do I really need to say “aforementioned” or “herewith”? Must I sprinkle in that Latin phrase? Should I really use double negatives, tautologies and wordy clauses that take up a whole page? I would suggest the answer to these questions is usually, “No”. The best advocates can make their point simply and succinctly. Some of the most experienced lawyers and judges could also use that reminder. Do not pick up bad habits from those of us who are older and crustier.
14. I also want to speak about failure. I would not be surprised if there were quite a few overachievers and perfectionists in the room today. Even so, at various points of your career, you will make mistakes, some minor, some more serious. When you do make mistakes, your commitment to honesty, integrity and the administration of justice means that you must take responsibility, correct what you can, and learn from those errors. You must fail at times in

¹⁵ Stephen Gageler, ‘2011 Graduation Speech’ (Speech delivered at the Australian National University, Canberra, 15 December 2011)
<<https://web.archive.org/web/20130313180106/http://news.anu.edu.au/2011/12/15/2011-graduation-speech-mr-stephen-gageler/>>.

order to grow. I myself have made many mistakes over the years, too many to remember. What is important is that you try not to make the same mistake twice. Even as Chief Justice, my decisions have, on occasion, been successfully appealed to the High Court. At this point, I am probably obliged to tell you that the High Court is never wrong. But in fact, at times even dissenting High Court judgments have later become the law.

15. Finally, I want to emphasise that your mental health is extremely important. This may sound unexpected at this type of ceremony, but the law is not everything. There may be times when you feel overwhelmed, burnt out or distressed. If you do, you should not be afraid to seek professional help, or to take a step back when you need to. Also remember that the law is a collegiate profession, and in times of difficulty the support of your peers will prove invaluable.
16. Although you might find it hard to believe, I was admitted quite a long time ago. I lost my first case, and I lost many more after that. Throughout my 35 years in practice, I could always count on the other barristers on my floor to share my disappointment at the unfairness of the verdict, the sly tactics of opposing counsel, and most often, I regret to say, the obtuseness of the judge or judges. I hasten to add that I do not include any of my fellow judges on the bench in that comment.
17. On behalf of all the judges of the Supreme Court, I once again congratulate you on your admission and welcome you to the legal profession.
18. The Court will now adjourn.