

FOREWORD

THE VIETNAMESE - A CASE STUDY

MIGRANTS AND THE LAW

FOOTSCRAY COMMUNITY LEGAL CENTRE

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#### Foreword

#### The Hon Justice Michael Kirby AC CMG\*

It is only in very recent times that Australians generally - and Australian lawyers in particular - have stopped to consider the cultural and legal systems of their Asian neighbours.

My attention to the profound difference between approaches to the law (and attitudes to individual rights and the rule of law) in Asia was stimulated by reading an important new text, *The Confucian Renaissance* by Reg Little and Warren Reed.<sup>1</sup> This text, by Australian authors with a deep understanding of Asian cultures, makes a point (incidental to their study) that, at least in North Asian societies the emphasis is upon:

- \* The community and not the individual;
- \* Duties and not rights; and
- \* The rule of powerful men of virtue and not the rule of law.

The different starting points of, and assumptions about, the

law as it operates in society is crucial to the growing commercial relationships between Australia and countries of the Asian region. Already, the courts are beginning to see examples of the differing attitudes to dispute resolution, to litigation and to binding rules of contract. Yet however important may be these differences, affecting the vital commercial links with trading partners in Asia, they pale into insignificance when compared to the reconciliation of Australians of Asian origin to the law of their adopted country.

People who come from the traditional sources of migrants from which, after 1788, the population of Australia was drawn bring with them many shared notions about individual rights and the rule of law. Until relatively recently, the vast majority of newcomers derived from the British Isles and a few other societies with virtually identical legal systems. Even that wave of migrants which came from Europe shared basic cultural ideas about individual rights and the rule of law. Now, Australian society, in the full flower of multiculturalism, must adjust itself to all of its migrants, coming from societies with quite different histories and cultures. This is demonstrated by the influx of migrants from Islamic countries. But it is also demonstrated by the more recent increase in the numbers of migrants from Asia.

There has been relatively little study of the way in which members of these new migrant communities respond to the peculiarities of the Australian legal system. The Australian Law Reform Commission is in the midst of a major inquiry into the implications of a multicultural society for the

Australian legal system.<sup>2</sup> The value of the case study recorded in this work, on Vietnamese migrants in Victoria, is that it provides a useful insight into perspectives of our system and areas where it is operating inefficiently or unfairly.

All too often the repeat players in the great game of justice regard their system with fascination bordering upon adulation. Aware of the undoubted strengths of the system, they are all too frequently blind to the way it appears to the consumer or the person involuntarily caught up in its machinery. From the surveys reported in this study we derive a useful glimpse of how the Australian legal system appears to Vietnamese clients at the Footscray Community Legal Centre. It is to the credit of the Centre that it performed the study in order to improve the provision of legal services to the many clients of Vietnamese origin who came to the Centre for help.

The Vietnamese in Australia are already making their mark. Their society at home bears the imprint of three major cultural forces: the Confucian, the Buddhist and the French colonialists. They are quite a small community in Australia. But many of them have braved extreme hardship, privations and the risk of death to leave their country and to come to Australia. As this study recalls, Vietnam has been a battleground of centuries. That history has affected attitudes to the law and to those in authority. The Vietnamese community studied here ranges from the elite refugees, the intelligentsia and the former Army officers, to the more recent influx of farmers, commercial fishermen and others looking for a better life for themselves and their families.

The areas of major involvement in the legal system are unsurprising: motor vehicle accidents, land title conveyancing, divorce and criminal cases. The clash of cultures can be seen most clearly in the reports on family law cases. Cultural attitudes to the wife's rôle in relation to her husband which may be acceptable in Vietnam run headlong into the provisions of the *Family Law Act*. Attitudes to police and people in authority in Vietnam colour the relations with equivalent office-holders in Australia. The profound difference between an inquisitorial legal system (introduced by the French into Vietnam) and the adversarial/accusatorial system followed in Australia continues to cause confusion, and not only to Australians of Vietnamese origin. Other cultural assumptions which are disclosed in this report show how easy it is to do offence (as by the use of the family name) even where no offence was intended. Sadly, the study also showed that *intended* offence on racial or cultural grounds is not unknown within the legal system.

Therefore, the value of this study is not just that it is a further insight into the problems of adjustment of migrants who have settled in Australia. Since 1788 our history has been one of repeated waves of migrants. This is, overwhelmingly, a migrant country. The process of adjustment has never been easy. For a long time a robust attitude was adopted to these difficulties. But we have now moved from an official policy of integration and assimilation to a more tolerant national policy of multiculturalism. All of this is well known.

It is the special difficulties which are presented to this process by a group such as the Vietnamese that represents the particular value of this study. Their difficulties of adjustment are greater because more of the cultural starting points are different. Yet a reflection upon Australia's place in the world and a glance at its changing migration patterns will show how important it is that we adjust our attitudes and adapt our institutions to the new cultural forces with which we must now live.

None of this means the abandonment of our inherited legal system which is 800 years old. Still less does it mean the overthrow of the features of stability, neutrality and independence of the courts. In part at least, it was those features which made Australian society attractive to Vietnamese and other migrants who have come here. But a sensitive reading of this report will show that there is no room for complacency. The actors in the drama of the justice system, at every level, do well to see themselves as others see them. That perception may lead to a heightened sensitivity to those who come before them for help or decision and a quest for improvement.

It may also lead to a curiosity, even a determination, to cross the bridge of cultures. Who knows what riches are waiting there in the Vietnamese community of Australia which will, in time, enhance this country and its legal system? That, after all, is the precious gift which comes with a multicultural society. In the place of bland uniformity there is a marvellous diversity of human civilization which presents, in microcosm, the variety of the wider world. Australia's multicultural society is an exemplar for that

wider world. It therefore behoves lawyers to ensure that its legal system keeps pace with the changing face of the community it serves. This case study is part of the jigsaw from which we will put together a system of law worthy of multicultural Australia.

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- 1. Federation Press, Sydney, 1989.
- 2. The Law Reform Commission, *Multiculturalism and the Law* (Issues Paper No 9) 1990; see also *ibid*, *Multiculturalism: Family Law* (DP 46); *Multiculturalism: Criminal Law* (DP 48).