

Admissions of Barristers and Solicitors-Speech

The Supreme Court of New South Wales, Banco Court

30 June 1994.

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THE SUPREME COURT
OF NEW SOUTH WALES
BANCO COURT

GLEESON CJ
KIRBY P
O'KEEFE CJ COMM D
LEVINE J

Thursday 30 June 1994

ADMISSION OF BARRISTERS AND SOLICITORS

KIRBY P: The Chief Justice has asked me to say a few words on behalf of the judges to the newly admitted solicitors.

The Chief Justice has shown an heroic devotion to duty by coming here today to share this special day with you because he is not at all well. But it is a special day. And for the Court it is an historic day because this is the very last day, in one hundred and seventy years of the history of the Supreme Court, on which the Court will have admitted solicitors and barristers. Henceforth, by reason of amendments to the Legal Profession Act which come into force tomorrow, the Court will admit legal practitioners. So you are amongst the last of the solicitors admitted, as such, by this Court.

The Court marks the occasion by the assembly of a court in banc. The Chief Justice and I are joined today by Mr Justice O'Keefe, the Chief Judge in the Commercial Division of the Supreme Court, who has lately been appointed Commissioner of the Independent Commission Against Corruption - he will take up duties in that high office in August - and by Mr Justice Levine, a judge in the Common Law Division of the Court. We four have constituted the Court which has admitted you to practise as solicitors. The formal order of admission is made individually in each case. Each name is called. Each name is precious and

important. Each one of you is admitted as an individual. So I offer, on behalf of the Court and of the entire judiciary of the State and of the community our individual congratulations and some words of praise and admonition.

It is usual on occasions such as this to say three things. As you know, lawyers will normally stick to precedent. The fact that I say these three things, and that it is usual, does not make them any the less sincere or important.

The first is to congratulate you. We realise that some of you have been admitted elsewhere before. For most of you this is the first time you will have been admitted as a legal practitioner. It is therefore a very important day.

On a day such as this, my mind goes back to the old Banco Court where, in 1962, on the same day as the Chief Justice was admitted as a solicitor, I was admitted as a solicitor. We served for a time in that honourable branch of the profession. This is a day when photographs will be taken. A moment of your lives will be frozen in film. In years to come you will look back on this day, on the precious friends who are about you. You will think about this moment. It is a very important watershed in your lives.

Secondly, it is an occasion that brings into the Court members of the families of the newly admitted solicitors. That is a good thing. We sit here, often in empty courts. But it is a very important principle of the tradition which we have inherited in this country from England that our courts are always open. Any citizen can come in here and see us, the judges and the lawyers, at work. As one judge said in England, it is the way by which the judges can be judged whilst judging. After the Star Chamber was abolished it has been a very precious

feature of the courts of our tradition. But, generally, when people come into the courts they come with anxiety and stress. Never forget that. The people you are dealing with are often under very great stress. But today it is a happy day. It is a day when the families come here and enjoy a moment of shared pride. So I welcome the families and friends on behalf of the Court. I also congratulate them for the contribution they have made to this special day.

The third thing that it is usual to say is that it is important that those with privileges should remember their duties to people less fortunate. When I sit here in the Banco Court my eyes sometimes wander to the Chief Justices of the past whose portraits are here and whose spirits are here in the Court. Their words in earlier cases are in the books. Their intelligence is still there to illuminate our path.

I think, for example, of Chief Justice Jórdan, the ninth Chief Justice, who is there looking down on us. On occasions such as this, he was noted for his less than warm and generous welcoming. He would choose, as it was said, a few well-frozen words to welcome the new practitioners to practice. And yet it was Chief Justice Jordan who, during the difficult times of war, was always vigilant in the Court to remember that civil liberties are tested most acutely in such difficult times and that it is in such times that we must hold steadfast to basic rights.

Up on the left is Chief Justice Evatt, the eleventh Chief Justice. As all the lawyers will know, he was a justice of the High Court of Australia. He became a cabinet minister during the War. He became the President of the General Assembly of the United Nations. He took a most important part, with

Mrs Roosevelt, in the framing of the Universal Declaration of Human Rights which is the foundation of the international order of human rights. Chief Justice Evatt, you will remember, also fought the communism case in the High Court. He won it, fighting for the right of people, even in an unpopular minority, even with views that many of his fellow citizens regarded as wrong, for their right to hold those views and to practice them so long as they did not harm other citizens. It is when human rights are tested that they become most important. They are most tested when unpopular minorities claim them. Judges and lawyers need then help to defend their rights against the clamoring majority.

The Chief Justice on these occasions often says, and I agree with him, that it is lawyers who defend those who are stigmatised by society, who are claimed to have committed disgraceful acts, who are charged with serious crimes. It is important that you, the new practitioners, should explain to your fellow citizens how important it is for the rule of law in society that you should fulfil this function. Easy it is to look after the powerful, the rich, the popular. But it often falls to lawyers to defend those who are less popular, who are stigmatised, whose human rights are at risk. This is an important part of your future mission as solicitors of this Court.

As we listen on this historic day to the new practitioners' names we realise what changes are coming upon our country and upon our profession. These are changes for the better. Changes in the variety and diversity of the legal profession. I can imagine that if you are sitting here, some of you, in twenty or thirty years time it is quite likely that there will be two or

three women on the bench. It is likely that the bench will not be made up exclusively of people of the old Anglo-Celtic tradition that has been so important in the early years of Australia's history. It will be people of other traditions who will bring new ideas and new wealth to the great inherited body of the common law.

We assemble here with the symbols of the long tradition of eight hundred years which is the common law. Chief Justice Forbes, Sir Francis Forbes, the first Chief Justice, is up there on my right. Some day you should steal into this Court and look at these faithful servants of the law and of the community. Forbes was born, as was the way in that time of Empire, in Bermuda. He served for a time as a judge in Newfoundland. Hence he does not wear a wig; for he disdained the wig. When he came to Australia in 1824 he found a single court. He sought to establish a single court - without Equity or Common Law - but with the two combined. He was not much in favour of the separated profession of barristers and solicitors. It is ironical at this moment to look at his face and reflect upon his thoughts and to remember that we are now entering into a period, one hundred and seventy years later, when, so far as the law is concerned, there will be just a simple admission of legal practitioners. In the law ideas sometimes take a century or so to be adopted.

Sir James Dowling, the second Chief Justice, like Chief Justice Forbes, was so overworked that he drove himself to illness and early death. He plaintively sought leave of absence from the Colonial Office in London. He was constantly denied, just as Chief Justice Forbes had been before him. I mentioned to the Chief Justice this morning that Sir James Dowling died in

office one hundred and fifty years ago this week from an illness and from overwork. June is not a good time for Chief Justices in Sydney.

Sir Alfred Stephen, the third Chief Justice, came out from England, worked as a lawyer in Hobart and then came up to Sydney to be a most distinguished Chief Justice of this State. He left office after many years service, also broken down in his health, saying to the profession assembled, just as we are assembled today, as he left: "Kill no more Chief Justices." But he also enjoined them not to allow the litigants to be "tortured" by cost and delay. Not a bad injunction for the lawyers of 1873. Not a bad injunction for the new practitioners of 1994.

You see, the genius of our legal system, as I hope you have realised, is in the brilliant way, over eight hundred years, that it has generally succeeded in combining stability and change. In keeping the traditions that are worth keeping, safeguarding and vigilantly defending the institutions that are worth defending, but all the time working within the common law for the improvement of the law and the improvement of society.

The future belongs to you. You will now have the obligation to carry on the great traditions which the Chief Justices and other Judges that I have mentioned have carried on in the past. May you be equal to and worthy of that obligation.

On behalf of the Court and on behalf of the community, we send you from the Court today with good wishes for your success and happiness.

The Chief Justice will adjourn the Court.

GLEESON CJ: The Court will adjourn.

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