Graduation address – Monash University

JUSTICE PAMELA TATE[1]

Remarks by the Honourable Justice Pamela Tate at the Graduation ceremony, Monash University, Robert Blackwood Hall, Clayton Campus, Melbourne.

Thursday 24 May 2018

Acting Deputy Chancellor, The Honourable Peter Young QC; President and Vice Chancellor, Professor Margaret Gardner; Emeritus Professor Louis Waller; Dean of the Faculty of Law, Professor Bryan Horrigan; distinguished guests; members of the Faculty; proud families and friends; and most importantly, fellow graduates.

It is a special day in the lives of all of you here, who, like me, are receiving a degree today. May I say it is a great privilege for me to be awarded an Honorary Doctorate from Monash University. And I offer my warmest congratulations, and good wishes, to all the new graduates.

Today is a rite of passage for you. It signals an immense personal achievement. All those years of sitting through lectures, typing hundreds of pages of notes, and frantically writing as much as you can in exams, have paid off. Take the time to reflect on the enormity of what you've achieved. You have met the rigorous intellectual standards of one of the finest Universities in the world. Today's ceremony publicly celebrates that each of you has met those standards.

It is an achievement that will stay with you for the rest of your lives.

To understand how far you've come, remember back to how it felt on your first day at Monash. How unfamiliar it all was.

For law graduates, remember how heavy your first textbooks were – and how expensive. You hadn't yet heard of the *Carbolic Smoke Ball* case. You had no reason to suspect that snails could

[1] Court of Appeal, Supreme Court of Victoria.

be found in bottles of ginger beer – the beginnings of the modern law of negligence. Whoever you happened to sit beside in your first law lecture, or on the bus to Law camp, may have been the determining factor in your friendships for the next several years.

You were soon to realise the tremendous hard work that it takes to achieve a Law degree.

You may be surprised to hear that many of the most valuable lessons from the degree are not directly connected to the curriculum. Completing Evidence or Trusts has not only taught you about complex legal principles, but also about discipline and perseverance. Your professional success depends more on developing those qualities than recalling the cases on the reading guides. You may soon find yourself immersed in an area of law you never studied, or in a role where law is only incidental.

You may also have juggled part-time work, internships, community legal centre placements, and maybe an international exchange. If you have managed all that while still remaining a good friend, and an only occasionally moody son or daughter, this shows that you have already learned how to lead a balanced life. That will be of the utmost importance for your future happiness.

As you begin the next stage of your lives, it is important to take your whole self with you rather than conforming to the expectations of others. This means you as an individual. There is no single path dictated to you by having a Law degree. There is no universal template for a lawyer.

My own individual path involved 10 years studying and teaching Philosophy before committing myself to Law.

I burned off my youthful energy at the University of Otago, in Dunedin, New Zealand, studying Philosophy of Mind and Philosophy of Language. I then spent three wonderful years at the University of Oxford.

However, originally, I had wanted to study Law – and be a barrister. My father gave me a book that had a formative influence, called *Advocacy in our Time,* when I was about 13.

I treasured the thought that one day I would appear in court.

I entered the Law faculty at the University of Otago as an immature teenager about to turn 18.

I found Otago Law faculty at that time stuffy and old-fashioned. Students were addressed as 'Mr' or 'Miss'. The aim seemed to be to make students conform to the establishment's view of what a lawyer should be. Law reform was not on the agenda. Human rights did not rate a mention. Women students and academics were scarce. Things have changed since then and the faculty is now diverse and flourishing. But when I was first exposed to Law, I found it limiting and dry.

After 10 years of Philosophy, I decided to try studying Law again — this time at Monash.

I immediately revelled in the vitality here. Lecturers and tutors called us by our first names. The Law faculty was full of female students and teachers. My honours thesis was supervised by Professor Enid Campbell, the first woman to hold a Chair in Law in Australasia. The faculty encouraged an openness of mind. There was a commitment to broadening access for entry to the legal profession and to enabling the community to obtain legal advice. There was an understanding that the Law could be used to work against injustice. There was an intellectual rigour and a sense of purpose. It was inspiring.

I have relied on that inspiration throughout my career.

As you start your legal careers, I want you to keep two ideas in mind. These two ideas come from opposite sides of the perennial debate about challenging or defending our institutions.

The first idea is the importance of critically evaluating the traditional norms and conventions of the legal profession. Your colleagues in the next few years will have a substantial impact on your

development. The most influential may be your supervisors or more junior colleagues. You will learn a lot from these people and they will shape the way you view the profession. But you should not uncritically accept the customs you witness and the social norms your work environment endorses.

For example, traditionally you needed to have a very specific set of characteristics to succeed in the Law. You may have noticed on the top floor of the Monash law library there are a series of photos of prominent Australian judges. Almost all of them are men. Almost all of them are white. The same is true of a long corridor that I walk down in the judges' chambers of the Supreme Court. Photos of all the judges from the Court's history line the walls in their order of appointment. One of the first photos is of Sir Redmond Barry, appointed when the Court was established in 1852.[2] I have to walk a very long way along that corridor before I encounter a woman's face. I have to walk past over 140 years of judges. That is a great many photos. The first woman's face appears in 1996, Justice Rosemary Balmford. Then a slow increase. Now the Court has a healthy proportion of women judges. But we're not there yet. Of the 12 judges on the Court of Appeal I am currently the only woman.

I hope that the world which you, as new law graduates, are about to enter will continue to become increasingly inclusive. I hope it will not tolerate the unfairness and unconscious bias that prevented women from occupying positions of authority or being equal participants within the legal system. The same applies to racial and cultural diversity. But it will be up to your generation to ensure that this is how the legal world operates.

The second idea is on the other side of the debate. This is the importance of respect for the

---

[2] Before then there were four judges appointed to the Supreme Court of New South Wales and the Port Philip District of New South Wales between 1841-1851: Justice John Walpole Willis, Sir William Jeffcott, Sir Roger Therry, and Sir William a-Beckett. This was before Port Philip District separated from New South Wales and became the colony of Victoria. One of Victoria's first legislative acts as a colony was to establish the Supreme Court. The last resident judge, Sir William a-Beckett, became the Supreme Court's first Chief Justice. Their photos are also included along the corridor.

administration of justice.

You may have recently seen, or read, extracts from the *Royal Commission into Misconduct in Financial Services.*[3] You may have watched witnesses squirming under interrogation from counsel assisting, or facing the wrath of the Commissioner, the Honourable Ken Hayne QC. Some of those squirming, both inside and outside the Commission, have been lawyers. You never want to be in that position. You never want to be facing the question of whether your legal advice was truly independent. Nor the question of whether you turned a blind eye to questionable practices so as to be part of the team or to keep a big client. In your careers, there may be real pressures to conform to a dubious culture. It is a very human quality to want to run with the pack. If you face those pressures, remember not to fall below the ethical standards that Monash has instilled in you.

Another way that I hope you respect the administration of justice is of close relevance to my role. I hope you respect judicial independence. This is the principle that judges must decide cases on the basis of the merits of what comes before them and without regard to external influence or interference.[4]

External interference commonly takes the form of a public attack on the courts.

This does not mean that judges cannot be criticised. Judges must be robust. Judges' egos are irrelevant. When I pick up a newspaper, I see dozens of stories criticising what judges have done,

---

[3] That is, the *Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry*.

[4] Judges must decide 'without fear or favour'. This principle is designed not for the benefit of judges but as a guarantee to the people who come before them, the litigants. It recognises that people who come to court 'have the right to have their disputes decided by an independent and impartial tribunal': *NAALAS v Bradley* (2004) 218 CLR 146, 152 [3] (Gleeson CJ). Its ultimate foundation in Australia rests on the Commonwealth Constitution: *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337, 343 [3] (Gleeson CJ, McHugh, Gummow and Hayne JJ)) 363 [81] (Gaudron J), 373 [116] (Kirby J), approved in *NAALAS v Bradley* (2004) 218 CLR 146, 152 [3] (Gleeson CJ), 162-3 [27] (McHugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ). Every Australian court must 'be and appear to be ...independent and impartial': *NAALAS v Bradley* (2004) 218 CLR 146, 163 [29] (McHugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ).

particularly in the realm of sentencing, as ‘lenient’ or ‘out of touch’ or other more colourful phrases. The criticisms may be misguided or ill-informed but by and large they do not risk infringing judicial independence.

However, if these criticisms occur at a particular time, the administration of justice can suffer. When judges are in the course of deciding a case, a public attack on them about that case, or the outcomes of similar cases, may cross the line. It risks infringing judicial independence. A call in the media for a case to be decided in a particular way places a judge ‘between a rock and a hard place’. If the judge decides consistently with that demand, it might look as though the decision is the result of that demand. If the judge decides the other way, it might appear the media’s criticisms are confirmed. The court is placed in an impossible situation - a ‘catch 22’.

No matter what the court does, it no longer *appears to be* impartial.

And who suffers?

The primary victim is the person whose case is being heard. How can they be confident that their case was decided according to law and not because of the demands in the media? Their likely reaction is that justice was not done.

The secondary victim is the community because faith in our justice system is eroded.

It is again the responsibility of your generation to defend our system of the administration of justice according to Law. This is so whether you are aiming to be a practising lawyer, a legal academic, or not entering the profession. Your degree means you know how the system works when many of your friends and family do not. You know that many legal questions involve balancing competing considerations. You know, for instance, that judges strive to impose fair and appropriate sentences and that, in doing so, they have to consider not only the gravity of the conduct and the impact on the victim but also an offender’s prospects of rehabilitation and remorse. These are not simple

mathematical equations.

You know why some evidence, although relevant, is not admissible in a trial – when, say, its probative value is substantially outweighed by the danger that it might be unfairly prejudicial to a party.[5]

And when a judge gets any of these matters wrong, the system provides for review by an independent group of judges, on appeal.

Defending our justice system, and explaining how it works, supports the Rule of Law. Without continuous vigilance and support, the justice system falls apart. The Rule of Law is not a natural state of affairs and looking around the world, it is not even the most common. Our system is one to be proud of and to defend. I hope you will defend it throughout your careers.

Finally, I thank the University for this wonderful honour. Just as the support of your family and friends no doubt means so much to you, I want to say to my husband, Chris, and son, Andrew, that my achievements leading to this honour would not have been possible without their constant love and joy.

Fellow graduates, you have demonstrated your exceptional ability. I hope you have the courage to follow your own individual path in whatever career you choose and find what makes you thrive. I encourage all of you law graduates to make your own distinctive contribution to the Law.

*****

5 *Evidence Act 2008* s 135.