

ROYAL MELBOURNE INSTITUTE OF TECHNOLOGY

CONFERRING CEREMONY, 31 OCTOBER 1979, 2 P.M.

THE DECLINE OF PROFESSIONALISM?

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

October 1979

ROYAL MELBOURNE INSTITUTE OF TECHNOLOGY

CONFERRING CEREMONY, 31 OCTOBER 1979, 2 P.M.

THE DECLINE OF PROFESSIONALISM?

The Hon. Mr. Justice M.D. Kirby
Chairman of the Australian Law Reform Commission

INTRODUCTION AND CONTRATULATIONS TO GRADUATES AND DIPLOMATES

On an occasion such as this, a speaker in my position is obliged by tradition and common courtesy to do certain things. The fact that they have to be done does not make them any less pleasurable.

The first is to express a proper sense of the honour which it undoubtedly is to be invited by tertiary institutions of learning to take part in this happy occasion. There are few obligations of public office more pleasurable than to stand with new graduates at the threshold of their careers.

The second thing to be done is to remind ourselves of the significance of this occasion. We gather here today in a ceremony at least as old as the Christian era to place before the international community of scholars, new recruits who have earned their laurels by a period of dedicated application to the study of knowledge. Inescapably in that study, the graduates have acquired discipline and a measure of wisdom. They are sent forth by the Institutes to the community, with the commendation of their degrees. They join the international society of tested scholars. The precise form of the ceremony traces its origin to the medieval church and the laying on of hands : by which authority was transmitted from one generation to the next. On an occasion such as

this, it is important to pause and reflect upon the continuity of scholarship.

Thirdly, it falls to me to congratulate the new graduates and diplomates. It does not seem so very long ago that I was sitting in the same position, wearing slightly less colourful garb, listening to an Occasional Address and wondering what the future held in store for me. There is no escaping it. This is a watershed in the life of the new members of the Institutes. It is a time when at least one period of concentrated study is over. It is therefore a time when the scholar is permitted a modicum of self-congratulation.

I am not so far removed from your position to have forgotten the rigours that are imposed upon those who pursue tertiary education today. When nostalgia sets in, it all seems an idyllic time. But in many ways life has become more difficult today. There are quotas to be met. There are restrictions to be overcome. There are rules against failure to be circumvented. There are special burdens for those who study part-time. Always there is competition to be faced. All of these have doubtless taken their toll, in one way or another, upon the young men and women who sit in this hall today.

In most cases the burden has not been borne singly. The family, parents, friends, husbands and wives, children, and colleagues have all played their part. They have helped to share the burden. The reward is here today. It is an occasion for proper, shared pride. That is why we involve the families and friends of the graduates in the community of scholars in this ceremony. It is a recognition of the contributions they have made to the achievement that is signalled by this occasion.

On behalf of the community and on my own behalf I extend congratulations to the graduates and thanks to those who helped them on the path to this culmination of their study. The community is proud of the graduates and diplomates. It is also grateful to those who supported them.

A NEW AGE OF REFORM

Having discharged my primary tasks, it is now my function to say something of general significance. The only requirement is that I must be brief in the process. For five years I sat on the platform of the Sydney Great Hall, as a Fellow of the Senate of that old University. In that time I attended at least thirty ceremonies such as this. Thirty times, an Occasional Speaker rose in his place to address the assembled throng. It is a sobering thought as I stand here before you today that I cannot call to mind a single utterance : not one item of distilled wisdom; no aphorisms, not a single jest of any of the thirty Occasional Speakers. Cicero told the Romans that he preferred tongue-tied knowledge to ignorant loquacity. People in my position do well to observe his maxim.

As you have heard, I am Chairman of the national Law Reform Commission. The task of the Commission is to review, modernise and simplify the laws of the Commonwealth of Australia. "Reform" does not necessarily mean change. Indeed it implies some degree of conservation. To "reform" presupposes the preservation of that which is being reformed : saving and adapting it to new circumstances.

Every informed citizen but especially, I would imagine, a group of diplomates and graduates such as this, will know that the law is in the throes of a major period of reform. It is certainly a period of instability. It is an uncomfortable time. But it will not simply go away.

I am often asked by anxious fellow citizens, particularly by those older than me, why is there so much talk of reform? Why is everything changing? Why is it changing so rapidly? Is all this change really necessary? Is it good for us?

Nowhere are these questions more earnestly asked of late than in the Australian professions. It has been said that the professions are going through a crisis and some gloomily predict the decline and fall of the professions.

Without being unduly pessimistic, it has to be acknowledged that the professions are coming under increased scrutiny. The scrutiny is not limited to our country. In England, in recent weeks, a report was delivered on the legal profession by the Royal Commission on Legal Services. In Canada there have been a number of reports pointing to unsatisfactory features of professional organisations which, at the one time, receive public complaints and perform disciplinary functions and, as well, seek to advance and protect the financial and status interests of their members.

It was in the United States that the move to introduce lay participation in professional bodies first began. The California Bar Association, for example, includes six non lawyers in a governing body of twenty one. In New Zealand, Britain and some parts of Australia, laymen now take part in disciplinary proceedings. Recent papers of the New South Wales Law Reform Commission have proposed an even greater infusion of laymen into the government of the legal profession. Only last week in Victoria it was announced that moves were afoot to deprive the Victorian Bar of the power to set standard fees.

Nor is my profession the only one subject to this new scrutiny. There is, at present, a major inquiry into the pharmacy profession. According to recent surveys in the United States, even the medical profession, the most universal of the professions in point of public contact, has lost a good part of its public appeal. In 1966 73% of the American public declared that they had "a great deal of confidence" in the medical profession. In 1976 that figure had dropped to 42%. The position in our country may not be much different.

Last weekend the New South Wales Minister of Health said we were now facing a "glut" of medical practitioners. The same spectre is presented in respect of other professions.

Should we, the professionals, be concerned about the changing public perceptions of our status? Is there anything we should do to reverse the so-called "decline and fall" of the professional? Why is it happening to us?

THE REASONS FOR DECLINE

There are many reasons why the professional man or woman today does not enjoy the same confidence and respect as predecessors in earlier generations. Some of the reasons are within our control. Other simply reflect inevitable changes in professionalism that arise from the nature of modern Australian society.

The first factor which I would identify is the change in the access of the ordinary citizen to the professional. Last century, access to the medical profession (and even more the legal profession) was beyond the purse of ordinary people except in cases of dire need. National health care, compulsory motor vehicle insurance, workers' compensation and other protections now assure a much more universal access to the medical and para-medical professions, pharmacists and others. For all its imperfections the system of legal aid (and the facilities of legal assistance offered by trade unions and others) ensure that an increasing number of our population can get to a lawyer. Nowadays, there are even funds to insure for veterinary assistance. Package deal architecture is big business. In the context of medicine it was put thus :

"The precipitous slide [in esteem] reflects what happens when an increasingly sophisticated public begins to detect fallability in professionals once thought to border on the divine. 'I don't see a deterioration in the quality of medicine, but a greater awareness of what our deficiencies are'."

A second reason is that professionalism is nowadays more commonplace than it was even a decade ago. In Britain, as Professor Sackville has recently pointed out, the Monopolies Commission was able to identify 130 bodies claiming to be professional. Within the past five years or so,

computing science has produced a large vital new employment group with claims to professional status. As a proportion of the population the numbers of people contending that they are professionals has greatly expanded. The mystique that attaches to remoteness and rarity tends to get lost in a much more knowledgeable and interdependent society.

A third reason is the growth of consumerism. It was inevitable that as general compulsory education was expanded the privileged position of some occupational groups would be increasingly questioned by sceptical outsiders. The rising costs of health care, legal representation, engineers' fees and so on produce demands that these professions should submit to the same rules of fair trading and competition as are enforced, by law, against mere trading corporations and businessmen. In the United States one medico lamented :

"People aren't outraged when the quarterback holds out for what he can, but they expect different treatment when it comes to the doctors".

In the Australian context, the analogy is seen by some to be less with the quarterback or the World Series cricketer and more with the rest of the wage and salary earners who are urged to show restraint and are frequently made to do so by compulsory awards fixed by industrial tribunals.

Fourth and most important is the growing role of government in the professions. It starts with the vital part played by the government in their training. But increasingly the day-to-day life of many professionals is dependent on the public purse. The tremendous investment of public funds in Australia in health services inevitably directs the attention of government to the efficiency of public expenditure. It is inescapable that this public investment, consistent with our constitutional democracy, will lead to a lessening inclination to leave things to the professionals themselves.. More and more lawyers are paid by the public purse. Lord Rawlinson has said recently that

public monies now account for more than half of the income of English barristers. In such a world, the notion of complete independence and accountability only to one's professional colleagues is surely a thing of the past.

Apart from these considerations there are others. The professions are swept along in the general decline of respect for established institutions that has been such a feature of the last decade or two. In the case of some professions, bad publicity has played a part. Front-page spectacles of well-heeled doctors being convicted for Medibank frauds and major defalcation by lawyers shake public confidence in the adherence of the learned professions to professional "ideal". Now we hear that computer crime, by this new "profession" is a problem of major proportions in Australia.

The old notion was that professionals, whether they were engineers, teachers, nurses, doctors or lawyers all served a higher ideal than mere monetary gain. They were submitted not just to the law of the land but to the severe critical scrutiny of their colleagues. Even that notion is now under question as critics assert that, in this busy world, professional organisations forget the higher ideal of humanity, society and scholarship and pursue selfish interests of status and income, with the same vigour as the rest of the community does.

CONCLUSIONS

What follows from all this? I think it is inevitable that professional men and women of the future, some of whom are sitting in this hall today, will have a different life and enjoy a different role in society. The respect that was born of infrequent contact, unquestioning reliance and blind faith has gone forever. We should not lament the more realistic assessment of our foibles and judgment according to human standards.

The bad publicity that attends individual default is partly beyond control. But it may require greater sensitivity to complaints by outsiders against colleagues whose faults are indifference rather than venality, incompetence rather than crime.

The role of the government, as defender of the public purse, will inevitably expand as more professionals become dependent for their livelihood on Treasury funds. It is to be hoped that the right balance can be struck between the legitimate demand of the community for a voice in the expenditure of its wealth and the need to preserve independent professions that will encourage the old-fashioned virtues of excellence, service and devotion to higher ideals.

As we send this new band of graduates and diplomates out into the world, many of them into professions old and new, may I express the hope that they will fulfil the hopes of their teachers and of the community. What began at a local kindergarden many years ago ends, for most, today. The process of formal education may be over. But in such times of change, who can doubt that the need for constant receptiveness to new ideas will remain? That is the mark of the educated man and woman : not clinging to the old for the sake of it, nor seeking its change for the sake of change.