



Advocates for Change

Hament Dhanji SC

In conversation with Samuel Pararajasingham



On 28 November 2018, Sam Pararajasingham (SP) sat down with Hament Dhanji SC (HD) to discuss the Advocates for Change role and the importance of the role and cultural diversity at the NSW Bar.

Set out below is their conversation.

SP: *Hi everyone. Thanks for coming along. This is part of a sort of series of interviews that have taken place with the Advocates for Change. The most recent was with Richard Weinstein, Senior Counsel earlier this year and today's our chance to have a conversation with Hament Dhanji SC. Now, he probably doesn't really need much of an introduction, but just briefly for those who don't know, Hament is a member of Forbes Chambers. He's*

practised exclusively in crime and crime related areas since he was admitted as a lawyer in 1990. Hament was called to the bar in 1997 and appointed silk in 2010. He has a substantial appellate practice and appears in major criminal trials and is a much liked and respected member of the bar. The purpose of this chat really is twofold. One is to kind of get to know a little bit more about Hament and his backstory and the other is to explore some issues around cultural diversity at the bar. I expect this will be a fairly fluid kind of process so if anyone has any questions along the way or wants to jump in, go for it. We'll have some questions at the end as well. Alright well Hament maybe just to start off, if you can just tell us a little bit about your background but start with your cultural background, because you have a kind of a Benjamin Kingsley kind of look about you.

HD: I do. I think Benjamin Kingsley is in fact the same racial mix as me which is one English parent, one Indian parent and that's my ethnic mix. Although while that's my ethnic mix I actually grew up in a sort of very Indian environment. I've got an English mother and an Indian father, they didn't stay together and I actually grew up with my father until I was about eight so he was a sole parent and in fact I find it slightly embarrassing in a sense giving a talk like this because it's not like I'm in a position to come here and say well I've overcome all of this adversity and managed to get to where I've got. I've overcome absolutely no adversity, almost no adversity at all, in fact. So I feel like I'm coming along here and saying here's this sort of rough road for people who – and I'm not saying it's necessarily the same for everybody, but it is interesting. Coming up here I was thinking about my father and I think he overcame a significant amount of adversity because he came here as a fairly young man. He was seventeen. He had reasonable English but he was in Brisbane in the nineteen fifties, he was vegetarian, it was hopeless. He had very few cultural reference points in terms of his background and what happened, is sort of interesting. So he met my mother here and they had children including me. And as I said they didn't stay together and then I was brought up by my father until I was eight and so if I think of adversity then I think of my father bringing up children. He had no family, very few cultural connections and there was really no Indian community to speak of around that time and that, I think, would have been incredibly difficult. And it's one of those things that I've only recently started talking to my father about. But he remarried and the woman he married, who I call my mother and regard as my mother, because she's actually filled the role of a mother, was Indian and then around

that time an Indian community did develop in Sydney and so we became, culturally, a very Indian family. We mixed in the Indian community. Paresh [Khandhar SC] is here, I knew Paresh as a child because we shared membership of the Gujarati community. But in terms of that sort of background what's, I think, interesting in terms of an issue that perhaps affects how we achieve greater levels of diversity at the bar and part of the reason I say I didn't overcome a lot of adversity is that while things weren't straight forward, one thing that was very clear in my upbringing was that there was an emphasis on education. And I think having that background and having that sort of emphasis did mean that there was at least the idea of going to university, doing something at university.¹ I must say [with an] Indian background the sort of expectation or the ideal is that you become a doctor or an engineer, and so it's a radical act of rebellion to become a lawyer. But you get the idea that it's a lot easier [to end up at university in the context of such expectations]. I think, the other thing to put all this in perspective, one of the things that is troubling in terms of where we're at, is that [my decision to go to university] also coincided with a time when there was free education or free tertiary education. And that's a very troubling aspect and when I was reflecting on the issues that arise in relation to just having this sort of conversation and where there are difficulties for me, there are things that we might address, it seemed to me that while the bar is not as diverse as the broader population there's a lot to be positive about. I think twenty one years ago when I did the readers course my group was very dominated by straight white men. I think that when you look at the people coming through now it's a lot broader and that's positive, but still lagging. But one thing Sam and I have talked about leading into this is what seems to be apparent to me is that while that broader diversity is improving, Indigenous representation I think remains sadly low and that's a concern. There's a lot being done in relation to that. Chris Ronalds SC has done an enormous amount of work. I think I've strayed beyond the question.

SP: *So just coming back, how much, if at all, was your identity growing up bound up in your ethnic makeup?*

HD: Look that's a difficult and deeply personal question. Well partly, because as I say I did have this kind of unusual growing up and there was an absence of an Indian community and then one came along and as a kid your natural inclination as a kid, I think is to be like everybody else and struggle a little bit with the idea that you're different and then

we actually became more different as time went on because of the cultural change that happened and my father I think had been, as I said he'd been here since the nineteen fifties and he really didn't have a lot to grab hold of in terms of maintaining his cultural identity but then that changed and he I think became far more Indian as time went on.

SP: *Was that something you were immersed in?*

HD: Ultimately yeah, and ultimately, it was strange, it wasn't immediate but I think ultimately I came to appreciate the richness of what we had and it's something where my own children, who are now further watered down, they love going to their grandparents and love getting an understanding of their cultural background but I think for them it's far different to the lived experience. I mean frankly they're spoilt, middle class, eastern suburbs kids.

[laughter]

HD: Gorgeous, but you know.

SP: *Growing up did you experience any difficulties, tensions?*

HD: Look, I feel like the appropriate answer to fall on is yes. But I think the answer is yes, but I don't know that I would say that I was ever held back or particularly troubled. And perhaps it's as much as anything a personality thing and this is part of it. I mean, look, I don't doubt for a moment that racism still exists and is quite pervasive. And I don't doubt for a moment that it affects people in their careers in the law and at the bar. In terms of the bar, and as I say, to an extent it may be a personality thing, but my own way of looking at it is that if you've made the decision to go to the bar you've got a degree of self-assuredness that allows you to make that decision. You've decided to back yourself and if you've backed yourself then aspects of the slights or intended slights that have no rational basis and don't impact upon your capacity to do your job – and I [while I] find that really troubling in the sense that people are still minded to go there, or troubling in the sense that there's that level of ignorance – but in terms of how it actually impacts upon me, I'm for the most part bemused, I have to say. But again, that's a very personal reaction. I feel like it's perhaps the wrong answer in a forum like this, but that's the reality of the way I've experienced things.

SP: *Let's talk about your path into the law. You said the expectation is to go to university, be a doctor, engineer; how was it that you came to study law, get into the law?*

HD: Again, none of these things reflect particularly well on me.

[laughter]

HD: I was a little bit perhaps bored at school, I certainly didn't do well. This is where I think those sort of parental expectations come in. Despite the fact that I hadn't done particularly well, I knew that I needed to do enough to get into university. And that was also partly perhaps an immaturity thing, in that I knew I wasn't ready to go into the world. But having that sort of backing, that sort of background where you knew that you didn't have to pay fees and you were going to be supported allowed me to maintain that level of immaturity I suppose, which meant that I did barely enough to get myself into university, which really wasn't very much. I started in an arts degree and then I worked out you really didn't have to work very hard to transfer into a law degree. It was certainly a lot easier than actually having to get the marks at HSC level, so I transferred into law and I did that, and obviously grew up along the way while doing that, and I think within a few years I did start to have some idea that this is something that I might be interested in and I had thoughts then of wanting to go on from there and work somewhere like the Legal Aid Commission or a Community Legal Centre or that type of thing and in fact I went from there to the Legal Aid Commission.

SP: *And what about those institutions attracted you?*

HD: Whatever it is in my background, I mean I certainly had I think a strong desire, if I was going to work in the law, to work in an area where you actually felt like you were providing some meaningful assistance to the broader community and in particular the less privileged people in the community. I should say in [the context of] the current trial I'm in, that seems a very long time ago. And just, I mean it's quite interesting and it does reflect on diversity and diversity in the community more generally. I'm in the middle of a trial involving a breach of the Corporations Act, acting for a director of a fairly large publicly listed company. There've been seventeen witnesses called by the Crown. Each and every one of them has been old, white, man, because they're all the people at high levels within this large publicly listed company with the exception of one who was the ASIC investigator. And there are company reports tendered in evidence and you open up the first few pages and white man after white man, but that's where I find myself now certainly. When I started in the early years of the bar I obviously continued to do a lot of Legal Aid work and a lot of work for the

Aboriginal Legal Services.

SP: *So coming back to your first foray into the law, the Legal Aid Commission you said?*

HD: Mhm.

SP: *Where were you working and what were you doing specifically?*

HD: I worked in crime, I started in the Prisoners Legal Service and then I did almost all of my time working in the Inner City Local Courts sections.

SP: *And how long were you a solicitor?*

HD: Seven years altogether.

SP: *And the decision to come into the bar, who or what were your inspirations for that?*

HD: Again, and this is I suppose one of the things that's relevant in terms of this discussion, I didn't start with any particular aspirations of going to the bar. And I think, in terms of my background, it is certainly the case it wasn't on the radar at all because I didn't grow up in an environment where I knew any barristers. I didn't grow up in an environment where we knew any solicitors or lawyers. Perhaps one or two by the time I was older, but I did have a sense of the bar being a somewhat foreign place. Having said that obviously I worked as a solicitor for a number of years. Because I worked in Local Courts I didn't have a lot of connection with the bar because doing Local Courts you don't tend to instruct counsel. Every now and again there are unusual matters. You tend to do your own advocacy, but I think I got to the point where I'd been doing that as I say for about seven years. It occurred to me that I'd got a little bit bored, I felt like I'd learnt everything I was going to learn. And Philip Strickland told me it was a terrible idea to go to the bar, that it was uncertain and that if I had a job I was moderately happy with I should stay. But I think I was just looking for something new and made the move.

SP: *Do you recall thinking at any point in time that not seeing faces like yourself at the bar, did that ever weigh into the consideration in going to the bar?*

HD: Look again I'm going to give the wrong answer but the answer's no. And whether I just simply didn't expect anything different, one thing I will say is that I did feel that I was stepping into a world where I didn't necessarily feel comfortable and wasn't sure I would ever feel like I belonged. That's certainly true. That said, to be fair, I don't necessarily assume that that's terribly different for a lot of people. You know obviously there are perhaps some people

who have a sense of the bar well before they come and connections within the bar world before they come and they feel that they slot straight in but I wouldn't presume for a moment that simply because I have a slightly or somewhat different background that it was necessarily more foreign or more difficult for me. I mean certainly my feeling was that it was a somewhat sort of foreign environment and I certainly had questions about whether I belonged there.

SP: *And in those early years at the bar did you have any mentors?*

HD: I did. I didn't necessarily feel like I had a lot of connections. I did know Phil very well, had done for a number of years so there was at least that. But I in fact had no idea, it was a measure of I suppose my lack of connection, I certainly had no idea who I might read with and spoke to Phil and he suggested Ian McClintock. And so not quite knowing what a burden it was, not thinking through why someone who was a complete stranger to me might want to take on the responsibility, I spoke to Ian and he agreed. And we're still good friends. I couldn't speak highly enough of the time, encouragement, acceptance that he gave me. I think the experience probably does have to be put in the context of going somewhere like Forbes. I've never been anywhere else, but I suspect it was probably a different experience to one that I might have had on various floors in Phillip Street. Forbes is a really accepting environment. It certainly has been the entire time that I've been there. It's a terrific group of people and a great place to practise being a barrister.

SP: *Change of tack a little bit. You were presumably approached to be an Advocate for Change.*

HD: I was.

SP: *You agreed.*

HD: I did.

SP: *There was a reason for that.*

HD: There was.

[laughter]

SP: *What's that reason?*

HD: I was contacted and asked if I would be an agent for change and my immediate response was to say well I'm happy to but I'm not sure that I'm quite as exotic as you might think I am. And it's funny I mean thinking about it, thinking it through to an extent, it is somewhat of a reflection of the problem I suppose. That, and I know that there are people certainly coming through who have had far more difficult paths in terms of coming to

Australia at much older ages and not being able to speak English and then having to learn English, study law, and the like, so there are certainly people coming through. But they were obviously looking for someone who'd been at the bar for a number of years and the fact that in a way, if I'm sort of the most exotic person at the senior level of the bar, that that does tell you something about the lack of diversity. But as I say, on the plus side, what does seem to be the case is that the makeup of each readers course, or certainly I compare the makeup of the readers' course that I was in with what the readers' include now, it's a very, very different mix. Still lagging I've no doubt at all, but certainly there seems to have been significant progress.

SP: *And how do you see yourself fulfilling any responsibilities of being an advocate for change?*

HD: Well obviously the idea is that while we're seeing greater numbers or greater diversity of people coming in there is still that lag. And so it is really important I think that – I mean events like this I think are good but, obviously, to an extent there's an element of preaching to the converted, and pretty much everybody here's either at the bar or been at the bar – and so you don't need a lot of encouragement in terms of coming to the bar. But these sorts of things are useful to at least get people thinking about these issues. It's been useful for me to actually think about, to actually take some time to actually think about these issues. But the more important aspect of it, I think, and part of the programme – the idea is to actually go out to some schools and in a sense show my face, a bit darker than the average white kind of barrister that might be the stereotype. But apart from that as I said Chris Ronalds has done a lot of work and the bar has done a lot of work in terms of the Indigenous students programmes and that really is I think hugely important because we have this situation where the progress there has been slow at the very same time we've got the statistics in relation to incarceration rates going backwards. And so, it's a very disturbing kind of aspect and anything that can be done there is obviously positive and in terms of that, whether it's because I'm an agent for change or whether it's just what you do, certainly there's been programmes for Indigenous students to come and spend some time at the bar and I've formed a relationship with one of the younger students that I remain in touch with. He's a really nice young man and if through having some sort of contact with me he feels like the bar is a more viable option, well that's one small thing. And if that's happening, that's a very small contribution. If that's happening more broadly and we're all getting involved,

having that awareness and maintaining that sort of attitude to try and encourage progress, yeah.

SP: *Taking a step back, why do you think cultural diversity is even worth pursuing at the bar?*

HD: Well there's probably two ways to look at it. First that if we want to be successful as a profession we're only going to do that by serving the community and in order to serve the community you're just not going to, as a profession, you're not going to do it well if you simply don't reflect that community. So there is a real need if we are to maintain that ability to do what we're here to do, to ensure that we've actually got a membership that reflects as best we can the broader population. [The second aspect is] being a barrister is a great privilege and if we are to be a fair and egalitarian society it's a privilege that one would hope would be available to everybody and to the extent that the bar doesn't reflect diversity, well that's demonstrating to you that you don't have the fairness and the egalitarianism that we would want to have. So viewed from both directions you can see, to my mind it really is a worthwhile aspiration.

SP: *And from your vantage point, peering down –*

HD: I wouldn't say peering down. Looking around.

[laughter]

SP: *How is the bar going in that regard?*

HD: Well as I say you could look at the readers' groups, they seem to be significantly more diverse. And there's going to be a lag I suppose it's to be expected. You've got significant migrant populations, you know they take root, the first generation the options simply may not be available to them in terms of their English skills and the time at which they've come here but then their children growing up here and learning English from an early age, if not from birth, are going to have one would hope a better opportunity but that obviously takes time. We've been a multicultural society for a long time now and one would hope that the lags aren't quite so significant, but I suppose if you look at it in terms of the various waves of immigration, so I suppose to take an example, the Vietnamese community one would hope that you'd start to see within the Vietnamese community people coming through, choosing law and going to the bar. You'd hope that it was happening to a greater extent by now. But even if it's not happening to the extent at which you'd hope, you'd certainly hope that that builds.

SP: *I want to identify a few, I suppose broader race or cultural issues in society and ask you or pose to you whether you think these issues are reflected at the bar, and if so ask you to comment on them. Let's start with a fairly obvious thing of overt racism for example. Now I think I brought to your attention, and others may have seen this, there was an article in the Financial Review a couple of months ago about a fellow by the name of Nimal Wikramanayake QC in Victoria, he's now retired. He was the first or one of the first 'coloured' barristers in Australia and in this article he gives a bit of an account of his experience. He recounts one example where "one young barrister came to see me while I was in conversation with another person and said what's the nig nog telling you?" Nimal complained to the chairman of the bar council and was told that the younger barrister should be counselled. And Wikramanayake said "look, you're not taking me seriously because I'm a black bastard, you don't care, nobody gives a damn about us, this is a bloody racist state." Now that's fairly florid stuff, have you experienced anything in that orbit?*

HD: Not as direct. I mean I've had references to spin bowling. I mean possibly the worst, I think, example was I took over a brief from Murugan Thangaraj to appear at [in the] Local Court and I stood up and announced my appearance. There had been some correspondence prior to me taking over and on the correspondence indicated [Murugan] was appearing and I stood up and I announced my appearance, "My name's Dhanji". And it got stood down and it came later and she referred to me and she said something, but she certainly didn't say Dhanji, it was something much closer to Thangaraj. And I said your Honour my name's Dhanji, and I was ignored, and [it] kind of went on for a little bit. And then it was like 'Mr [mispronunciation of Thangaraj]' and I said to her your Honour my name's Dhanji and she was still trying to say Thangaraj and she looked at the papers and then she said: "Well I can't pronounce it". I just stopped in my tracks. But again I was not, I was not impressed, I was not particularly thrilled by it, but did I form the view that I'd been affected in terms of my ability to put my client's case? I'm not sure that I did. I think that, and again I think I said this at the start and it might be a personality thing, but I was bemused more than anything else. And I wouldn't suggest that my client was affected. So I suppose you can look at that and I think it shows a lack of respect perhaps. But did it trouble me? Not particularly.

SP: *Let's pick up on the mispronunciation of surnames, that's a bit of a bugbear of mine, frankly. Dhanji is not that hard.*

[laughter]

SP: *It reminds me of, and I know you're a big soccer fan, 2 you may recall earlier this year during the world cup that SBS televised there was an incident with the host Lucy Zelic. She went to great lengths to pronounce the surnames of various players correctly and at times adopted the appropriate accent. She inexplicably copped a whole whirlwind of grief, social media mainly, and then her co-host Craig Foster the following night kind of came to her defence and among other things he said this, on the issue of pronunciation of a surname, and you've kind of hinted at it, can be trivialised at times. He made this point he said, "of course the way you use the language is the most important way to show respect to someone, through the name. If you can't get someone's name right, it means you have no regard, you haven't done the work, you haven't tried". Do you agree with that?*

HD: Yeah I do. And as I said it's an issue of respect. And that in a sense reflects these broader ideas that we share in this community, we're made up of a range of different people with different backgrounds and if we're serious about actually sharing the community that we're part of with all members then, you know, fundamental things like a basic level of respect in terms of making an effort to pronounce somebody's name properly. Your name is what you go by, it's an identity [which] in many ways takes you into the world. And to convey to people that you, in a sense, don't recognise that means by which they are supposed to be recognised in this world or in this community does have a fundamental lack of respect about it. The whole thing with the mispronunciation of the names, that was terrible in that Lucy Zelic had been brought in to commentate as a result of Les Murray having died and so it was a new presenter and we got a woman who's actually very knowledgeable about the game and then to have this kind of thing occur it was pretty ugly.

SP: *I want to ask you about this idea of nepotism. Do you accept that a feature of the first generation migrant experience is the absence of any sort of institutional connection?*

HD: Look that's obviously a factor and that's obviously going to mean that it's not as easy for people in that situation as it may be for others. If you come from a background that's had several generations in the law, or even one generation in the law, that's obviously going to assist you. I think you do also need to, as the sort of person without that background, need to also understand that just because you're from what might be described as an ethnic minority, I don't think it's constructive to be going into law or the bar thinking that things are set against you because other people



[have such connections] because again, in this area, I think you do have to be careful about making assumptions about other people. And while certainly it may be for some, I mean if you look around and see a straight white male the temptation to say, well it's necessarily easier for that person – you don't quite know what that person's experience is, whether they've overcome poverty, or what their kind of particular background is. So yes it's true to say that coming from my background I guess I was not going to have any particular advantages in terms of connections. And yes anything like the bar is unlikely to be a level playing field. I don't think it's constructive and again I'm speaking for myself as I approach it, I don't think I've ever regarded it as healthy or constructive to approach these things with the

mindset that I've got an obstacle to overcome.

SP: *Just to slightly challenge you on that, in an area or industry where one sources work through connections, where invariably briefs come to someone's desk for reasons other than necessarily merit, do you see the particular role that nepotism might play and the experience for those who are deprived of that. The absence of that nepotism can play in firstly the decision to come to the bar and secondly, enjoyment or success at the bar.*

HD: Obviously if you start with the proposition that the bar's not a meritocracy then necessarily it's going to flow that you're only going to succeed if you've got particular advantages, but the premise that it's not a meritocracy and I'm not suggesting for a moment that it's purely a meritocracy, I'm not suggesting for a

moment that there's not a lot to be done and it's across – obviously the focus of this talk is on ethnic diversity but you do have to look across the broader range. When I finished law school we had I think it was the first year in which they'd been more women than men in Sydney University Law School graduating: the women just outnumbered the men. And so that's my cohort and if you look at my cohort coming to the bar when I did or you look at my cohort now, women have fallen away considerably from the levels at graduation.³ And so – I've sort of lost the thread of the question really but in terms of meritocracy, yes I don't suggest that the bar is based purely on merit, I don't suggest for a moment that there aren't advantages enjoyed by some. But I'm sort of positive in my outlook in terms of the way things are moving. I'm positive in my outlook in terms of confidence that there is developing a broader understanding of these issues, the fact that we're here I think is an acknowledgment. I think twenty years ago these sorts of events wouldn't have been on the radar. So I don't want to seem like I'm ignorant of the issues or the problems but how would you put it, I mean on the way up here I think I was saying to you that the way I'd perhaps put it, is if you want to be a really average barrister - it would be a good thing if you're a straight white male. But if you're willing to put the work in and have some ability I think that the way the bar works does provide some encouragement. But I should say whether the experience in crime is different, is another sort of interesting question. Certainly in crime I've noticed in the last probably five years plus the diversity among the solicitors that brief us has really expanded and there's some terrific young firms with kind of diverse, well more generally diverse both in terms of ethnic background and gender, so that has an impact potentially in terms of who they might be briefing because obviously unconscious bias, obviously that's going to be playing out in some way. So to get back to your question I suppose, and it may be a case of look it's easy for me to say because through luck, good management or otherwise things have actually worked out reasonably well so, you know sort of fine for me to say well it's clearly a meritocracy [laugh] because there's a sort of self-congratulatory aspect to it. And I suppose the other thing I should say about the way crime works is that you also have a kind of diverse client group so you're not necessarily dealing with a client base that has a particular expectation, or maybe you are, I don't know. And other people's experience might be different but it may be that it's easier for a solicitor to provide a client, given the criminal mix, someone who's perhaps not the sort that looks like a barrister that you'd normally see on television. Because certainly the fact is if

you're looking at representation of people, if you watch television and maybe it's changing slightly but I think where you're seeing these roles portrayed you're not seeing perhaps the same mix that would be ideal. There's actually an article in the *The Guide* this week – there's a programme on tonight on SBS called *On The Ropes* and there's an actor Nicole Chamoun and she was commenting on the fact that it's a great role – she plays a young Muslim woman who wants to be a boxing trainer, but she makes the comment that well you know I'm very pleased to be doing this role but I'd really like to be cast as a doctor or a lawyer where the fact that I actually am not obviously Anglo Saxon is not part of the character. Just saying again and again, all her roles, she's always cast in roles where she's cast because she can be a Muslim woman. And you know I think that's a really good point. You really want to see people being cast, or at least you want to see through film and television better representation in the professions of that sort of diversity. But can I just pause there and just say if you do go home and watch *On The Ropes* tonight at 8:30, it's not bad and there's a character in it called Iggy who's played by my son.

[laughter]

SP: *You don't have much time left but I just want to go into some deeper water if I can. And explore with you this idea of double standards. Waleed Aly and others have made this observation about the migrant experience or the ethnic experience in Australia that the acceptance or success of culturally diverse people in Australian society is on strict terms and at the leisure of the majority and Waleed, I think, uses this example of if you conceive of Australia as this enormous pie, and the majority carves out a slice for the minority. As long as minorities are content with that slice they can participate in this wonderful democracy. But, so the argument goes, the moment you want more than your slice, more than your lot, the moment you manifest features that are not in keeping with fixed or widely understood views of you as a minority, then you are in for a world of pain and the most obvious example that you and I have discussed which is perhaps ironically in the context of Indigenous Australians is the way Adam Goodes was treated.*

HD: Yeah.

SP: *Is there anything you wanted to say about that topic, that example?*

HD: I mean something like the Adam Goodes experience, it breaks your heart that at this stage of our supposed development as a society, that that should go on and one of my reactions to this idea of – and I don't want to be critical at all, the idea of the agent for change, I mean it is

possible to have a reaction to that and say well look is there kind of an aspect to that where I'm supposed to be a role model and that's fine, but is there an aspect to that which says that and I should hold myself up to higher standards of behaviour than somebody of a similar level at the bar because I am supposed to be a role model and that the expectations should be higher? And there's obviously a clear problem with that. Because I should be able to behave as badly as anybody else.

[laughter]

HD: And that's not to say that I should but it certainly ought not to be the case where to be a role model you have to somehow maintain some higher standard than what is expected of other people at a similar level within the profession. Now I'm not suggesting that that's the expectation but I think there is that potential in terms of that type of role and one needs to be careful about that.

SP: *Sorry, so you acknowledge the situation for example of a white male barrister going in to court, making some oral argument in a fairly florid way, he's considered bold; the same argument run by say a south east Asian barrister and he's presumptively arrogant, he's being difficult and he gets the ire of the judge, yet the former doesn't get that kind of heat?*

HD: These things are very difficult to assess. They're unquantifiable aspects. I think another really good example, it's probably a few years ago now but when the Sri Lankan cricket team started dishing it back, and there was this real thing of like the Australians had for years been acting in this particular manner and somehow when the dark skinned opponents weren't just pleased to be here and be included and have the privilege of getting on the field against the Australian cricket team, they were upstarts and they didn't know their place. And that was I think a real sense that came out from that and I think that was fairly overt, I thought at the time. One hopes that things aren't quite as extreme, [but] I think there certainly can be an element of well you should be pleased to be here and that's enough.

SP: *We've basically run out of time so my last question is what can the Bar Association do to further foster cultural diversity?*

HD: Well I think they've, as I said, they're obviously thinking about it which is the first step and there's obviously the Diversity Committee and that's obviously working on issues and doing things like appointing Advocates for Change. And so the idea of I suppose reaching out to particular communities and then within the bar I suppose increasing awareness of these issues so that people are conscious of

them and able to just think about how we can all contribute to making the bar a welcoming environment for a more diverse population and encouraging a more diverse population to come to the bar and I think to an extent, whether that's developing, each of us as individuals, developing mentoring relationships or being a contact point for people who might be assisted, those sorts of small things; at a more formal level, programmes for actually getting young students and the Indigenous students programmes and then the process of actually going out to schools that are populated by kids who don't have the visible presence of barristers, judges, in their lives, actually being exposed to people and being encouraged.

SP: *Just picking up on something you said then, how important is it in time to have a culturally diverse bench?*

HD: Again, this is this thing of just the time for things to filter through and if you look at the bench it's pretty obvious that it's got a long way to go. But that's again, that's obviously going to be fed by the bar and one hopes that as we continue to improve diversity at the bar that flows on, and then you come back to that fundamental point that I was making earlier which is the bar obviously is there to serve the community and our ability to do that is reflected by our diversity and the point is obviously all the more significant in the case of the judiciary. And indeed a way to look at it would be the importance of diversity at the bar, a large aspect of it is to ultimately be looking to greater diversity on the bench and that again, travelling back to the idea of the kind of society that we want, it's obviously vitally important.

SP: *We've got a few minutes for questions if anyone's got anything to ask you Hament really.*

HD: Or Sam.

Phillip Boulten SC: So an Arabic solicitor, young man, who instructed me a lot, left with problems. Standing up to appear in court he would be asked where his solicitor is. One afternoon, I knew I would be late the next day. I have a place in town, I said 'can you go to court, look after the client, I'll be there at ten thirty.' And ten past ten the jury couldn't agree. I said 'can you grab my bag and bring it into town.' He went into the robing room looking in the lockers for my bag and a barrister came in and said 'what are you doing?' he said 'I'm looking for Phil Boulton's bag.' He said 'who are you?' He said 'you're asking me that question because I'm Lebanese and that's the only reason you're asking that question'. Sheriff's officer came. 'What are you doing here looking

in people's lockers?' He said 'I'm not answering your question, I've got no time for you.' He was detained at the entrance of the court. Last month I wrote an opinion about the way the young, female, Vietnamese heritage barrister was literally savaged by the trial judge in the Supreme Court in another jurisdiction. It is still out there and it is partly subconscious racism.

HD: I think it's absolutely still out there, but I should say I mean I think I've had a pretty good run. Question?

Aditi Rao: I'm glad you [added that] Phil because my question to you Hament, was that listening to you today I wonder if you have experienced, there must be an expression for the phenomenon and it ties in to Waleed Aly's comment; which is that you might have been a visible example of someone who's different but not threatening because there's so few of you and liked in some ways, so it's possible that you've had an easier time of it, sort of almost a charmed passage through by comparison to what I think the wave of people maybe behind you have experienced. My father came to Australia in the sixties, not as early as your father came, but it's something that he's commented on that white Australians, once you [inaudible] almost like a pet, you're the pet Indian and they're quite affectionate toward you and they'll look after you. But once there's a seething mass of people of different colour it's quite a different experience.

HD: I think that's a really, really good point. I think it's almost certainly right. And I think it does make my experience perhaps not representative. I think Phil's story in that context is a really good one because you've got this Arabic male solicitor rifling through lockers provokes immediately for the people around a stereotype and given that the time I was growing up and the time I was coming through there wasn't the same stereotype to mark me against. I think that's a really valid point and I think is absolutely right.

SP: *Anyone else? Alright, thanks everyone for coming and thank you Hament for making the time.*

[applause]

[end]

ENDNOTES

1 This can be contrasted with, what Stan Grant describes as 'the tyranny of low expectations': Grant, *Talking to my Country*, Harper Collins 2016, p 44.

I interpose here to note that my interest in football in this country is inextricably linked with my views about diversity. I grew up playing what was then (imaginatively) called "woogball". I am now thrilled to see Australia regularly playing at the World Cup, and in the Asian Cup,

whereby we engage with the world through sport in a way that is not possible with the other football codes played in this country. It is a sport suited to a range of body types and hence suited to a multicultural society. We recently saw Awer Mabil and Thomas Deng, two footballers who came here with their families as refugees from South Sudan, make their debuts together for the national team. Of late I have seen, prominently displayed in the windows of sports stores, Australian Women's jerseys labelled with 'Samantha Kerr' (an Indigenous footballer) and her number, which underscores football's inclusiveness.

3 The point I was thinking of here but failed to make is that women (as a group), should have the same relative advantage as men, yet they remain underrepresented.

Advocates for Change Andrew Pickles SC



On 25 March 2019, President Tim Game SC appointed Andrew Pickles SC as a NSW Bar Advocate for Change for a period of three years.

The purpose of the Advocates for Change programme is to provide role models who are excellent practitioners and who, through the example of what they do and say in their professional lives as barristers, represent the full width of diversity and inclusion that the NSW Bar Association wishes to promote at the Bar.

Through Andrew's work at the Bar and the NSW community, he has demonstrated a commitment to LGBTI diversity and inclusion and it is hoped that his appointment as NSW Bar Advocate for Change will contribute to the advancement of LGBTI inclusion and diversity at the NSW Bar.

As an Advocate for Change, Andrew has agreed to participate in the formulation of strategies to promote equality, diversity and inclusion at the NSW Bar.

There may be three Advocates for Change serving at any one time. He joins Advocates for Change, Jane Needham SC and Hament Dhanji SC who were appointed in June 2017.

More information about the NSW Bar Advocates for Change programme can be found on the NSW Bar Association website www.nswbar.asn.au.