

COMMENT ON ADDRESS – HIS HONOUR THE CHIEF JUSTICE
(305 WILLIAM STREET MELBOURNE, 5:15 PM 1 DECEMBER 2008)

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Principally from the perspective of a practising barrister, it is apparent that:

- Australian legal profession is very diverse and increasingly so.
- There clearly are problems in attempting to maintain a coherent professional identity.
- There needs to be intellectual interchange and a high level of understanding for the 3 principle areas of activity (academic, practising and judicial) to operate as well as it might.
- The homogenisation of legal community should be improved.

Legal scholarship

- The legal academia is engaged in work in juris prudence, social law, comparative laws, international laws, criminology and deals with broad overviews like the analysis and comparison of the way in which national lawmakers deal with those varying areas.
- The academic perspective is much broader than is usually the case with a legal practitioner (it needs to be) academic institutions do not only educate practising Australian lawyers.
- The legal academic perview is quite different from that of the practising lawyer.
- The academic lawyer specifically analyses decided cases; he or she also looks much more widely at issues like the trend of decision, the impact of the way

in which cases are being decided in certain areas, in the desirability of those trends and their probable future implications.

- In the area of academic consideration of legislation the academic is continually commenting on the illogicality and impracticality of legislation, and how it fits into the overall legislative framework, and how it might be improved.
- Very importantly the Academy takes a more global perspective and introduces other considerations such as the theoretical and moral bases of areas of law and how those areas work in our society in relation to political or sociological or economic phenomena – academic institutions and writers also consider comparative overseas experience and trends.
- The academic does not need to direct his or her efforts to purely practical application, (although to do so might improve the sale of their texts and works to practising lawyers).

The practising lawyer advocate/barrister:

- Seeks specifically to produce a result which is favourable to one's client in the context in which the matter briefed arises.
- Leaving the factual aspects aside – identifies and communicates the available legal arguments to achieve a winning outcome for one's client.

Utility of academic work via institutional teaching, texts and articles – to practising lawyer

- The utility of the academic product is very significant.

- Texts and articles : reflect the understanding of a person who has probably been reading into the area (in detail) for many many years and looking at all aspects of its context and development.
- The academic teaching, text book or academic article is the input likely to most effectively accelerate the barrister's understanding of that area because within a relatively concise work the lecturer or author will probably have touched on most of the background, principles, tension between the principles and the important cases.
- The breadth of erudition by the academic is likely to lead one quickly into where the law and the philosophy of the law is at in other jurisdictions including the juris prudence in Canada and the United States of America which often interests Judges in this country.
- In certain areas of the developing law and subtle policy the identification and the discussion of the considerations which inform the intellectual debate and how it appears assisted the court's decisions, and is very helpful (restitution/unjust enrichment, negligence cases which have a novel aspect to them – pure economic loss, psychiatric injury, causation and the like).
- In the regulatory area where regulators are focusing on acceptable policy considerations (and in the area of novel situations the views of the academic is of particular value and utility to the advocate) the evolution and execution of substantial commercial arrangements and transactions where there is the need to persuade regulators as to the acceptability of the same (ASIC and the ACCC etc.)
- Similarly – academic analysis and views are of great assistance in certain areas of legislation interpretation.

- I note that there is an increasing trend of reference to academic writing in relevant areas of law.

Bridging the gulf

Initiatives to close the gap – improve understanding and communication

- Increase level of teaching tutoring and seminar participation by practising lawyers at universities and similar institutions.
 - There has been significant mobility between the academic community and the Bar in that a number of academics have come to the Bar and commenced sustained and successful careers as barristers. (I expect the experience within the ranks of solicitors is similar). This is an important area of potential homogenisation.
 - Academics could participate in the continuing Professional Development Programs (CPD) run by such organisation as the Victorian Bar and the Law Institute I expect.
 - I also note there is some, although I would suggest minimal movement of practising lawyers into academia.
 - Involve academics as observers in the coalface conduct of [legal work] litigation.
 - All quality intellectual input from academics, practising lawyers and of course the Judges should be harnessed to get to the best enlightened result.
- Therefore any work towards better utilisation of each area by the other will be of real benefit.