

THE UNIVERSITY OF SYDNEY

GRADUATION CEREMONY

7 MAY 1999

The Honourable A M Gleeson AC

Chief Justice of Australia

The University of Sydney has paid me a great compliment by conferring upon me the honorary degree of Doctor of Laws. May I express to the Chancellor and to the University my deep appreciation.

May I also express my warmest congratulations to all of you upon whom the University has today conferred degrees, or to whom it has granted prizes, honours and distinctions. You are all entitled to be proud of your achievements. Many of you are accompanied on this occasion by family and friends, who also take pride in what you have done. Some of you may come from families with a long history of association with the University, but I imagine that most of you, like me, are part of the first generation who have had the advantage of tertiary education. In many cases, the fact that you have been given that opportunity, and have been able to take advantage of it, is a result of support from others who have not had a similar opportunity. Many of those who have come with you today, I am sure, are entitled to feel that they share in your success. Occasions such as this are intended a tribute to them also.

My remarks are directed to all of you, but they may have particular relevance to those who are graduating in Law. Most of you have taken degrees in the expectation that you will soon enter upon the practice of a profession. It is the concept of professionalism that I wish to address.

It was a lawyer of the 17th century, Sir Francis Bacon, who was then Solicitor-General of England, who made the famous observation that every man is a debtor to his profession. He wrote that in a Preface to a book entitled "The Elements of the Common Laws of England". He was explaining why he had written the book. He said that there were two ways in which a person might seek to repay the debt of which he spoke. The first was "by the honest and liberal practice of (the) profession". The second was by seeking to develop the science which constituted the foundation of the profession.

What is meant by the honest and liberal practice of a profession? In what ways, if any, is it different from the honest and successful conduct of a business?

To modern ears, sensitive to anything that suggests inequality, or what is pejoratively called elitism, the concept of a profession, whether applied to law, or medicine, or teaching, may sound antiquated and even slightly embarrassing. In truth, there are some aspects of the idea that are outdated and need revision in the light of current circumstances. However, it would be a great pity if our reluctance to use a word were to result in the loss of a value which the word expresses.

There is uncertainty in the community as to the role of the professions, and as to what we are entitled to expect of them. Both inside and outside the legal profession there are some who say that we should now

accept that the practice of law is a business, like any other. Lawyers are positively encouraged to engage in marketing practices which, not so long ago, were regarded as unethical. When I was admitted to the New South Wales Bar, for a barrister to put his or her name on a letterhead was regarded as inappropriate self-promotion. Now the Bar Association publishes directories of barristers, and members of the profession press on the public details of their mobile telephone numbers. The application of competition policy to what is now called the market for legal services is seen as the means by which the needs of the public may best be satisfied.

These ideas appeal to many people, and have a good deal to commend them. In some respects it is desirable that lawyers should be more business-like. It should be acknowledged that some of the traditional rules of professional ethics owed more to a desire for a quiet life than to a commitment to the public interest. There was also a tendency to confuse ethics and etiquette. In 1963, newly admitted barristers were solemnly warned against offending judges by wearing light coloured trousers to court. The possibility that some of them might want to wear skirts was not thought worth mentioning. Competition promotes equity within the profession, and, through its effect on the level of prices for legal services, assists access to justice.

Nevertheless, I am convinced that if we abandon the idea of a profession, and accept that pursuit of financial reward is the primary objective of legal practice, the public, and lawyers, will have lost something of substantial value. At one level, the point could be made sufficiently by saying that anyone who thinks the public interest will be served by allowing lawyers to follow the dictates of self-interest has never met a lawyer. But there is more to it than that.

Justice Sandra Day O'Connor, of the Supreme Court of the United States said in *Shapero v Kentucky Bar Association* (1988) 486 US 466 at 488-489, that one thing that distinguishes a profession from other equally respectable occupations is that membership of a profession involves adherence to standards of conduct which cannot necessarily be enforced by legal compulsion or as a result of market discipline. Membership of a profession entails privileges. Members of the legal profession have a monopoly upon the right to represent litigants in court for a fee, and to perform certain other kinds of service. Members of the clergy, teachers, medical practitioners, and other professionals are given similar privileges. In return, the community expects that they will acknowledge obligations and responsibilities which override considerations of financial reward, and which are not necessarily enforceable either by legal sanction or by the practical constraints of the market place. The conferring of privilege and the acceptance of responsibility are two sides of the one coin.

Of course, human nature being what it is, not all members of professions live up to their ideals. This is conspicuously true of lawyers. An American scholar, Professor Rhode, noted that for more than 2,000 years commentators have been remarking upon what they saw as declining standards of behaviour amongst lawyers. The legal profession seems to have been permanently in decline. She said that if there ever had been a fall from a state of grace in the profession, it must have occurred at a very early stage in its history.

Even so, the fact that we find it difficult to live up to our standards is not a reason to abandon them. All professions, including the clergy, have their notable failures, but we should not overlook the successes, often quiet and unpublicised, that are achieved, and the good work that is done, day by day, by women and men honourably pursuing their calling.

We live in a society which measures success by financial gain, and which measures achievement by wealth and social status. We are not encouraged to regard ourselves as debtors of the kind referred to by Sir Francis Bacon. On the contrary, we live in a rights-conscious society which encourages us to regard ourselves as creditors, aggressively and constantly demanding, and if necessary suing for, payment of what we claim is due to us. Everybody, it seems, owes us something, and our aim in life ought to be to collect it. Concern for human rights is most valuable when it reminds us of the need to protect the rights and interests of minority groups, the underprivileged, the unpopular, people whose legitimate concerns are at risk of being swept aside by a majority. An Australian barrister, and Prime Minister, Sir Robert Menzies, once wrote that a lawyer is never seen to better advantage than when representing a client against whom every man's hand is turned. However, concern for human rights is misdirected if it merely encourages us to the relentless pursuit of our personal interests, ignoring responsibilities. A world in which the strong take what they want, and the weak accept what they must, might satisfy the dictates of competition policy, but it knows little about respect for human rights or dignity.

It is not only the public who will lose if professions become mere business associations, and abandon the idea that their members have obligations of service overriding considerations of personal financial advantage, or commitments to standards of behaviour beyond the bare minimum of what is enforceable by legal sanction or by commercial necessity. The members of the professions also will lose.

What Bacon described as the honest and liberal practice of a profession can also be a source of personal fulfilment. There are plenty of opportunities for lawyers to practice their profession liberally. Many lawyers, including young lawyers, perform voluntary work providing services to people who cannot afford to pay legal fees. Many practitioners regularly give their services at no charge or at reduced rates, and much of the work funded by the legal aid authorities is carried out at rates substantially below market rates. Some successful practitioners regularly take on cases without the expectation of a fee. Working for the maximum number of billable hours never has been, and I hope never will be, regarded within the profession as the mark of achievement and distinction.

Nobody entering any profession is entitled to regard it simply as a way of making money. This morning's splendid and colourful occasion, held in these beautiful surroundings, marked by the presence of distinguished scholars, and of numerous relatives and friends, was not arranged for the purpose of enabling the Chancellor of the University to present to each of you a licence to make money. If testamurs were nothing more than that they would be distributed by email.

All of you who have graduated this morning will have an opportunity to make an important contribution to the community, and also to achieve personal satisfaction, by the honest and liberal practice of your respective professions. I congratulate you all and wish you every success in your future careers.