



Getting the best results for Indigenous clients

By Gerard Mullins

I recently acted at an inquest into the death of 15 occupants of an aircraft that crashed at Lockhart River in North Queensland. Five of the deceased were members of an Indigenous community; I acted on behalf of their families and relatives. Part of the inquest was conducted on Thursday Island and I spoke to the families and relatives there at length. My experience reminded me of the specific issues associated with communicating with and taking instructions from Indigenous clients.

Most lawyers acting on behalf of injured victims will take instructions from an Indigenous client from time to time. Providing good advice based on sound and complete instructions requires a careful consideration of a series of factors that might not otherwise be considered when taking instructions from non-Indigenous clients.

The *Australian Pro Bono Manual*, published by the National Pro Bono Resource Centre, provides excellent resources for lawyers approaching an interview with an Indigenous client. In a helpful section dealing with advising and acting for Indigenous clients, John Boersig, a NSW lawyer, and the assistant secretary of the Indigenous Law and Justice Branch of the Attorney-General's Department, notes several critical factors that need to be taken into account to ensure that the rights of the Indigenous client are respected and that the avenues of communication are open between lawyer and client.

- The non-Indigenous lawyer must respect Indigenous culture and history. An Indigenous client will have a personal history inextricably tied to the colonisation of Australia by non-Indigenous people. Indigenous people have a history of conflict with the legal system and non-Indigenous lawyers have played a key role in the administration of the system. The legacy is that often an Indigenous client will have a distrust of the legal system and its players. A lawyer communicating with an Indigenous person must be alive to this reality.
- The lawyer must create an environment that is comfortable for both client and lawyer, which will facilitate the interview process. An appropriate environment is a combination of the creative use of physical surroundings and personal rapport. The lawyer must be open and approachable. The physical

surroundings must be set out in such a way so as to not alienate the Indigenous client. An interview in a room where both parties are sitting at a table rather than an office where the lawyer is behind a desk will often be preferable. If an Indigenous field officer is present, sufficient physical space must be given to the person to ensure that they are respected and have a role to play in the interview.

- Where the interview is to be conducted outside the office, the privacy of the individual must be respected. Establishing personal rapport becomes critical. At times, where many people are present, this may require some creative thinking.
- The lawyer should plan a holistic interview that allows the client's story to be told. Some Indigenous clients may not be as forthcoming as non-Indigenous clients. An interview that takes the form of an interrogation may be unhelpful as the Indigenous client might feel alienated or overwhelmed. An interview process that establishes rapport and then permits the client to 'tell their story' without interruption may be a preferable approach. To achieve this, an interview that might otherwise be conducted at one sitting may require a number of separate interviews to establish the relevant rapport.

The use of legal language is another critical issue that applies to Indigenous and non-Indigenous clients alike. Too often, the client walks away from a conference with a lawyer without a full understanding of what they have been told. Particularly in civil proceedings, references to 'statements of claim', 'interrogatories', 'particulars' and other legal jargon is unhelpful. Many clients will simply not understand the technical nature of these terms unless they are familiar with the legal system. An explanation of the process with an accompanying timeline, in a format that the client can understand, is critical in establishing rapport and trust.

In many cases involving Indigenous clients, unless rapport and trust is established, the full story might never be told. Most importantly, take the time to stop talking and listen. ■

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