

A SHARED PROFESSIONAL DEBT

The Legal Profession Admission Board Graduation Ceremony Occasional Address

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Let me ask you a question: Who benefits from the law?

You have just been awarded prizes and diplomas because you have spent 4 or more years studying the law and you should be justifiably proud of your achievements. I am sure that those who have lived with you while you have been studying will also be proud of you and thankful that your lectures, assignments and exams are over and that they no longer have to live through the highs and lows of your Legal Profession Admission Board course.

Who is to benefit from what you have achieved?

Holding the Diploma-in-Law means that you now have the opportunity to join the Australian legal profession. Just 17 days ago it was arguable there was no such thing as an Australian legal profession but, by operation of the Legal Profession Uniform Law¹ which came fully into force on 1 July this year, the foundations for an Australian, as opposed to a State and Territory based, legal profession have been laid (at least in NSW and Victoria). The objectives of the National Law are "to promote the administration of justice and an efficient and effective Australian legal profession"².

* President of the Civil and Administrative Tribunal of New South Wales; Judge of the Supreme Court of New South Wales.

¹ See s 4 of the *Legal Profession Uniform Law Application Act 2014* (NSW) which applies Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic) as a law of New South Wales to be referred to as the Legal Profession Uniform Law (NSW).

² Legal Profession Uniform Law (NSW), s 3.

If you choose to enter the legal profession, as many of you will, you will discover one important fact: in the legal profession, you are never alone. This has at least three aspects.

First, you are never alone in that, as a new member of the profession, there are older or more experienced practitioners who will guide you, mentor you and support you. Their help, encouragement and advice can be invaluable. Take the time to seek out those practitioners who can provide that support and do not hesitate to call upon them.

Secondly, you are never alone in that you will always have to interact with other members of the profession and they will watch and judge you. Depending on what you do, what you say and what you write in your capacity as a lawyer, you will acquire a professional reputation determined by your peers. It is entirely up to you, what sort of professional reputation you acquire.

Experience teaches that: you can lose a case but not lose your reputation, you can lose a client but not lose your reputation but if you lose your conscience, your reputation will also eventually be lost.³

Thirdly, you are never alone in that, when you confront a legal problem or question, almost invariably someone before you has also confronted a similar problem or question. Finding out how those before you have addressed the problem or answered the question can be of enormous assistance. Indeed, the great strength of our Common Law system is that it preserves and relies upon the accumulated wisdom of a very long past in order to assist in resolving very pressing, present issues.

To illustrate this, consider the question of the relationship between a lawyer and the profession to which he or she belongs. There are many comments and writings to

³ This summary is based on the quotation from Mr Ram Jethmalani referred to by Mr Stephen Gageler SC (as his Honour then was) in his Graduation Speech given on 15 December 2011 at the Australian National University, <<http://news-test.weblogs.anu.edu.au/2011/12/15/2011-graduation-speech-mr-stephen-gageler>>.

which one could refer but I want to draw your attention to the introductory paragraph contained in the preface to a legal text book published in 1630. The text⁴ is entitled:

THE ELEMENTS OF THE COMMON LAWES OF ENGLAND.

...

... Explicated for the more facile Introduction of such as are studiously addicted to that noble Profession.

By Sir FRANCIS BACON, then Sollicitor *generall* to the late renowned Queene Elizabeth, and since Lord Chancellor of ENGLAND.

It should be noted that I did not stumble upon the paragraph I am about to quote while I was thumbing through Sir Francis's text. As is typical in the Common Law system, I was alerted to it by a more recent reference. In May 1999, the Honourable Murray Gleeson AC, then Chief Justice of Australia, gave an address⁵ to a graduation ceremony like this one. In that speech, he referred to Sir Francis Bacon's "*famous observation that every man is a debtor to his profession*" and went on to examine what practice of a profession should entail. This caused me to search for the source of the observation and to assess whether it had relevance for today's young lawyers. I think it does, notwithstanding the unfamiliarity of the language.

Sir Francis Bacon, in explaining why he wrote his text book on the Elements of the Common Laws of England, said:

[I] Hold every man a debtor to his profession, from the which, as men of course doe seeke to receive countenance & profit, so ought they of duty to endeavour themselves by way of amends to bee a helpe and ornament thereunto; this is performed in some degree, by the honest and liberall practice of a profession, when men shall carry a respect not to descend into any course that is corrupt, and unworthy thereof, and preserve themselves free from the abuses wherewith the same profession is noted to bee infected; but much more is this performed, if a man bee able to visite and strengthen the roots and foundation of the science it selfe; thereby not onely gracing it in reputation and dignity, but also amplifying it in perfection and substance.

Although not in fashionable, early 21st century, plain English, this passage contains invaluable insights. Sir Francis argues that because members of the legal

⁴ Bacon, Francis, *The Elements of the Common Lawes of England* (London, 1630) <<http://www.constitution.org/bacon/ecl.htm>>.

⁵ Chief Justice Murray Gleeson AC, (Speech delivered at the University of Sydney Graduation Ceremony, 7 May 1999) <http://www.hcourt.gov.au/assets/publications/speeches/former-justices/gleesoncj/cj_sp7may99.htm>.

profession derive status (or countenance) and profit from their profession, they owe a debt to their profession. The fact that status and profit are derived from being a lawyer remains true today, just as it was in 1630. The concept that lawyers should make amends by being “*a helpe and ornament*” to the profession is equally applicable, although it is no doubt true that some members of the profession are more ornamental than others.

Similarly, his observations on how that debt can be repaid are as relevant now as they were 400 years ago. He identifies two principal means of repayment: by the honest and liberal practice of the profession; and by strengthening legal education which is the foundation of legal science or learning. Whilst participating in, and contributing to, legal education is important and it is appropriate today to acknowledge your achievements in this regard, I shall concentrate on the second means of repayment, your future practice of the law.

What does the honest and liberal practice of the profession involve?

The honest practice of the profession involves, in 2015 as it did in 1630, not descending into any conduct that is corrupt or unworthy of the profession. The Civil and Administrative Tribunal (of which I have the honour to be the President) confronts these issues frequently when dealing with the professional discipline of lawyers. You should avoid appearing in the Tribunal in the capacity of a respondent in such proceedings. Whilst it may be unpalatable to be reminded of such potential failures on a celebratory occasion such as this, it is salutary. Becoming a legal practitioner carries with it very significant responsibilities as well as the opportunity for substantial benefit.

Sir Francis Bacon also reminds us that, as lawyers, we should strive to avoid “*the abuses wherewith the ... profession is noted to bee infected*”. Whilst I find it difficult to think immediately of any abuses or vices with which lawyers might typically be infected, there are no doubt occupational hazards to which lawyers fall prey. Consequently, it would be wise to listen to you family, friends and supporters who are non-lawyers. They will usually be most willing to identify in graphic detail any

lawyerly shortcomings that you may be exhibiting. My family certainly do not feel the need to hold back in this area.

In addition to the honest practice of the law, Sir Francis counsels its liberal practice. “Liberal” is a much used and somewhat abused word in modern English with various connotations. Whilst the expression has many shades of meaning, in this context it includes being generous or magnanimous, free or copious⁶ in the performance of your duties and functions as a lawyer. When I use the word “free” I am not suggesting that lawyers should not charge for their services provided to those who can afford them. What liberality requires is that our practice of the law should promote the benefit of ready access to justice for all who need it, delivered to the full extent permitted by our capacity and resources.

There are many barriers, even in modern Australia, to accessing justice including disability, age, race, cultural background, socio-economic status, lack of education and social or geographical isolation. Sir Francis Bacon speaks directly to us to encourage us to conduct ourselves as lawyers and to conduct our practices so that we ensure that access to justice is generously available, especially to those who might otherwise not obtain the redress or assistance they need. Having been Solicitor-General and thus part of the Government, it is perhaps not surprising that he does not mention the Government as a provider of legal services or access to justice. Rather, he is emphasising that it is up to each of us as individual members of the legal profession to make justice accessible to the extent that we are able.

The logic of the situation is that, in order to repay the debt arising out of the benefits that the legal profession gives each legal practitioner, each of us should give back magnanimously, copiously, freely and even, when required, without charge the benefit of our services and professional expertise in order to make justice accessible to all with whom we come into professional contact.

If you do this, you will find once again that you are not alone in the legal profession. Many practitioners diligently repay the debt identified by Sir Francis Bacon through their individual provision of effective, efficient and well directed professional services

⁶ *Oxford English Dictionary* (Online Ed, meanings A. 1. a. and d.).

and through their participation in the pro bono schemes of the Law Society of New South Wales and the New South Wales Bar Association⁷.

It is honourable, praiseworthy and noble to be part of a profession whose principal aim is to promote the administration of justice in this nation.

Now that you have each been awarded your diploma, you are probably eager to go into the world and make the most of it. You are almost certainly eager for this address to finish so that you may go and celebrate this occasion with all those who have come with you tonight. You have sacrificed for long enough the golden hours of your evenings and weekends to attend classes, pore over cases, construe statutes, write assignments and listen to people like me.

Congratulations to all of you on being awarded your diplomas and prizes. Celebrate now.

Remember the debt lawyers owe to their profession.

Practice the law honestly and liberally, for the benefit of all.

⁷ See <http://www.lawsociety.com.au/community/findingalawyer/probono/> and <http://www.nswbar.asn.au/briefing-barristers/legal-assistance> .