



From The Journal Editor: Courts and Cultural Diversity

By Anne Wallace¹

Many courts in the modern world are being challenged to meet the needs of increasingly culturally and linguistically diverse communities. This challenge may be more easily recognized in countries that are commonly perceived as having high levels of diversity, based on indices related to ethnicity and language. However, the court user population is not necessarily reflective of the broader population demographics. Countries that appear to be relatively ethnically and culturally homogenous may, in fact, experience higher levels of diversity among the population who access court services. Conversely, the ability to access court services may be unevenly distributed across a community. Research suggests that education, language, and cultural background are all factors that may play a part in determining a person's ability to identify legal problems and access support, including using the courts.

For courts, as institutions, diversity poses a number of challenges. Some of these challenges relate to the potential for the substantive law to be adjusted to, or accommodate, cultural diversity. That is a topic outside the scope of this discussion, but one which is receiving increasing attention by legal scholars. However, the potential impact of cultural diversity on court management and administration is also significant in a number of ways. Citizens from culturally and linguistically diverse backgrounds may be more likely to lack awareness of their legal rights, less able to access legal advice and support, and to access courts to resolve their disputes.

In a culturally diverse community, courts can no longer assume (if they ever could) that those who do come to them share a common understanding of the values, goals and procedures of the justice system that the court embodies. For example, a refugee from a dictatorship, or regime that has experienced high levels of corruption, may have had a very different experience of legal institutions in their country of origin; an experience that may well color their expectations of a court they engage with in their country of refuge. This may impact on both their understanding and their conduct in relation to the court, court officials, and the judge.

At a very practical level, linguistic diversity poses challenges for effective communication. These challenges are exacerbated in the courtroom where communication often takes place under high stress and involves protocols and levels of formality with which participants may be unfamiliar or inexperienced. Access to trained, appropriately credentialed court interpreting services may be critical in ensuring that victims, defendants, parties and witnesses are able to fully participate in court proceedings, and communicate effectively with their legal advisors. It may not be easy to ensure an adequate supply of interpreting services, particular at times of expanding population growth. Ensuring that those services meet the standard required for court interpreting may be even more difficult.

There is a further challenge; one that is harder to identify, but no less significant in its implications. It was expressed recently by the Chief Justice of the High Court of Australia, the Hon R.S. French, who stated:

“Judicial awareness of the significance of cultural diversity is a key area of concern. Another is the unconscious influence on a judge of underlying assumptions or attitudes based on race, religion, ideology, gender or life style which are irrelevant to the case which the judge is hearing.”

To take a simple example; in some cultures failure to make eye contact is seen as a sign of evasion, while in other cultures it may be a sign of respect. An assumption about this by a judge in a particular situation may cause them to draw a completely wrongful conclusion about the truthfulness of a witness. More detailed investigations, such as those undertaken in relation to Australia's Aboriginal community, have revealed other culturally specific barriers that can have significant detrimental impact on effective courtroom communication. These may often be unknown to presiding judges, whose assumptions will tend to be based on their own cultural backgrounds and understandings.

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The challenges of cultural diversity in the courts are being responded to in a variety of ways. These include strategies to engage with communities to build public trust, confidence, and understanding of the work of the court; to extend legal support and assistance to newer arrival and refugee communities; to educate and promote awareness of diversity among court administrators and the judiciary. Australia has recently established a Judicial Council on Cultural Diversity to advise and assist Australian courts, judges and court administrators to respond to the needs of its increasingly culturally diverse community. There may be much that courts in Australia and elsewhere can also learn from sharing information and experience about these issues with each other.

