

UQLS PROFESSIONAL BREAKFAST

4 MARCH 2004

Thank you for inviting me to address you. It is more than 30 years since I have been in your position as I graduated in December 1973.

I know that, for you, 30 years is probably an almost unimaginably long period into the future. Believe me it is not – at least looking back in retrospect. Those of you who care about repetition, tautology or even the pleonasm will draw comfort from the fact that even Sir Owen Dixon once spoke about “looking back in retrospect”.

That exercise, looking back, produces a double effect for me. 1973 sometimes seems a very long time ago, partly because I seem to have done a lot between then and now. By the same token, however, the variety and intensity of what I have done has made the time pass quickly - on the journey through. Life for a busy lawyer is not idle.

When I do look back it helps to confirm that the past is a foreign country – they do things differently there.

When I was admitted in December 1973 it was the day of the dingo fence. To those of you who remember, admission to the Bar in Queensland then required the applicant to swear an affidavit that he or she resided here, to state when he or she arrived here and to undertake to cease to practise elsewhere.

It had peculiar significance to me when I was admitted because I was then working as Sir Harry Gibbs' associate and living principally in Sydney. I had to swear an affidavit on seeking admission that I resided in Brisbane. As a scrupulous young man I was worried. So I sought legal advice – not for the last time. My advisor was in the room next door in Sir Harry Gibbs' chambers in Darlinghurst – Sir Harry himself. I raised my problem with him. Coincidentally he was coming to Brisbane late in 1973. One of his tasks was, rather like this one, to speak to the graduating LL.B class of which I was one. I had to travel with him. He suggested that I swear my affidavit at my

parents' home where I stayed for the brief period I was then in Brisbane with him. It was, after all, my normal residence, at least when I was here.

This seemed perfectly sensible advice to me, which I followed. I was admitted without objection, although I was told by a member of the Bar Board many years later, that he had wondered whether I really was a resident of Queensland at the time.

Sixteen years later I was the junior counsel for Queensland in a case in the High Court which some of you may have come across – *Street v Bar Association of Queensland* (1989) 164 CLR 461. Geoff Davies QC, now a Court of Appeal Judge and who was then the Solicitor-General, was leading me. It was our job, along with those representing the Bar Association, to defend the dingo fence. We failed. I was not sorry to see it go. At least it meant that I had been properly admitted.

When you are admitted we will have a new admission and

regulatory regime for the profession – and not before time. There will be common admission with different practising certificates for those who wish to practice as barristers, or perhaps I should say “independent referral advocates”, compared to those who wish to practice as lawyers in a firm. The practising certificates will be issued by the professional associations and discipline will be regulated by an independent body under the overall supervision of the Supreme Court, something the Bar Association has been urging since before I began to practise.

You will be able to obtain a national practising certificate covering most of the country and those who practise as solicitors will be able to be members of corporations, and, probably, multi-disciplinary practices. Those structures may well lead to difficult ethical issues when the temptation to prefer commercial “reality” to the duty to the client or the Court becomes most exquisite.

Many of you will not practise law as it has been practised traditionally. You may use it as an entrée into business or simply as a

useful general education.

From my story about the dingo fence you will have picked up an idea of the parochialism that attended practice when I was admitted. The transition between that concept of confining practice to one state within a federation to the present, with our national and burgeoning international practices, has been swift. When I started off it was not uncommon for young Australian lawyers to work overseas in places like London. I did so myself for about 6 months after studying at Cambridge but it was less common to be admitted there and to stay overseas practising the law. As many of you will know there is now a well trodden path from here to Sydney, Melbourne, England, Ireland, New York, other parts of the United States, Canada, Hong Kong, Singapore and elsewhere in the world. That is a significant change. I used to be jealous of colleagues who were engineers, doctors or students of some other disciplines when I was young. The law then seemed to me to be very closely tied to a life of practice in one very local jurisdiction.

Let me give you a couple of examples of the opportunities that are open these days. I have a niece who qualified at this law school about 10 years ago who now practises in London in film and entertainment law and regularly travels to places like Nice and Los Angeles for film festivals, and, this week, the Oscars. Last Monday a new barrister came to call on me. He had been a solicitor for 9 years and went to the Bar about 6 months ago. For 5 of those first 6 months he has been engaged in a commercial arbitration conducted in Mexico City before three Spanish speaking arbitrators. The link with Brisbane was an associate partner of an international firm based in New York who had trained here originally.

Those sorts of opportunities were unimaginable when I started practising in 1977. The closest equivalent experience I had was a trip to the Privy Council when I was Sir Harry Gibbs' associate – and I thought that was pretty good! But the growing internationalisation of the law and commerce and the potential for disputes to spread beyond national boundaries make it much more likely that many of you will have some exotic experiences in your careers and – more

importantly – the need to be aware of what is going on in the outside world as much as here.

I also expect that the focus on human rights jurisprudence that has been important for so long in the United States and is now much more prominent in England and other comparable common law jurisdictions will start to affect practice here much more during your professional lives – whether from the development of constitutional and administrative law and anti-discrimination legislation or from the eventual introduction of a Bill of Rights. We are now one of the very few societies without such an instrument. We do have, however, a number of useful institutional safeguards that too few societies possess: a strong multi-party political system in most of our Parliaments, an independent judiciary and a free, if not very diverse, press.

The internationalisation of practice and the development of new areas of legal regulation are significant but you will also discover that the past is not so foreign and that much of what we take for granted

in legal practice will continue its importance for the future. You will need to keep a strong focus on the ethics of the law and the essence of professionalism - that you exercise your skills not in your own interest, but in the interest of your clients and in the public interest, particularly as that is expressed in your duty as an officer of the Court. You will not simply be an agent or a mouthpiece for your clients and you will discover that the proper practice of the law requires you to be rigorously honest. If you are not honest you will be found out because you will have vigorous opponents examining what you do and, if you are an advocate, a Court which expects and demands candour from those who practice before it.

Apart from urging you to be honest I also encourage you to think about what you say, particularly if you become advocates. My time this morning is almost up and I don't want to trespass much more on yours. Let me finish with some advice for those who don't know when to stop.

There are many stories about advocates who go on too long; they ask

the one question too many. My favourite from that genre comes from the United States. Before I tell it to you and before I sit down make sure that you never tell it to your doctor friends.

A doctor was being cross-examined at an inquest in California. He had signed the death certificate. The lawyer was keen. He had a mission. He wanted to establish that the time of death in the death certificate was wrong. The cross-examination went like this: ...