

- 1 Ms Everett (President of the Law Society), members of the profession, guests one and all. Thank you for inviting me to speak on this important annual occasion at which we recognise the excellent work of the law society and the individual achievements of its members. I wish to convey my particular congratulations to the ‘golden oldies’ who have been members of the profession for 50 years.
- 2 I only managed six weeks as a solicitor before my admission to the bar. The transition may have had more to do with my less than adequate filing skills than anything else but that is a matter upon which I beg you not to speak to my associate. I trust, however, that notwithstanding my fleeting experience with the role of a solicitor, I may be able to usefully occupy your evening for the next 15 minutes or so.
- 3 In 1964, the year in which this year’s ‘golden oldies’ commenced practice, the landscape of the legal profession was very different from the one in which we operate today. *The Law Society Journal* had entered circulation only one year earlier, in 1963. The Journal was a new haven. It provided to the profession a means of communication, a channel for the expression of views on what the profession was and what it ought to be. It was, I believe, the only source of accessible continuing legal education.
- 4 Thumbing through those early editions of the Journal for insights into what the profession was like at that time, I came across a letter to the journal in September 1964, written by a member “*B. Watchful*”, discussing the public image of the profession. B. Watchful wrote that he (or was it she?) was in favour of efforts to improve the image of the profession and, I quote, that we should aim to be “*regarded as up to date, businesslike and efficient, as opposed to being hair-splitting, legalistic Dickensian fuddy-duddies*”.<sup>i</sup>

- 5 To achieve that end, B. Watchful advocated the abandonment of the manila folder tied with pink tape and lauded the use of the steel filing cabinet, “*prominent (in business) wherever one goes*” with its “*flat almost vertical filing system*”, which he counselled would eradicate forever the dog-eared legal file. I am able to report that judge’s chambers now have steel filing cabinets. The difficulty is that lever arch folders don’t fit. They remain lying flat and uneven on the wooden shelves of old.
  
- 6 We have bested the US Supreme Court, which used carbon paper to exchange draft judgments until as late as 1969.<sup>ii</sup> The New South Wales Supreme Court is, I think, probably the last bastion of the carbon papered document, although, being such a precious commodity, we restrict its use the appearance sheet.
  
- 7 The modernity for which B. Watchful longed in 1964 is an articulation of the fact that the practice of the profession, at any given point of time, is a product not only of its history but of the society in which it operates. Not only has the law office changed in concept, the manner of the practice of the law has changed radically, as has the composition of its membership. The modern law firm in a city like Sydney invariably has a national, or at least a multi-state presence, and increasingly has international connections.
  
- 8 Badging has become important. Recently, a group of barristers decided to break with their former chambers and operate as an independent group. They hired a market research consultant to develop a new name for the new chambers. Some little time and some few thousand dollars later, the new name was found. The new chambers are called “*New Chambers*”. The marketing consultant was right. Every solicitor in this room now knows of the existence of a new set of chambers called New Chambers.

But even this has an historic underbelly. In 1379, a new college was established in Oxford, named, with some precision, New College, and now one of the oldest in Oxford.

- 9 The urge to brand and rebadge underpins a more fundamental change, as every aspect of the economy in which law is practiced has become globalised. Even those areas of practice that might be considered essentially local can be impacted by global or international factors. Two examples exemplify the point. Australia's international obligations under the Hague Convention<sup>iii</sup> impact upon the decisions that are made in respect of children who are taken overseas or brought here from overseas. So the family lawyer, in fact, also needs to understand basic precepts of international law. Asbestos litigation was potentially and may still be affected by the manner in which Hardies restructured itself to move offshore.
- 10 There are other changes, so familiar to you that I will light upon but briefly. 100-200 plus partnerships; incorporation; stock exchange floats. However, the stunning statistic is that notwithstanding the apparent predominance of the large law firms, the law has remained the province of the sole practitioner (87.3 per cent of all firms in 2013) and smaller partnerships (10.6 per cent of all firms).<sup>iv</sup> This raises challenges of a different nature. It raises the challenge of efficiency and, in particular, of the ability of the smaller practitioner to operate within a complex environment where the court demands that litigation is to be conducted in a "*just, quick and cheap*" manner. And there is always the terror of isolation.
- 11 The composition of the profession has diversified significantly. We know that, but it is sobering from time to time to understand just how much the profession has changed. In the edition of the Law Society Journal in which

B. Watchful's letter appeared, the names of the individuals who were admitted to the profession on 29 May, 22 June and 24 July 1964 were recorded.<sup>v</sup> Of 44 admittees, there was a sole female.<sup>vi</sup> Today, women constitute 47.8 per cent of the profession.<sup>vii</sup> But it is the increase over time that I found staggering: the increase of women in the profession has increased by a 508 per cent since 1988.<sup>viii</sup> Even taken over a shorter period, from 1994 until today, the growth rate has been 283 per cent since 1994.<sup>ix</sup>

- 12 What have women contributed, besides great Presidents of the Law Society and Bar Association? I was appointed to the bench in 1993 at the time when there was a raised consciousness of gender issues. This was apparent in a number of ways, including in the use of language. Judges would groan behind closed doors as to how to make a sentence flow using "*him or her*". The current generation of tippies simply cross all that out and use the plural. Some say they just don't "*get grammar*". But in reality, the him/her style of gender neutral language has been relegated to its proper place in legal history: as one of the great non-issues of last century. The angst at the time, however, was considerable and produced some interesting life vignettes.
  
- 13 In September 1993, the Attorney General issued a discussion paper on appointments to the judiciary, in which his opening broadside was at the male dominated, Anglo-Saxon judiciary. My copy of the discussion paper was directed to "*Mr Justice Beazley*". I complained. I received a handwritten, personalised invitation from the Attorney to attend the opening of the new Federal Court building in Brisbane. It was again addressed to "*Mr Justice Beazley*". To complain was clearly futile, so I decided that the best weapon available was "*exposure*". Apparently, I said something in my next response which had the Attorney's First Assistant Secretary on the telephone begging me not to ring *Column 8*. That simply

would not happen today. The whole matter would have probably gone viral on receipt of the first communication.

- 14 Although so much of that is all so last century, only 10 years ago, I received a letter from a would-be author of a book of Miscellany-type content seeking contributions of judicial anecdotes. The letter stated that the author had been directed to me personally by the Chief Justice. The letter began, "*Dear Sir*". I responded:

"Dear Sir,

Thank you for your letter ... Perhaps your first anecdote could come from you. My first name is Margaret!"

The response came, "OOOOPs" and thanking me for lacing my response with such good humour. I would have labelled it something else (judicial sarcasm – rarely used, of course), but sometimes blinkers are just too heavy.

- 15 The Court in which I have served for so long is a wonderful Court. I trust I make an appropriate contribution. Every now and then, however, there is a slip up. There was an occasion when, having pointed out such a slip in language in a draft judgment, I was thanked profusely, with the comment, "*After all, Margaret, that is what you are here for*".

- 16 The other great change is in the manner and style of our communications. The law scoffed at plain English. But at least it has eradicated the arcane writing styles of old. By way of example, I have correspondence between two solicitors in 1972 regarding the completion of a real property transaction. Two paragraphs sufficiently convey the style:

"The Mortgagors' authority respecting disposal of the advance noting that at completion we shall by endorsement thereon confirm our oral request when appointing completion herein."

17 The letter concluded:

“May we at the time of your acknowledgement hereof be favoured with your advice of your convenience to appoint completion herein.”

18 We may laugh, but language and its use are fundamentally important. For the lawyer, and therefore the community, it is at the core of statutory interpretation. Statutes are increasingly governing our society. As I wrote in *Norrie v NSW Registrar of Births, Deaths and Marriages*:

“Questions of the meaning of words and their usage involve an understanding of the function of language and the way it develops. Whilst the Court has no expertise in that matter, it can be readily accepted that language is a means of communication of observations, ideas and emotions. It provides a basis upon which a body of knowledge can be organised, classified and understood. As ideas and knowledge develop, so does language. This is a reflection that language is a dynamic process that develops, evolves and changes. Sometimes, words fall into disuse as other words take their place. The word ‘*hermaphrodite*’ may well be an example, as it appeared from the material presented to this Court that the word may be falling into disuse and the word ‘*intersex*’ is being used, at least interchangeably, if not completely in substitution for, that term.”<sup>x</sup>

19 Language is the embodiment of our thought processes. If language is focussed around a single entity, if it identifies one group in society, if it is the language of a simple matrix, the thinking behind it must be similarly narrow and blinkered.

20 We are not a monochrome society. We are a society of races, of religions, and of more than two specific genders.<sup>xi</sup> So when looking back on history, it is important to ask, “*Why was it ever thus?*” That question is not confined to the gender issues about which I have spoken. The question must always be: “*Why do we operate as we do? Do we, as a profession, resist the realities of the society in which we function?*”

- 21 The great thinkers of the world know that great insight is about asking the right question. At a recent mentoring forum for female law students, a partner of a sponsoring law firm asked the all-female panel how law firms could best 'make way' to allow their solicitors to have maternity leave or study leave that took them out of the profession for a year or so. That was the wrong question. It was a non-question. The question should have been, why do we, as a law firm, require a commitment that does not permit members of the profession to function as members of the community? Why do young lawyers work 15-20 hour days and earn in real terms something in the order of some few dollars an hour?
- 22 I suggested that perhaps he could take back to the firm a proposal whereby after 10 or 15 years of service, lawyers were given the opportunity to study for nine months to refresh the mind, to do something to stroke the soul and rest the body. I made a like suggestion to the editor of *Lawyers Monthly* which promotes a series of awards for lawyers: best partner, best pro bono lawyer, best small firm, best dispute resolution firm and the like. My suggestion was that next year there should be an award for the firm that provides reasonable working hours for young lawyers, and I am not talking about a 40 hour week. But there has to be something between 40 and 100 which is reasonable. If that was done, there might be more legal jobs available and young lawyers, indeed perhaps all lawyers, not be subject to the stresses that are a significant feature of modern legal practice.
- 23 In 2003, in a speech addressed to government lawyers, I began by observing:

"The last few years have been big years for Government, for business and for the community at all levels. There are issues of national security in ways which are unprecedented in our lifetime. There has been the HIH collapse with reverberations through all

sectors of the community. There have been corporate regulatory issues.

The most cursory review of history reveals that difficult social and political times are productive of difficult legal times. Although the seeds are sown in the period of turmoil the legal implications are often not worked out until many years later, and often those legal implications are extended far beyond the scope of the original problem.

- 24 With the GFC and the introduction of amendments to national security legislation, such as the Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014, these words are very much applicable to today.
- 25 So (and perhaps unfortunately), some things never change. But what of the future? B. Watchful was onto this 50 years ago, asking rhetorically: “[a]re we traditionalists wedded to customs of longstanding, regardless of their faults?”<sup>xii</sup> Like all legal questions the answer is “yes” and “no”.
- 26 We know that Technology will govern. There is, and will be, e-filing. Bail hearings will continue to be done by video link. One’s late night television viewing will allow you to see a re-run of every court case in the State.<sup>xiii</sup> The National Legal Profession may encompass more than two states and it may not take 30 years to achieve it.<sup>xiv</sup> Sydney should become the centre of alternative dispute resolution in the Southern hemisphere – not only the centre in the southern hemisphere, but for the southern hemisphere.
- 27 Change involves energy, forethought, inspiration and hard work. The right questions for us as a profession is not whether we are up to it. It is what needs to change, what can change and how do we do it? What is needed is the dynamic dualism of individual responsibility and collegiate implementation.

- 28 At the end of the day, however, the law is about society and the people in it. The contribution made by the profession to our society in all its aspects is enormous: from the provision of high quality legal service to the depth and breadth of pro bono work. That is why the profession endures and is its enduring legacy. Technology may change, but not our core values.
- 29 For those who have given 50 years of that service, you are acclaimed and toasted.

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<sup>i</sup> B. Watchful, "Correspondence" (1964) 2(3) *Law Society Journal* 57, 57

<sup>ii</sup> RM Mersky and K Percy, *The Supreme Court enters the Internet Age: The Court and technology* (1 June 2000) LLRX.com <<http://www.llrx.com/features/supremect.htm>>. See also M Grabowski, "Are Technical Difficulties at the Supreme Court Causing a 'Disregard of Duty'" (2012) 3(1) *Journal of Law, Technology & the Internet* 93

<sup>iii</sup> Hague Conference on Private International Law, *Hague Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, Hague XXVIII

<sup>iv</sup> Urbis, *2013 Profile of the Solicitors of NSW: Final Report* (December 2013) Law Society of New South Wales, 18

<<https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/823347.pdf>>

<sup>v</sup> B. Watchful, "Correspondence" (1964) 2(3) *Law Society Journal* 57, 58-59

<sup>vi</sup> *Ibid*

<sup>vii</sup> Urbis, *2013 Profile of the Solicitors of NSW: Final Report* (December 2013) Law Society of New South Wales, 22

<<https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/823347.pdf>>

<sup>viii</sup> Law Society of New South Wales, *The Advancement of Women in the Legal Profession Project* (2013) Law Society of New South Wales <<http://www.lawsociety.com.au/ForSolicitors/advocacy/thoughtleadership/Advancementofwomen/index.htm>>

<sup>ix</sup> Urbis, *2013 Profile of the Solicitors of NSW: Final Report* (December 2013) Law Society of New South Wales, 4

<<https://www.lawsociety.com.au/cs/groups/public/documents/internetcontent/823347.pdf>>

<sup>x</sup> *Norrie v NSW Registrar of Births, Deaths and Marriages* [2013] NSWCA 145, [176]

<sup>xi</sup> *Ibid*

<sup>xii</sup> B. Watchful, "Correspondence" (1964) 2(3) *Law Society Journal* 57, 58

<sup>xiii</sup> *Courts Legislation Amendment (Broadcasting Judgments) Act* 2014

<sup>xiv</sup> See Law Council of Australia, *Blueprint for the Structure of the Legal Profession: A National Market for Legal Services* (July 1994) Law Council of Australia

<<http://www.lawcouncil.asn.au/lawcouncil/images/LCA-PDF/a-z-docs/BBLUEPRINT.pdf>>