QUEENSLAND YOUNG LAWYERS' SEMINAR

Phillips Fox, Level 29, Waterfront Place, 1 Eagle Street, Brisbane
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"Advice to young practitioners: from a Chief Justice 17 years out of practice!"

The Hon Paul de Jersey AC
Chief Justice of Queensland

It is a great privilege to address you. I have been asked to regale you with some account of my own years in the practice of the law. I will do so because asked, although I would prefer to speak of you, not me. I am also asked to offer some advice.

Now I am conscious that just as it is a great privilege for an older lawyer to address younger practitioners, it is great sacrilege to squander the opportunity. Over the years I have sat through countless addresses – many, I fear, of my own, where the audience has been reduced to a state of torpor within minutes if not seconds. I will do my best to interest you, and I acknowledge that at the end of my space this afternoon, you will be the judge!

My themes are unsurprising: enhancing one's professional capacities, preparation, and balance.

You ask how I became interested in the law. My "legal" background was limited to the circumstance that my great-grandfather Fred de Jersey, who we would now call a taxi driver, parked his hansom cab outside the old Supreme Courthouse in George Street, and, as well as the Duke of Windsor and Dame Nellie Melba, regularly drove the Judges – especially the popular Chief Justice Sir James Blair. In an era where family legal influences were often

determinative, that was not so in my case. I was at school interested in the art of persuasion, especially through debating, and my bent was the humanities, so that law, and the Bar, seemed an obvious and natural choice from very early on – in fact, from pre-teenage years. But I expect, as with you, that the original motivation became of only incidental interest as one embraced the study – not all of it enthralling by the way, and eventually the practice. I would claim, I hope not sanctimoniously, an interest in helping others, and that is common to most of us. Immediately prior to admission, I was greatly inspired by a year's associateship to Mr Justice Wanstall, who taught me a lot about industry and dedication, and a "straight down the line" application of the law. Incidentally my great-grandfather also drove the newly-born Charles Wanstall home from hospital.

I was admitted to the Bar on 16th December 1971 by a Full Court – as the Court of Appeal was then known – comprising my former Judge, then Senior Puisne Judge, Hoare J and W B Cambell J. You may or may not know that I preside now over all admissions ceremonies. The court has eschewed any relaxed application of admission requirements. Applications for abridgement of time in relation to practical training, especially, attract fairly strict scrutiny. I have now shamefacedly to acknowledge that in my own application for admission, I had to seek an abridgement of time!

As a junior barrister for 10 years, I grew up professionally over the first few years with a healthy diet of what we called "crash and bash" property damage, motor vehicle collision claims in the Magistrates Court. This provided wonderful experience for someone intent on developing skills in advocacy. In that era, we would appear there at least three days out of every five. The fees were not massive: if appearing for a plaintiff who recovered more than $1,200, for

example, the fee on brief was $78.60; if between $500 and $1,000, $56.70! My fee book reminds me that my first court appearance was on 21 January 1972, an extradition matter – *Wardell*. The fee – covering conference, advice and appearance – was the substantial amount of $31.50. The brief came from a solicitor who was best man at our wedding! Dare I say it, this was the time to make one's mistakes and learn from them. I hope I did not occasion too much injustice. There were some at the Bar at that time who sought to jump the Magistrates Court stage, to commence their careers in the superior courts: generally a mistake. The sheer volume of work one accomplished in the Magistrates Court meant a real chance of developing advocacy skills. And remember, they were "unsophisticated" times: the culture was brinkmanship more than mediation and settlement, so that many more claims went to trial. But you should know that I applaud the different contemporary focus. My message, if there is one, is to be prepared to start at the bottom, and maximise the opportunity that offers.

I had been called to the Bar at the age of 23 and then married my wife, Kaye. My wife was then, as now, my most enthusiastic, though long-suffering, supporter. The Jeremiahs said I was foolish to commence practice so young, and that I would live to regret it. I was fortunate, however, and have never regretted it. There was a lot of effort, but immense family support.

I was very careful of my family in those days, as I hope I still am: so far as practicable, for example, I did the out-of-hours work at home. I housed a substantial and comprehensive library of law reports at home. They were exhilarating days. I recall the incredulity of the doubting clients who regularly said, on first meeting, "But we thought a barrister would be much older". I

remember the client, after a considerable success, thanking me, and having sat behind me in the courtroom for some days, suggesting in addition that I should take time out to reheel my shoes.

And then there was the regular question – "I suppose you may one day feel experienced enough to become a solicitor?"; not to mention the somewhat irritating query, "what is the difference between a barrister and a lawyer?" – but one dealt patiently with those things.

I progressed into the District Court, more chamber work than trials, and – I was lucky – quickly into the Supreme Court where I developed a substantial chambers practice. It was not unusual in that era, from the mid-1970's, to have four or five substantial chamber matters on the same day. There were also undefended divorces, at $70 per brief.

I was particularly fortunate in four particular respects. First, the Crown commenced briefing me, and persisted until my appointment to the Bench in 1985. This provided tremendous opportunity, through exposure to a raft of interesting cases, many of major public significance. Second, large firms started briefing me in the more demanding heavy cases, especially in the commercial area. Third, Senior Counsel enlisted me as their junior. I was enormously benefited by association with luminaries like David Jackson, Bruce McPherson, Bill Pincus, Ian Callinan, Tony Fitzgerald, Jim Thomas, and, more occasionally, Peter Connolly, Cedric Hampson, Des Derrington and Charles Sheahan. Fourth, I developed a substantial High Court practice. These were the pre-special leave days: for a Brisbane High Court sittings, one might be briefed in five or six cases!

And then one travelled reasonably frequently to Canberra and other capitals. And so my practice became "heady".

In 1981 I was appointed a Queen's Counsel. The practice actually expanded after that. I was personally honoured to be given that accolade at the age of 33. With feigned humility, on the morning of my swearing-in, I said to Kaye at home after breakfast, "The QC will now take the rubbish to the bin." She shook with laughter: the foibles of the not so young! Shortly after that, she bought the children a story book called "Rex QC" – I did not then have the chance to read the book. For years I thought she was thereby betraying a deep respect for my appointment, to discover eventually that the "QC" of the title to the book, stood for "Queen's Corgi". My family and I do, however, truly believe that "dog" is "God" spelt backwards.

This Senior Counsel qualification took me to the Privy Council in London for the second time. I lost the case, spectacularly. The first momentous trip was as junior to David Jackson QC in the early 1980's. Unsurprisingly with that leadership, we had on that occasion won, spectacularly! Ironically, I retain the written case in the appeal I lost, but have mislaid the winner. My orientation as a senior was on the commercial side. A point of achievement was being given a general retainer from Westpac in 1983 – though I now note, looking at the brief on retainer, that the solicitor's secretary misused the apostrophe! My message to you drawn especially from my just three years as Senior Counsel is that the key to courtroom success is comprehensive preparation, even though frequently 95% of it will but turn out in fact to have been wasted. While this may now be a tad less important, with such greater emphasis on written presentation, it remains

vital: the advocate must be prepared to deal properly with any eventuality in litigation, and litigation is by nature often unpredictable.

To those of you are, or aspire to be, advocates, my advice is that you be prepared to take on a variety of cases, to develop capacity to deal with a variety of challenges. And do not be discouraged by the forensic failures which will come. Good advocacy, you must know, survives the odd mistake. Don't be discouraged if you ask witnesses the obvious questions: "how many times have you committed suicide?", "the youngest son, the 20 year old, how old is he?", "are you qualified to give a urine sample?", "you don't know what it was, and you don't know what it looked like, but can you describe it?". But you mustn't ask too many such questions.

Judicial officers strive to encourage young practitioners, not rebuffing them or becoming impatient with inexperience – provided a genuine effort is being made. Of course, with those who have been around longer, the Judges may be a degree more robust. The recently published Oxford Companion to the High Court mentions Sir Anthony Mason's recollection of a Solicitor-General concluding his argument with the words: "that concludes the first branch of my argument", whereupon Sir Douglas Menzies – dubbed the "laughing Cavalier" of the court – responded: "Mr Solicitor, would not "twig" be a more appropriate word?" Then Mason himself, to counsel's concession: "your Honour has me on the ropes", responded: "on the canvas would be a more accurate expression."

Three decades have passed since my admission to practice in 1971. For the solicitors' branch especially, change over that span has been dramatic. There certainly have been changes at the Bar, with the reduction in oral content of

presentations and the embrace of mediation in particular. But the changes which have occurred within the solicitors' branch aggregate to an utter transformation in the scale of legal practice, and that has spawned its own pressures.

There are pressures to meet high and relentless overheads; to attract and keep clients who are more inclined these days to move from firm to firm, with firms now often obliged to tender competitively for work, and being driven even to the lengths of retaining marketing staff; to operate in an increasingly regulated domain such that to protect and promote both the position of the firm and the rights of individual people, human resources staff need often to be employed; the command of increasingly complex banks of legislation and judge-made law; to master intricate legal concepts, the courts unfortunately sometimes not assisting with judicial definition marked by particular precision. These sorts of pressures, the product of the changes in practice which have characterized the whole of my professional life to date, mean that the modern practitioner is challenged to display true professionalism in the face of intense business pressure especially.

There are additional pressures associated with current ethical problems within this State: the entitlement to fees in "no win/no fee" or speculative type arrangements; the treatment of complaints of professional misconduct levelled against solicitors. How does the young practitioner, in particular, proceed, in the context of this raft of pressures?

Primarily, one should "keep one's head", with a keen eye on the professional objective. That means, calmly do one's professional best, remembering that the objective is optimal service to the client, thence the public. You should

demonstrate a lively commitment to professional excellence, wherever your task lies. A practitioner should work to expand, to push the boundaries of his or her professional talents, and keep up-to-date through reading – hard copy and the internet – and discussions; attain the Law Society's specialist accreditation in your field; write articles for a professional journal; deliver papers on specialized subjects at CLE sessions; if briefing Counsel for advice on complicated problems, research them fully and be prepared to argue the toss in conference. Push the boundaries of your professional capacity.

It is enormously important, I believe, that practitioners not operate in isolation. One cannot overstate the beneficial value of human interaction – within the firm, the chambers grouping, the family, and the usefulness of community orientation. These interactions help ensure the individual remains balanced. They also keep the individual in touch with community attitudes, and that is itself important in the approach to the client. As to community orientation, the value of pro bono schemes and voluntary work again cannot be overstated – though undervalued and insufficiently acknowledged by some critics. As to teamwork within the firm, the professional staff and the support staff must obviously seek to work together in harmony and mutual cooperation. Every person within a law firm has obligations to all others: if they are discharged amicably and conscientiously, the individual will be energised the firm will exude confidence. Harmonious teamwork is a very important key.

Self-esteem is critically important. So is good health. But even more important, in my experience, is family support. That will be fostered by keeping the professional role in proper perspective.

It will also be fostered by mutuality: you need to support your family, minimizing time away – communicating, maximizing social contact, engaging together in diverse activities. Professional life these days is much more challenging and demanding than it was when I was at the Bar. Competition is more fierce. Cases are longer and harder, office problems more sophisticated. Legislation is frequently now of Byzantine complexity: the case law apparently expands exponentially. Understanding the legal aspects of complex financing these days, for example, seems to require mathematical acuity. How to succeed?

John Grisham's protagonist in "The Firm", "would start at 5.30am, unless someone could top that; then he would arrive there at 5.00, or 4.30, or whenever it took to be first. Sleep was a nuisance. He would be the first lawyer to arrive at the Bendini Building on this day, and every day until he became a partner. If it took the others 10 years, he could do it in 7. He would become the youngest partner in the history of the firm, he had decided."

Not my answer, and not yours! Work hard, but sensibly, and creatively. Think laterally if you can. Keep a balanced perspective. Work was only one of the things for which you were created. When you are overwhelmed and disheartened, turn to enduring things – like the compassionate support of your family. But always interact with your family. And if in the end, you can derive some encouragement from my own experiences, great! Remember, young people can do anything!