

Speech given at Law Faculty graduation ceremony at Queensland Institute of Technology on 5 February 2002

Chancellor, Vice-Chancellor, Acting Dean of the Faculty of Law,
Members of the Academic staff, Distinguished guests, graduates, ladies
and gentlemen.

Thank you for your kind invitation to speak to this year's graduating
class. As always it is a pleasure to be part of such a momentous and
happy occasion and my congratulations must go to you all. This
afternoon sees the recognition of all your efforts – intellectual and
otherwise - with the conferring of your degrees. Without diminishing the
achievements of each one of you, I congratulate in particular the honours
graduates, those receiving higher degrees and the Medallists.

Also deserving of real congratulations are your parents, partners, friends
and supporters - many of whom are here this afternoon and many of
whom have shared with you your triumphs *and* your anxious moments
over the last few years.

Your time spent at QUT has imparted to you a legal education of a first
class standard. The QUT law degree has a reputation for providing an

intellectually rigorous as well as a practical legal education. I know this from my time as a member of the Law Faculty Advisory committee where I have seen the commitment to excellence of the academic staff and also more personally from the pleasure I have had in having my son as a student in this law school.

You now leave this university with many important qualities – the capacity to solve problems, the capacity to exercise judgment, and a depth of knowledge derived from the discipline in which you have been immersed. And in the world into which you now step, there exist many diverse and satisfying opportunities for law graduates with such skills.

At this point, I thought it may be of use to reflect on this world – legal and otherwise – into which you now move; to consider the trends and changes brought about since my own graduation in law in the 1980s; and to use this reflection and comparison to offer some advice for the future.

Let me commence by telling you a story written 2000 years ago by a Chinese philosopher.

“ Once there was a boy who was told by his master to catch a hare.

He went into the woods and looked around. Lo and behold, at that

very moment, he saw a hare running along at full speed. As he watched in astonishment, the hare ran smack into a tree and knocked itself unconscious. All he had to do was pick it up. For the rest of his life the boy waited behind the same tree in hope that more hares would do the same thing.”¹

The boy went through life expecting the same conditions to be waiting for him around every corner. However, in life, the only thing that does not change is that everything changes. As I always say during criminal trials, expect the unexpected!

Changing profile of law graduates:

As I stand here today, one of the changes that strikes me most is the number and diversity of this year’s graduating class. In the 1960s, there were only 6 university law schools in Australia. By the mid 1970s, this number had doubled to 12. There are now 28 law schools throughout Australia.² This has led to one rather frivolous commentator suggesting that if numbers continue to increase at the same rate by 2050, there’ll be more lawyers than humans!

This afternoon, there are 304 eligible graduates for law-related degrees, of whom 138 are men and 166 (55%) are women. Further, of this number

¹ Story as re-told by Adeline Yen Mah in *Watching the Tree* , Flamingo Press, London, 2000, p6.

4 are Aboriginal or Torres Strait Islander and 40 are from overseas countries. These numbers illustrate some important trends. Firstly, it is clear that there has been an enormous increase generally in the number of graduates from law. Secondly, is the marked increase – numerically and proportionately – of female graduates in law. This positive trend should see greater female participation at influential and powerful levels of the workforce. As I said upon my appointment to the Supreme Court in 1998:

“the barriers to advancement which previously existed have slowly changed, and the expectations of bright young women in particular are now similar to the expectations of bright young men as they enter the legal profession and make their way in the world. This has enriched our society and I hope it will enrich our institutions.”

Thirdly, I congratulate the 4 Indigenous Australian graduates this afternoon who will each make an immense difference for your own people and also enrich the wider Australian community. As we move towards reconciliation and a greater appreciation of indigenous Australian culture, your success will be an inspiration to many others.

Finally, the number of overseas graduates this afternoon confirms the positive impact of globalisation on Queensland and Australia. It

² Paterson, JM, ‘Student Numbers and Legal Education’ (1995) 69(2) *Law Institute Journal* 78 at 78

demonstrates that QUT is offering an educational product that is both internationally recognised and highly sought-after.

There has also been another interesting change in the profile of law graduates over the years. Traditionally, most law graduates envisaged their career path to be within a legal firm or at the bar. Today however, an increasing number of law graduates no longer feel confined to a choice between life as a solicitor or barrister but instead are following a wide range of alternate career paths. Areas law graduates are increasingly being drawn to include the public service, politics, the corporate sector – indeed, everything from A to Z – from arts administration to the legal status of the zygote.

After the greater diversity of lawyers and law students the next most striking change is in the area of technology.

Technological change

In the 21st century, we are all forced to recognize the significance of changes brought about by technological innovation. We sometimes forget how quickly this technological revolution has overtaken us. In 1995, less than seven years ago, Bill Gates decided that the internet had only a limited future. This error, and his attempts more recently to rectify

it through aggressive marketing, are keeping courts and thousands of lawyers in the USA extremely busy.

Even four years ago, when I joined the Supreme Court of Queensland, neither the judges nor their associates were provided with computers; very few used email to communicate, and the use of on-line legal resources was in its infancy. But today information technology is an indispensable part of the working lives of every lawyer. So much so that it has recently been said that “[i]n the near future the legal profession will be divided not into solicitors and barristers, but into the dot-com lawyers and the dying out technophobes”.³

However, it is important to keep in mind that the use of IT by no means replaces or precludes the human aspects of lawyering.⁴ A lawyer’s work will always involve one-on-one contact with clients and, as Justice Kirby notes, the “helping of another human being, ...in situations of great anxiety, distress and inconvenience”.⁵ Oral contact will also retain much of its importance – for while virtual courts and online mediation are beginning to be used, they lack the “demeanour, body language and those

³ Reynolds, A, “Is there a future for the technophobic lawyer?” (2001) 75(6) *Law Institute Journal* 49 at 49

⁴ Reynolds, A, (supra) at 51

⁵ Kirby, M, ‘The Future of the Courts – do they have one?’, Judicial conference of Australia, Third Annual Colloquium, Gold Coast Queensland 1998.

other human elements” so present in face-to-face communications.⁶ Computerised legal expert systems cannot add in human factors such as community values, the exercise of judgment and core concepts such as justice. What is said to be the “art and heart of the profession and the essence of a lawyer’s work” will therefore continue – namely the ability to listen, interpret, advise, persuade, mediate, negotiate and argue.⁷ In other words to synthesise the human and legal aspects of a problem and provide the most effective solution.

Commercialism – viewing law as a business

Finally, let me mention briefly the increasing tendency, to see “the practice of law [as] a business where once it was a profession.”⁸

In recent years a market-centered approach has been adopted in Australia regarding the practice of law. This approach would have it that the practice of law is no different from any other business enterprise and should be conducted as such.⁹

⁶ Stanfield, A, ‘Dinosaurs to Dinamos: has the law reached its technological age?’ (1998) *UNSW Law Journal* 530.

⁷ Baetzel, T and Herstein, C, ‘Virtual Memory: looking back at the changing relationship among lawyers, law firms and technology’, (1998) *77 Michigan Bar Journal* 422.

⁸ Rehnquist, WH, Catholic University School of Law Commencement Speech, 23 May 1996, unpublished, 7.

⁹ Trimmer, A, ‘Law – a profession or a business?’, (2001) *5 Australian Lawyer* 2 at 2

But it almost goes without saying that most people consider the practice of law to be a profession and - lawyer jokes aside - lawyers to be 'professionals'. I should interpolate that normally I don't tell lawyer jokes because lawyers don't think they are funny and other people don't realize they are jokes!

But may I break with my general rule and tell you one that I particularly enjoy.

At a convention of biological scientists, one researcher remarks to another, "Did you know that in our lab we have switched from mice to lawyers for our experiments?" "Really?" the other replied, "Why did you switch?"

"Well, for five reasons. First, we found that lawyers are far more plentiful. Second, the lab assistants don't get so attached to them. Third, lawyers multiply faster in numbers, Fourth, animal rights groups will not object to their torture. And fifth, there are some things even a rat won't do. There is a drawback however; sometimes it's very hard to extrapolate the test results to human beings."

So what makes a lawyer a more useful member of society than a lab rat? While an exact definition of a 'profession' is elusive, the common point raised in academic discussions is that, unlike other respectable

occupations, membership of the legal profession “entails an ethical obligation to temper one’s selfish pursuit of economic success by adhering to standards of conduct that could not be enforced by legal fiat or through the discipline of the market”.¹⁰

A lawyer cannot strive purely for economic success due to two important duties inherent in the practice of law – firstly, a fiduciary obligation to each and every client; and secondly, the overriding duty as an officer of the court to uphold and ensure the effective administration of justice.¹¹

The first duty does not by itself differentiate the practice of law from a business – business people also try to act in their client’s best interests and with integrity.¹² Thus, it is the duty to the court and to the administration of justice that can be said to characterise the law as a profession - ensuring an ethical commitment to the community and the legal system.¹³ Chief Justice Gleeson confirmed this connection by stating:

¹⁰ *Shapiro v Kentucky Bar Association* (1988) 486 US 466 at 488-489 per Justice O’Connor

¹¹ Bickenbach, JE, ‘The Redemption of the Moral Mandate of the Profession of Law’, (1996) 9(1) *Canadian Journal of Law and Jurisprudence* 51 at 52.

¹² McConvill, J, (supra) at 70

¹³ McConvill, J, (supra) at 70

“The role of the lawyer as an officer of the court is the primary basis upon which lawyers can claim to share in the principal attribute which distinguishes a profession from a business.”¹⁴

But perhaps the most significant indicator of the law as a profession and not just a business from my own experience is the crucial role lawyers can play in the maintenance and enhancement of human rights both in our own community, where we need to be vigilant, and in the rest of the world.

Conclusion

Important changes have occurred in the legal world. However - as illustrated in the story about ‘watching the tree to catch a hare’ - one ever-remaining constant is that today’s solution to a problem may be useless or obsolete tomorrow.

You now stand on the verge of your professional lives - and I wish you every success. Catching hold of the legal ‘hare’ today requires your resilience, flexibility and integrity. My wish for you is that your legal career gives you as much enjoyment and deep satisfaction as I have found in mine. Again, my warmest congratulations to you all.

¹⁴ Gleeson, M, “The changing Paradigm”, speech to the Women Lawyers’ association of NSW, October 1999.