



Supreme Court
of New South Wales

IN THE SUPREME COURT OF NEW SOUTH WALES BANCO COURT

ADMISSION OF LAWYERS

- 1 **BATHURST CJ:** 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 and particularly to the ceremonial Banco Court.
- 2 Present with me on the Bench are two other Justices of the Supreme Court. Together, we constitute the Court that has, in exercise of its jurisdiction, admitted you to practice. On behalf of my colleagues, can I begin by saying it is always an honour to preside over these ceremonies, and to welcome and congratulate each newly admitted lawyer.
- 3 This is a significant occasion – for the family and friends who are present, and most importantly for those of you who have been admitted to practice. In my mind, it seems as if it is only a few years since I was sitting where you are. Chief Justice Sir Leslie Herron, whose portrait hangs up to my right, spoke to us on a topic that I cannot recall. It is a privilege for me to now offer you a few words of encouragement that I suppose will no doubt also fade from your memories with time.
- 4 You have joined a profession with ancient origins, and one that makes an essential contribution to the economic progress and social cohesion of our nation.¹ In taking an oath or affirmation before this bench, you have agreed to uphold duties to your clients. More importantly, you have accepted a paramount duty to the court. This overriding duty rests on public interest principles; it is to assist the court to do justice according

¹ See *Perre v Apand Pty Ltd* [1999] HCA 36; (1999) 198 CLR 180 at [88] (McHugh J).

to law.² These obligations apply regardless of whether you practice as a litigator, or if you intend this to be your first and final appearance in court.

- 5 Our legal system rests on principles that are encapsulated in the rule of law. The rule of law is a concept that lies at the heart of our democracy; it was described in the Communist Party case as being assumed in our system of government under the Constitution.³ It is a multi-faceted concept that demands, among other things, a commitment to justice, equal application of the law to government and citizens, strict judicial independence, and an ability to access the courts. We are each obliged to preserve and promote these principles bound up in the rule of law.
- 6 While this is an occasion to celebrate your successes thus far, I'm afraid your legal education is not complete. This will not doubt come as a huge disappointment to your family and friends; I'm sure many have felt as if they were studying your courses and sitting your exams alongside you. It may be fair to say your achievements are in some ways also their achievements. I hope you take the opportunity after this ceremony to thank them for their support and congratulate them on their patience.
- 7 Law is a profession that demands constant learning and you must engage with the evolving body of rules that have resulted from centuries of analysis and debate. You may even have the privilege of contributing to that process of evolution through work in government, at a law reform body or simply by advancing a novel legal argument. Many accepted principles today were initially considered to be at best, plainly wrong, or at worst, legal heresy. It is, however, never possible to learn everything there is to know about the law. While I'm sure it is hard for you to believe, I was admitted an exceptionally long time ago. However, I'm still learning new things – or, to be honest, having them pointed out to me. Often, it is by the recent graduates like you who assist us in our duties.

² See *Giannarelli v Wraith (No 2)* [1991] HCA 2; (1991) 171 CLR 592 at 578 (Brennan J).

³ *Australian Communist Party v The Commonwealth* [1951] HCA 5; (1951) 83 CLR 1 at 193 (Dixon J).

- 8 You already know of the dangers of gastropods in soft drink bottles, the value of peppercorns and the importance of boilermakers. However, you might not know about other quirky aspects of our legal system; for instance, specific legislation in this State governs the keeping of bees and deer,⁴ and there is an accepted common law principle that further opening an already open window is not 'breaking' for the purpose of break and enter.⁵ I tell you this because the law is fascinating; it affects all aspects of our lives and will allow you in your work to find humour and express creativity. I also trust there are no aspiring cat burglars in the audience.
- 9 Sometimes there is a tendency at occasions like this to speak in generalisations. However, I'm sure the paths you have taken to arrive here are diverse. You come from different homes, backgrounds and in some cases countries. No doubt your goals for the years ahead are equally unique. The administration of justice will only benefit from the individual experiences and perspectives you bring to your practice.
- 10 It is important that the profession broadly reflect the make-up of our diverse communities to maintain public confidence in the legal system. Diversity has historically been an area in which the legal profession has not excelled, and it remains an issue that demands our careful attention. Through the years there has been much progress, albeit far too slow. Ada Evans was the first woman in Australia to graduate in law. She managed to enrol at university in 1898 while the Dean was away overseas. She then campaigned for many years for legislation to allow her to be admitted.⁶ This is just one story of many. It should remind us of the difficulties faced in the past, encourage us to support initiatives that foster diversity, and celebrate the breadth of the profession today.

⁴ See *Apiaries Act 1985* (NSW); *Deer Act 2006* (NSW).

⁵ See *Stanford v The Queen* [2007] NSWCCA 370; (2007) 70 NSWLR 474.

⁶ See M Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Oxford University Press, 1996) at 47-56 for a detailed account of early women in the legal profession. See also J M Bennett (ed.), *A History of the New South Wales Bar* (Law Book Company Ltd, 1969) at 126-127; The Hon. K Mason, *Lawyers Then and Now* (Federation Press, 2012) at 131-133; The Hon. M Gaudron, Address to the Women Lawyers Association of New South Wales 50th Anniversary Gala Dinner (13 June 2002).

- 11 As a lawyer, you have a duty to serve the community by protecting the tenets of our legal system. This means at times you may have to defend unpopular clients and speak out against abuses of power. This will not be easy; however, legal practice sometimes requires great tenacity.

- 12 There are many occasions where lawyers have shown courage in their work. Thankfully, they are not limited to fictional characters like Lawrie Hammill and Dennis Denuto in *The Castle*. One can think of numerous instances. It was not easy for those lawyers who represented the Communist Party and the other plaintiffs in the Communist Party case that I mentioned earlier. They were arguing for the invalidity of a law that at least at that stage seemed to have the support of the majority of the Australian public. Some of those lawyers including Doctor Evatt, a former High Court justice and then Deputy Leader of the Opposition, were vilified for accepting the brief. Notwithstanding, they played an important role in confirming many fundamental constitutional principles.⁷

- 13 There are many examples of courage and tenacity that have produced remarkable results. The dedication of the lawyers for the plaintiffs in *Mabo* is one that springs immediately to mind.⁸ However, I assure you there is nothing exceptional about these cases. Day in, day out, lawyers are appearing for people charged with serious and sometimes heinous crimes, are giving pro bono assistance, or are providing fearless legal advice, even when they know it will not suit the personal or commercial objectives of their clients. Such lawyers are acting in the finest tradition of the profession, ensuring fairness, justice and equality before the law.

- 14 In joining the legal profession you too will be called on to deliver fearless advice, and may at times need to defend unpopular causes and speak out in cases of injustice. You must also contribute to public discussion

⁷ For a history of the decision, see G Winterton, "The Communist Party Case" in HP Lee and G Winterton (eds.) *Australian Constitutional Landmarks* (Cambridge University Press, 2003) at 108-144.

⁸ *Mabo v Queensland (No 2)* [1992] HCA 23; (1992) 175 CLR 1.

and, where appropriate, correct ignorance in public debate. While these obligations may seem a burden, they are in fact exceptional privileges.

- 15 Finally, I wanted to say a few brief words about failure. The importance of failure is a cliché of milestone speeches like this. That is because failure is a great teacher and, unfortunately, is inevitable for us all. My first professional failure at the bar was one of my earliest cases. A range of factors – many that were, in my defence, outside of my control – meant that I lost what some might call an unlosable case. You too will make mistakes. How you respond and learn from failure is what matters.
- 16 From today you have the great benefit of being a member of a professional community. When clients are demanding – and they generally are – or you are having difficulties with your work, the support of your peers will be invaluable. I was a barrister for some 35 years and over that time I lost my fair share of cases, certainly far more than I think I should have. The other barristers on my floor could always be counted on to share my disappointment at the unfairness of the verdict, the sly tactics of opposing counsel, and most often, the obtuseness of the judge.
- 17 For all the appalling lawyer jokes you will have to endure, you are today joining a profession that is held in high regard. However, any distinction related to being a lawyer is merely a reflection of the central significance of the law. We are each custodians of the legal traditions that underpin our society. It is for this reason that we mark today's occasion with the ceremony you have just witnessed. Believe me, I am not wearing this wig because it is comfortable, much less because it is fashionable.
- 18 On behalf of the judges of the Supreme Court, I congratulate you on your admission and wish you the very best as you embark on what I hope will be a long and fulfilling career in the law.
- 19 The Court will now adjourn.