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ETHNIC COMMUNITIES' COUNCIL OF NEW SOUTH WALES

ANNUAL GENERAL MEETING

POLISH CLUB, ASHFIELD

MIGRANTS AND AUSTRALIAN LAW : THE LAST CITADEL?

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MIGRANTS AND AUSTRALIAN LAW : THE LAST CITADEL?

The Hon Mr Justice M D Kirby CMG
Chairman of the Australian Law Reform Commission
Member of the Australian Institute of Multicultural Affairs

A TIME OF CHANGE

The rapid post-War influx of migrants into Australia has left the law in Australia virtually untouched. If Australia is serious about multiculturalism, it will have to adapt its laws, legal procedures and institutions to the reality of today's ethnic diversity. This will not mean, of course, throwing away the best features of the legal system inherited from Britain. But it will require a greater sense of urgency for law reform than has been evident to date in our country.

'LEGAL CITADEL'

The law is virtually the 'last citadel' of Australian public life still to adapt to the rapid influx into Australia of post-War migrants from non English-speaking countries. Migrants are now increasingly being found in top jobs, as parliamentarians, as professors and as senior bureaucrats. However, so far, they have not made much of an impact on the law or on the judiciary.

Justice Murphy and other commentators are pointing to the fact that there are few women and even fewer 'ethnics' in the judiciary in Australia. Of course, you do not create a 'ready-made' judge overnight. Years — decades — of training and preparation must go into readying a lawyer for this demanding intellectual job. But whereas things are changing in respect of women, I do not see the same changes on the horizon in respect of 'ethnics'. It is surprising — even frightening — to some of the older members of the legal profession, to learn that in half the law schools of Australia more than 50% of the

students are women. Women judges are now being appointed in greater number. In 20 years, I expect we will have gone a long way to redress the balance of the sexes on the Bench in Australia. Girls at school today can be told with confidence that they can enter law and look to an expectation of judicial promotion. When I was at the law school, 20 years ago, only 2% of the law students were women. Inevitably, it takes a while for the change to be felt at the top

But if things are changing in connection with women, the changes to reflect our diverse ethnic population will come more slowly. This is, as I have said, the last citadel of public life still to be taken. The judiciary is still decidedly Anglo-Celtic. People from non English-speaking countries somehow do not seem to enter the law as a profession. Take the following statistics:

Number of lawyers in Australia		17,515
Numbers born outside Australia		2,558
<u>Subtract</u> numbers born in UK	960	
numbers borne in NZ	214	1,174
Approx number lawyers born overseas		
in non English-speaking countries		1,384
ie percentage		7%
compare adult percentage general population	20%	

The figures in relation to people whose parents were born overseas are similarly atypical. The only figures I have are from a survey of lawyers in Victoria, but they are probably typical of the rest of Australia:

proportion of practising lawyers in Victoria		
born in Australia		84%
proportion of practising lawyers in Victoria		
whose father was born in Australia		70%
proportion of the general population whose		
father was born in Australia		57%
proportion of 16% not born in Australia		
UK	5.7%	
Greece	0.5%	
Italy	1.8%	
Eastern Europe	2.5%	
Northern Europe	2.2%	

These figures show that migrants and the children of migrants are not being attracted, proportionately, to the legal profession. Why should this be so? Is it because of the very English appearance of the legal profession? Is it the Englishness of horsehair wigs and black robes? Is it the obligation to find our laws in the judgments of English judges, handed down over the centuries? Is it the necessity to master the refinements of the English language, revelling in the nuances of linguistics that so delight lawyers?

I do not believe it is any of these things. In the other great multicultural society — the United States — you have only to look at the names of the finest judges to realise the gusto with which their ethnic community has entered the law school, the Bar and the judiciary — Brandeis, Cardozo, Frankfurter. How ironic that the three greatest common law judges of the United States this century were all first generation migrants. Where are the similar success stories in Australia? There are, I am afraid, few of them. Somehow, our migrants do not enter law schools in anything like the proportion of their growing numbers in our community. The women are flocking to the law in great numbers. The migrants are staying away. This is a serious and puzzling phenomenon. It is unhealthy for the law, whose officers, high and low, should generally reflect the diversity of the population.

NEED FOR REFORM

Possibly it is because of the lack of reflection of ethnic Australians in the Australian legal system that it had, until lately, been relatively insensitive to the special problems of people not fluent in English. The Australian Law Reform Commission, in a number of reports, has made recommendations to improve the position of people in Australia not fluent in English. I mention specifically:

- * proposals for a right to an interpreter during interrogation by Federal police
- * proposals for notification of rights to police suspects, in the major ethnic languages
- * proposals for notification in ethnic languages of procedures and rights governing compulsory acquisition of property by the Commonwealth
- * proposals for changes in sentencing, affecting persons liable to 'double punishment' by deportation
- * proposals for changes in insurance law to allow courts to take into account the circumstances of the person insured when determining matter he should have disclosed to an insurance company. These circumstances could include familiarity with the language and with Australian insurance practice
- * proposals for changes in relation to the right to an interpreter in Federal courts and tribunals.

The Australian legal system has many 'fine qualities'. Many migrants have come to Australia to escape unjust legal systems and because of the high standards normally provided by the system of British justice followed in Australia. However, it is vital to avoid complacency and self-satisfaction. It is not possible to have such a radical change of Australian society as has followed the migrant intake, without necessitating changes in laws, procedures and legal institutions.

The Australian Law Reform Commission is working hard to adapt the law to the needs of multicultural Australia. Of the present 11 Commissioners of the Australian Law Reform Commission, four at least were from an ethnic background:

One of our Commissioners, Mr Theo Simos QC, is a first generation Greek Australian with a most distinguished academic and professional career. Another Commissioner is Professor Alice Erh-Soon Tay, whose early training was in Singapore and whose cultural links are with China. Professor Tay is Professor of Jurisprudence at Sydney University and she is an acknowledged expert on comparative law. Dr Michael Pryles is a first generation Australian of German-born parents. He is Reader in Law at Monash University. Mr James Mazza is a first generation Australian of Italian origin. He is a barrister and solicitor in Perth, and he has strong links with the Italian community in Western Australia. These are success stories. These Commissioners add greatly to the richness of the information and attitudes available to the Law Reform Commission.

However, this variety and 'ethnic' influence is not general in legal institutions in this country. We must avoid tokenism. We must avoid the destruction of excellence and high standards, simply to secure 'ethnic representatives'. But, whilst avoiding these sins, I do believe that those who have the responsibility for the appointment of judges and magistrates should keep an eye out for diversity. That, after all, is the basic philosophy behind multiculturalism. People no longer have to pretend to be white Anglo-Saxon Protestants. Our country can rejoice in its variety. In multiculturalism, Australia is leading the world. I hope that the law will not be bypassed.