



**THE ELEGANT ANONYMITY OF A PROFESSIONAL**

**Address to the Law Society of Western Australia's**

**Welcome to the Profession**

**The Honourable Justice Peter Quinlan**

**Chief Justice of Western Australia**

28 November 2018

Thank you to the Law Society, its Young Lawyers' Committee and the College of Law for the kind invitation to address you all at this welcome of recently admitted practitioners. May I begin by acknowledging the Whadjuk people of the Noongar nation, on whose land we meet, and pay my respects to their elders past, present and emerging.

Of course, if you were admitted to the Supreme Court in the past three months, I will already have welcomed you to the profession at your admission ceremony. If you are one of those, I welcome you again and promise not to repeat what I said on that occasion. If you were admitted earlier this year, I take this opportunity to formally welcome you to the profession. If you were admitted years ago and are still hanging in there trying to work out what it is to be a professional, I thank you for hanging in there. And if you were admitted years ago, and feel yourself drifting from the profession, I plaintively call you back.

It is one of the great clichés of occasions like this that I inform you, or remind you, that the law is a profession and not a business (or its more insidious version: that the law is a profession and not *just* a business).

And this is not a cliché because it is untrue.

It is a cliché because it is a soothing little phrase that we use all the time but don't spend any time contemplating what it means, or how it affects our day to day practice of the law.

What exactly does it mean to be a member of a profession?

How do we distinguish a profession from other forms of worthwhile calling, that involve skill and learning, and contribute to the well-being of society but which are not traditionally described as professions? Mechanics, technicians, retail workers, hairdressers. All of these pursuits are important and worthwhile, and surely no less important than being a lawyer. And yet these vital occupations are not traditionally described as professions.

Is it formalised, specialised knowledge that marks out the professions? Years of study at university, pouring over texts and law reports (do you still have those?), graduating with honours degrees only to be cast into the practical training regime of the College of Law. Surely the amount of time and effort it requires to get that certificate of admission must be what counts to be regarded as part of a profession.

And yet, all manner of work involves specialised acquired knowledge, requiring training, study and effort. A mechanic knows more about car engines than I could ever hope to know; without his or her acquired skill I would be rendered absolutely helpless whenever my car broke down. Not to mention electricians or plumbers. I never cease to marvel at the skill and ingenuity displayed by these technical experts.

So it's not specialised knowledge, or skill, or importance that marks out the professions.

It is something more subtle and elusive than that.

The American philosopher Robert Sokolowski identified that elusive quality in this way:

If I go to an automobile mechanic, all I entrust to this person is my automobile, but when I approach a professional, I subject something more than a possession of mine to the professional's expertise: in a distinctive way, I subject myself and my future to his or her assessments and to his or her judgment. Using the word 'prudence' in the classical sense, the sense given to it by Aristotle as a person's ability 'to deliberate about what is good and expedient for himself' in a way conducive to the good life in general, I submit my own prudence to that of the professional. In a limited way, I hand over the steering of my life to this person. I let him or her take over not just one of my things, but my choices and activities themselves. ...

If I go to a mechanic or to a dry cleaner, even one that provides 'professional dry cleaning', I hand over my car or my jacket to someone else, but in dealing with a doctor or a lawyer or a teacher, I submit myself to be determined in my future condition by the one I consult.

Submitting your future condition to another person is something we usually do only to loved ones, close friends, partners and family. Not to people who are strangers.

And handing over the course of one's future in this way, to a stranger, implies a particular kind of trust, and a particular kind of ethical responsibility on the part of the stranger.

That is where the distinctive ethical dimension of a profession comes in. Because if I am going to submit the future condition of my life to someone else I have to trust that person, in a way that is different from the trust I place in others.

Professor Sokolowski again:

The client trusts the professional and entrusts himself or herself - not just his or her possessions - to the professional. The professional is presented as trustworthy not primarily in the way a friend is found to be faithful, by having proved himself or herself in many situations, but by having been certified as a professional. There is an elegant anonymity to professional trustworthiness; if I get sick away from home and must go to the emergency room of a hospital, I can in principle trust doctors and nurses I have never met before. I enter into a fiduciary relationship with them because they are presented as members of the medical *profession*, persons who are certified by the profession and who can, *prima facie*, be taken as willing to abide by its norms.

The "elegant anonymity" of professional trustworthiness, then, comes not from your own individual moral rectitude but from an ethical character of the community as a whole – from which it derives and for which every member of

the community has the responsibility to maintain. This is why unethical behaviour by one member of a profession tarnishes the profession as a whole.

Of course that ethical character - that *ethos* - is different for every profession and it is as elusive and subtle as the nature of a profession in the first place.

You won't find it in a set of rules, or in a book, or even (Heaven forbid!) in a course at a College of Law. You only find it in the community of persons itself; and you only acquire it by being immersed in that community of persons.

The habits of conduct that make up the ethos of a profession are, as the English political theorist Michael Oakshott put it, acquired "in the same way as we acquire our native tongue".

Taking this idea further, Professor Gilbert Meilander has said:

We learn from those around us - from living with people who habitually behave in certain ways, and from being thereby initiated into a tradition of conduct. The moral life is essentially a reflection on practice, and we are drawn into such reflection as we learn from skilled practitioners. Again, the analogy with language is illuminating. We have learned to speak English, but there is no moment to which we can point and say, 'then I began to learn the language.' For it was habitually spoken by all around us. It was the form of life in which we were immersed. To be sure, our language will also have its grammatical and syntactical rules, and the day will probably come when we learn them. Perhaps on one occasion or another these rules will help us over a difficult point, but this sort of learning has little to do with making us skilled speakers of the

language. Education in our native tongue cannot be confined to particular moments. It is the sea in which we float and then, perhaps, swim.

Can I suggest that that is where those of you who are new members of the profession are all now?

Floating in the waters of the profession.

No longer standing on the shoreline wondering whether to dive in, wondering whether you will sink or whether the water is too cold.

Well, you didn't sink and the water is fine.

And soon you will be swimming and, even better, bringing others along with you.

I wish you the best of luck.