



**Supreme Court**  
of New South Wales

**IN THE SUPREME COURT  
OF NEW SOUTH WALES  
BANCO COURT**

**ADMISSION OF LAWYERS**

- 1 **BATHURST CJ:** Now that the formal part of the proceedings has ended, I would like to warmly welcome you to the Supreme Court of New South Wales and particularly to the ceremonial Banco Court.
- 2 Present with me on the Bench today are two other Justices of the Supreme Court. Together, we constitute the Court that has, in exercise of its jurisdiction, admitted you to practice.
- 3 This tradition, of taking an oath before judicial officers to be admitted, is over 500 years old.<sup>1</sup> No doubt that's how long it feels like many of you have been studying. For your family and friends it probably feels like even longer.
- 4 I was in fact tempted to impose one more requirement that you would have to satisfy before you could practice as a lawyer. I was thinking, in order to boost the Supreme Court's twitter following, that as a precondition to you practicing, each of you would have to follow the Supreme Court on our Twitter account. I was told however, by my fellow judges that I had no power to do this. Incidentally, our "handle" is @NSWSupCt.
- 5 May I more seriously say, without recourse to abbreviations used on twitter that I only pretend to understand, on behalf of my colleagues, it is an honour to preside over this ceremony, and to welcome and congratulate each newly admitted lawyer. It is a tremendous achievement, which some of you no doubt have been thinking of since high-school. Others amongst you may only have become interested in the law after working or studying in another field or indeed

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<sup>1</sup> See for instance Statute 4 Henry IV, Ch 18 (1402).

after migrating to this country. Then again, if we are honest, there are probably some who only saw the allure of the law after watching Harvey Spector in *Suits*, Janet King in *Crownies* or Lieutenant Kaffee in *A Few Good Men*.

- 6 Whatever your path that has led you here, your individual experiences and perspectives mean the profession, and the administration of justice, has been invaluablely enriched by your admission. In this way you have contributed to ensuring the profession broadly reflects the make-up of our varied communities. This is something which is vital if the legal profession is to maintain the confidence of those communities. Although this is an area in which improvement can always be made, I thank you for your contribution to enhancing the diversity of the profession.
- 7 The fact that each of you have unique perspectives, reflects the unique nature of the legal profession. The law is different from other forms of employment. It does not concern itself with one subject matter. In many ways it is not only a discrete profession. It is a place. A place where all the different components and aspects of society intersect.
- 8 Not only is this a unique feature of the law, it is also one of its better attributes. It means you will never cease to discover all of its quirky expressions of human nature. You already know of the dangers of snails in soft drink bottles, or perhaps more recently, chips on shopping centre floors, the value of Carbollic smoke balls and the way to use “the vibe” in legal argument. However, you may not know that specific legislation in this State governs the management and tagging of rock lobsters, and on common law principles it was once a misdemeanour to eavesdrop.<sup>2</sup> Fortunately, and perhaps somewhat conveniently for lawyers, gossiping has never been outlawed.
- 9 Of course, the downside of the law’s constantly changing nature, is that it requires constant learning. By the time you reach the end of your career,

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<sup>2</sup> *Fisheries Management (Lobster Share Management Plan) Regulation 2000 (NSW)*; *Sibuse Pty Ltd v Shaw* (1988) 13 NSWLR 98 at 108.

probably 90% of what you tried to remember for exams will have been statutorily replaced, impliedly repealed or overruled by judges such as ourselves. Try not to be too disheartened though. For one thing, you now have the opportunity to contribute to this process of evolution. For another, it is this very quality of the law, as an ever evolving body of principles, spanning the breadth of all aspects of society, which will help maintain your enthusiasm and interest in it throughout your career. Although I am sure it is hard to believe, I was admitted an exceptionally long time ago. Yet to this day I am still learning new things – or, if I'm perfectly honest, having them pointed out to me.

- 10 It is, however, impossible to learn everything there is to know about the law. So don't send yourself to distraction trying to do that. Instead, focus on the other unique feature of the legal profession. As a lawyer, you do not build sky scrapers or plant fields. The constructions made and seeds planted through your work deal with a far more intangible, vulnerable thing. That is, the rule of law. The rule of law is a multi-faceted concept that demands, among other things, a commitment to justice, equal application of the law to government and citizens, strict judicial independence, and an ability to access the courts.
- 11 It is only because of the rule of law's presence and the stability which it provides, that our communities and economies can flourish. The equality which the rule of law ensures means in our society, the race is not always to the fastest, the battle not always to the strongest,<sup>3</sup> the victory not always to the wealthiest. It is this enigmatic principle which you are now trustees of. You are tasked with preserving, and strengthening the rule of law, as you declared, truly, honestly and faithfully, to the best of your knowledge, skill and ability. In taking an oath or affirmation before this bench, you have agreed to uphold this paramount duty to the court.
- 12 It is because of this commitment to the rule of law that lawyers are said to have clients, not causes. Lawyers must be prepared to give the same answer, to the

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<sup>3</sup> Justice Stephen Gageler, '2011 Graduation Speech' (Speech delivered at the Australian National University, Canberra, 15 December 2011).

same questions, for the same reasons, no matter who asks the question, or for what purpose, or in what context the asking may occur.<sup>4</sup> This means that at times, you may have to represent unpopular clients and speak out against abuses of power. It means, at times, you will have to be nothing less than courageous.

- 13 Fortunately, there are many lawyers, both past and present, that can act as inspiration. I should clarify that I am not only speaking of fictional lawyers, like Dennis Denuto in *The Castle*. Take for example the lawyers representing Mr Gregory Kable in a case which gave rise to the Kable principle. Those lawyers argued that legislation seeking to detain Mr Kable, because of the fear of *future* crimes that he *might* commit, was invalid.<sup>5</sup> They did not have the politics of the day on their side. They did not have the support of talk-back radio or the general public. Quite the reverse. Yet they argued, successfully, for the preservation of a fundamental aspect of the rule of law, equality before it.
- 14 Despite the almost legendary reverence lawyers tend to give cases such as *Kable*, *Mabo*, *Boilermakers* and so many more, I assure you there is nothing exceptional about these cases.<sup>6</sup> Day in, day out, and for a good part of the night too I regret to say, lawyers are providing fearless legal advice, even when they know it may be unpopular to do so or will cost them a crucial client.
- 15 Now that you are admitted, you too will be called on to deliver fearless advice, speak out in cases of injustice, contribute to public discussion and, where appropriate, correct ignorance in public debate. I should add that these obligations apply regardless of whether you practice as a litigator, or if you intend this to be your first and final appearance in court.

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<sup>4</sup> Ibid.

<sup>5</sup> *Kable v The Director of Public Prosecutions for the State of New South Wales* [1996] HCA 24; (1996) 189 CLR 51.

<sup>6</sup> *Mabo v The State of Queensland (No 2) (The Mabo Case)* [1992] HCA 23; (1992) 175 CLR 1; *The Queen v Kirby; Ex parte Boilermakers' Society of Australia* [1956] HCA 10; (1956) 94 CLR 254.

- 16 Bearing these obligations in mind, it is important to remember that from today, you have the great benefit of being a member of a professional community. When clients are demanding – and they generally are – or you are having difficulties with your work, the support of your peers will be invaluable. I was a barrister for some 35 years and over that time I lost my fair share of cases, certainly far more than I think I should have. The other barristers on my floor could always be counted on to share my disappointment at the unfairness of the verdict, the sly tactics of opposing counsel, and most often I regret to say, the obtuseness of the judge. I hasten to add I do not include any of my fellow judges in that comment.
- 17 It is because of your entrance into this collegiality and the united promise you now all share to serve the law that we mark today's occasion with the ceremony you have just witnessed. Believe me, I am not wearing this wig because it is comfortable, much less because it is fashionable.
- 18 On behalf of the judges of the Supreme Court, I congratulate you on your admission and welcome you to the legal profession.
- 19 The Court will now adjourn.