

Ceremony for Admission of Lawyers

**Speech delivered by Chief Justice Terence Higgins
On 16 February 2007**

I welcome you on behalf of my brethren Justices Crispin and Gray. I acknowledge that we are gathered on the traditional land of the Ngunnawal People who for centuries nurtured and were nurtured by this land.

Congratulations to all of you who are now admitted as lawyers of the ACT Supreme Court. From today you are entitled to obtain a practicing certificate allowing you to offer your professional skills to the community as a lawyer. It will no doubt serve as a reminder of the limitation of your skills that the practicing certificate you are entitled to is a restricted one.

What does this mean for you? Well, you will now be trying to convince a judge or magistrate of the merits of your legal arguments rather than a lecturer. Further, your admission places you in a most unique and valuable role in our society. You have become advocates of the fundamental principles of the law.

The fundamentals of our profession are simple tenets, which have long and proud traditions dating back generations. For example, the Greek philosophers, Sophocles and Aristotle were in 500 BC, pronouncing the equitable doctrines of natural justice and procedural fairness that now guard against arbitrary or unfair administrative decision-making. The doctrine of *Habeas Corpus* which protects against imprisonment without lawful reason took written form in 1215 via the *Magna Carta*. These strong and powerful ideas have formed the bases for revolutions that liberated man (and woman) and changed our world forever.

Given their antiquity, upholding such principles should now be a conservative value. Yet in this brave new world, captivated by an era of neo-conservative interpretation, leaders of communities and indeed nations have tried to create

a belief that these principles must be derogated from for our collective security. They fail to see that the ideas of civilisation and arbitrary detention are antipathetic to each other. As lawyers you must now advocate for these historic and rewarding traditions to be upheld without exception.

Do not be afraid to question the tactics used by authorities. Continue to ask those questions for, as David Hicks' legal team have shown, if you ask long enough people will listen, eventually. The answers you get, however, may not be the ones you were hoping to receive. As has again been shown by the responses to David Hicks' legal team. Nevertheless, ask questions and, as this court also demands, demand high ethical standards.

On a good day taking up such a fight will make you a champion of justice. On other days it will seem to place you on the side of the unpopular and on occasion it may leave you feeling like your work is without value or appreciation at all. In these trying and testing moments do not hesitate to call on your colleagues or the Law Society or the Bar Association and ask for advice. Use the support of your family and friends who surround you today. Look for the humanity in the law in whatever area you practice. That may be hard at times, for example if you are working in commercial leasing, but keep looking I assure you it will be there even as you convey your 50th car parking space for the month.

When you are in practice remember that though for you the law is a creature you come into contact with daily and its use as a weapon in battle may excite you, for your clients, particularly the most vulnerable, the law will seem to be a fearsome beast, with big teeth and bad breath. (This is not a reference to any actually lawyers). Do not, however, forget to act with humanity. Always remain advocates for the principles which are the foundations of our profession and, if I may be so bold as to say, our civilisation. Such action will also help put an end to those terrible jokes about lawyers, which seem to concentrate on their greed and lack of humanity.

A fine advocate of the law and humanity was former Justice John Kelly, who passed away in December of last year. On the 30th of January of this year this Court held a ceremonial sitting in his Honour's memory. I recall him saying to me, on my succeeding him as a Judge of this Court, that if I was ever in any doubt as to which was the appropriate sentence I should choose that which was the less harsh. Even those guilty of most appalling crimes would have their innate humanity recognised and respected by Justice Kelly. Punishment in his Honour's eyes was not vengeful but rehabilitative. By pushing aside the fundamentals of the law our political leaders have not only disturbed the foundations of justice but also obstructed the path of rehabilitation for many offenders.

The concerted attacks upon the principles of the law and the repetitious 'law and order' campaigns being run by various groups of society, are not only an insult to our intelligence but, a major cause for concern. In recent times we have seen the erosion of individual rights, the silencing of dissent and debate and attempts to undermine judicial independence. To paraphrase my New South Wales counterpart Chief Justice Spigelman, it appears that there are members of the executive branches of various governments who believe judges should be treated like public servants, subject to a bureaucratic criterion of performance.

I am of course concerned that such views may be seen as contributed to by the decision of the Department of Justice and Community Safety to offer this Court's former Registrar a 12month contract containing quarterly performance reviews. It should be of concern to all that this Court's most regular litigant, the ACT Government, would seek to subject a person with a quasi-judicial function to such unreasonable and intrusive oversight. Just use the "say it out loud" test: How would you feel, as a litigant on the other side, to hear the Registrar say, "Sorry, I have to adjourn now for my quarterly performance review."

However let us not dwell on the negatives. Let this new year, your first as a bona fide lawyer be one of excitement for all the right reasons. I hope you

follow your passions and may your advocacy contribute to the maintenance of the laws fine traditions. My congratulations once again to you and those who have supported you throughout your studies. I wish you all the very best in your future careers wherever they may take you.