

'Take a seat at the back': Lawyers, judge hit out at racism in the law

By Tammy Mills
October 15, 2020

"Are you the defendant or are you the witness?"

Sam Pandya is neither. He's the president of the Law Institute of Victoria, the state's top legal society. But it's a question he's been asked in court more than once.



Law Institute of Victoria president Sam Pandya.

Sometimes, when he has arrived at court to give a speech called the "welcome" – to mark the appointment of a new judge – instead of being shown to the bar table at the front, Mr Pandya has been told to "take a seat at the back".

Implicit in these types of interactions is a presumption that, because he has dark skin, he is a member of the public or someone charged with a crime, rather than in a position of power.

"It makes you feel you're not an equal, and that needs to change," said Mr Pandya, who is of Indian background.

Along with a Victorian judge, he has taken the unusual step of speaking out as new figures show the profession has a cultural diversity problem.

In information collated in Victoria for the first time by the Legal Services Board at the request of the institute, lawyers renewing their practising certificates have been asked about their cultural background.

Of the 17,000 lawyers who responded (70 per cent of registered practitioners), about 80 per cent said they were from an "Australian" or Anglo-Celtic background, 5 per cent

were Chinese, 3 per cent were Indian and fewer than 1 per cent said they were Aboriginal or Torres Strait Islander.

The lack of diversity is a known issue in the sector. A poll last year of 11 of the big commercial firms found while 25 per cent of law graduates and non-partners had an Asian background, only 8 per cent of partners were Asian.

In 2018, fewer than 1 per cent of solicitors in NSW reported as Aboriginal or Torres Strait Islander.

When Mr Pandya sits at the bar table to give a welcome, he checks who is around him.

“There’s a number of very important judges who are all Anglo-Saxon and I’ll turn around ... I was the only non-white person in the room,” he said.

“I sat there for a minute and said, this isn’t right, we’re such a multicultural community.”

Last year, the County Court appointed Judge Arushan Pillay to the bench, making him one of the few members of Victoria's judiciary who is not white.

Born in South Africa to parents from a Tamil Indian background, he migrated with his mother to Tasmania to escape apartheid when he was five, following the death of his father.

To Judge Pillay, who had come from a place where opportunity was dictated by the colour of your skin, the law here provided fairness and openness.

“Whenever I went to court, I had a great sense that the courts that we have were places where exactly those same values were at play,” he said.

“I had a great deal of confidence and faith in our system, which is why I was never deterred from aspiring to be a judge.”

But there were moments that flattened him.

Two decades into his career in Melbourne, Judge Pillay was acting as junior counsel in a case when a senior barrister used a racial slur.

“I heard the senior barrister say, about one of those difficult issues [with the case], that issue is the ‘n----- in the woodpile’ and ‘we’re going to have to deal with that’,” Judge Pillay recounts.

The extremely derogatory expression, originating during the slavery era in the US, was used to describe a concealed motive, or a factor making a situation more difficult.

Judge Pillay said the barrister’s words left him in a state of confusion.

“You begin to question yourself. You’re uncertain about what you should do, whether you’ve appreciated something properly, whether it’s been directed to you or whether it’s just something which really you can move on past,” he said.

Then it happened again. The same phrase, from a different barrister, on a different case.

Judge Pillay said he thought both barristers had noticed the colour of his skin first and associated that with a negative stereotype to such an extent that the phrase was front of mind.

“When they looked at me, they simply saw the stereotype,” he said.

“It left me feeling isolated and it left me feeling not appreciated for who I was, which is the exact heart of prejudice and racial stereotyping.”

Judge Pillay said he wanted other lawyers to realise they were not alone, and that there were people who valued what he had found in the law: “openness, fairness and equality of treatment”.

The profession, Sam Pandya said, wanted to change and was changing.

While 22 per cent of lawyers told the Legal Services Board they spoke a language other than English, almost half of recent graduates surveyed by the Law Institute spoke another language.

Mr Pandya said the next step would be to measure retention rates and the make-up of the judiciary and law firms at senior levels.

Some big firms have already committed to reviewing position descriptions, senior leadership roles and sourcing effective unconscious bias training.

The Victorian Aboriginal Legal Service, run by four Aboriginal women and with almost half of its staff Indigenous, supports Aboriginal law students in gaining graduate positions and offers traineeships to high school leavers.

“It’s really important that Aboriginal and Torres Strait Islander communities have access to Aboriginal lawyers, no matter which service they choose to use,” its director of legal services, Moricia Vrymoet, said.

Nyadol Nyuon, a commercial lawyer with Arnold Bloch Liebler, is one of the founders of the African Australian Legal Network, which has about 120 members.

Ms Nyuon said that for a sector that was only just seeing a shift in attitudes regarding women, the solutions to diversity were complicated.

“You don’t want to be treated differently,” she said. “I don’t want to be anyone’s token, anyone’s diversity quota. I just want to be a lawyer.”

Ms Nyuon said she didn’t encounter prejudice within her work, but it came from the outside.

“I’ve told people I’m a lawyer and they just don’t believe me; they think I’m lying,” she said.

Criminal lawyer Daniel Ajak pursued a legal career in Melbourne after noticing a lack of African defence lawyers in a city in the grips of the "African gangs" media coverage.

The 29-year-old, born in Ethiopia after his parents fled South Sudan, arrived in Adelaide with his sister when he was 13.

“There weren’t any Sudanese or African defence lawyers in court – in the Magistrates Court and Children's Court – providing representation,” he said.

“I saw it as an opportunity not only to give back, but if I did OK, one day I’d go to the bar [becoming a barrister] and have a good shot.”

Mr Ajak said security guards had stopped him as he queued at the lawyers' entrance into court and had refused him entry, asking him for his ID.

Court clerks and barristers had also queried whether he was an interpreter or a client.

“You don’t have to be white to go to court as a lawyer,” he said.

“I can brush it off and move on because I’ve got my own way of dealing with it, but for some young practitioners, that could be the end of their career, it could be really detrimental.”

Mr Ajak started his own firm, Ajak, Wolan & Tut, at the start of the pandemic in April.

“Me and [his partner] Tut are not special ... you’ve just got to have the urge, the vision to do it and just push through,” he said.

Mr Ajak said organisations such as the African Australian Legal Network were helping young lawyers begin their careers through initiatives like clerkships with Legal Aid.

The government and private sectors, he said, could do more by looking for graduates outside of the Group of Eight universities.

“There’s a lot of good will out there. It’s about harnessing it and making sure the right people get in,” Mr Ajak said.