

**MONASH UNIVERSITY GRADUATION CEREMONY
FACULTY OF LAW ROBERT BLACKWOOD HALL
THURSDAY 5 MAY 2011
THE HON. JUSTICE PAMELA TATE**

Mr Deputy Chancellor, Mr Deputy Vice-Chancellor, members of the faculty, and, most especially, today's graduates and their families and friends.

It is a great privilege and honour to have been invited to address this Graduation ceremony at Monash University today.

Being here today holds particular pleasure for me as it was in this hall that I sat, in happy anticipation, waiting for my name to be called, 23 years ago, on the 6th of May 1988. My fellow students and I sat there with very little idea of what the legal profession was all about. We had no real sense of what would anchor us in our legal careers. We suspected that there were critical things about the legal profession that we had never been told about at Law school. We had an intellectual passion for the Law and a dedication to the Rule of Law. We had equipped ourselves well in our summer clerkships and had been welcomed at the cocktail party functions of the big law firms and the considerably less lavish, but equally as enjoyable, barbecues of the Law Students' Society and the community legal centres.

But it was another matter entirely to reflect on the consequences of leaving the comforting entrance of the Law school and with it the first decision of the day, whether to take the steps up to the library or the steps down to the chatter. We were as keen as no doubt you are to find out more and more of what the practice of law was all about, in its many forms. But this involved walking as novices, without the comfort of our friends, as many of you will have started to do, into the offices of law firms, government agencies, barristers' chambers, law reform commissions, and courts, knowing that we would ultimately be called upon to make our own distinctive contribution.

When I was sitting in this hall, all those years ago, this reflection carried for me, as perhaps it may for you, an ambivalence. There was the excitement of an open-ended and abundant future and yet the uncertainty of not knowing what the details of that might be. Most especially, I was concerned that there was a single model of a 'lawyer' to which everyone was bound to conform.

Looking back from the perspective of 23 years, might I assure you that one of the great attributes of the law and the legal profession is that it encourages and rewards individuality. There is no single path dictated to you by having a law degree. There is no universal template for a lawyer.

At the Bar it was made plain to me that it was an important aspect of legal presentation that you remain true to yourself. It is impossible to simulate the advocacy of some other lawyer without appearing false. Now looking down from the Bench I see a great myriad of advocacy styles – some more effective than others – but all respected and all discussed by the judges as bearing that advocate's individual style. Graduating in law is not about becoming a clone. Being true to yourself within the profession helps ensure that you can authentically discharge the responsibilities that will fall upon you.

There are some cautionary limits on individuality, however. There are antics to avoid, especially in court. Perhaps it's best not to emulate the barrister who responded to the question repeatedly made by the exasperated judges 'What's your best point?' with the reply: 'I'm not prepared to disclose that'.¹ And you would be ill advised to inform the judge, as one lawyer did, that his submissions to the jury would not take long because he 'would like to move [his] car before five o'clock.'²

For my part, I imposed my own limits on individuality. At the Bar I was advised by another barrister that, as I was born in New Zealand, I should seek to emphasise the flat New Zealand accent to make myself

¹ David Pannick, *I Have to Move My Car – Tales of Unpersuasive Advocates and Injudicious Judges* (2008), 102.

² Ibid, 1.

noticed. I considered this beyond the pale and it is advice I have sought strenuously to avoid, with or without success.

The question of authenticity is linked to the future of your legal career in three critically important ways.

The first is that it is your duty to give legal advice that is your honest opinion of the law. It must be independent of whatever pressures are brought to bear on you or the context in which you find yourself. This applies if you are in a large law firm and called upon to give advice to an important client on whether a defence is available to a proceeding brought by ASIC. The same duty applies if you are working for a government agency and asked whether the conduct of its officers – conduct that may be part of a regular practice – has exceeded the officers' statutory powers. It applies if you are asked whether a trial in which millions of dollars have already been invested really has any prospects of success.

What every client is entitled to assume is that you will give them an opinion that is not designed just to please them or to retain them. Your opinion should not seek to put a reassuring spin on a matter that has proved hopeless. The client is entitled to an opinion that, within the limits of your knowledge and capacity, is your honest understanding of the law.

The second professional responsibility that personal authenticity will enable you to discharge, is the obligation to the Court or Tribunal not to mislead. Whether you find yourself at VCAT or before the Supreme Court you must know that those who exercise the decision-making power are relying on you to disclose what is necessary to enable it to have a proper and full appreciation of the relevant facts. Failing to disclose in a bail application that the accused owns a Learjet will leave a bitter taste in the mouth of the magistrate. Even worse, the Court will associate you – perhaps forever – with an occasion on which it was duped. Its displeasure on seeing you again will be palpable.

The third consequence of remaining faithful to who you are is that it enables you to understand that different lawyers will have genuinely different perspectives on a case. Be cautious about those lawyers who invariably think that the merits of their side of the case are overwhelming and that anyone opposed to them must be an imbecile. The chances of the merits of a case lying wholly on one side are very slim. I have almost never seen it.

Failure to appreciate the strengths of the opposing case is a bad misjudgement. For a new lawyer to understand who they are and that they come to each matter from their own perspective, with their own

instructions, best enables them, I believe, to respect the professionalism of those who see the matter through an opposing lens. Remember that your friends at law school may ultimately become your colleagues or your opponents, or, in the case of the Bar, both at the same time.

It is easier to understand that other lawyers will approach a contested matter from a different point of view when one respects the fundamental tenet of our legal system that everyone has a right to legal representation. ‘Everyone’ includes not only those who are disadvantaged and at the margins of society but also the murderers, armed robbers and serious sex offenders who appear regularly before the Court of Appeal. The Mokbels, the Freemans and the Farquharsons all have a right to be legally represented – so too British American Tobacco or the directors of James Hardie. Those who represent a client are not to be identified with them. Clients come in all shapes and sizes. Learning to live with an unpopular cause is part of the discipline of becoming a professional.

A legal career is thus not a path to uniformity. I could not have known 23 years ago that my law degree would lead me to a seat as junior counsel for Victoria listening to the submissions in *Kable* that were to change the constitutional arrangements for State Supreme courts,

perhaps forever. I could not have known that I would represent the State of Victoria in the armed conflict known as *WorkChoices* or that I would ultimately hear and determine cases as diverse as those seeking a remedy in restitution, or overturning an exemption from stamp duty, or the setting aside of a conviction on the ground of mental impairment. It is that variety that has reaffirmed my passion for the Law. The need to retain authenticity in all the ways I have described, and to discharge one's obligations to the Law, has been ever-present.

On a personal note, I am particularly delighted to deliver this address, as a graduation ceremony holds for me one of my earliest childhood memories. When I was a young girl aged about five my father took me to the graduation ceremony at Otago University in Dunedin, New Zealand. My principal recollection of the event was that there was what appeared to be a spontaneous eruption of applause at regular intervals although it was not clear to me at the time precisely what this was for. From where I sat, the stage looked very remote and it's true to say there was a certain sameness about the actions of the participants. Nevertheless it was plain that it was a formal and serious occasion.

A graduation ceremony may seem to have been an odd choice as an outing for a young girl. I've wondered whether my father had a friend

or a relative graduating that day. I suspect not. I believe that he viewed the ceremony as a visual affirmation that tertiary education was something to be prized – that the intellectual training and discipline that a university provided was something to aspire to and something which, if achieved, was to be cherished. That ceremony represented, as does today's, a celebration of the inherent value of tertiary education which should instil in you a life-long love of learning. It is that continuous desire to learn which will enable you to have real fulfilment in your future careers.

The debt you owe to Monash University – as do I – is that it is an institution which sets out to cultivate and nourish the minds of its students. Its endorsement, your degree, enables you to receive recognition from the world for the depth and accuracy of your knowledge and abilities. It renders your future sure-footed.

The demands that Monash has imposed on you, and your demonstrated capacity to meet those demands, is evidence that you are ready to grapple with the complex challenges of your chosen discipline. You have the competency to engage intellectually with the rigours of Law in any of the many versatile ways that Law permits. The University has warranted you as ready and you can be confident that you are ready. You have met the standards of an eminent

institution. Today's ceremony publicly celebrates that each of you has met those standards.

It is for you, as new graduates, to sustain your capacities with the confidence, joy, and pride to which you are entitled.

To each of you I give my very warm congratulations and my very best wishes for your individual futures.

Thank you.
