

LEGAL EDUCATION

Aboriginal lawyers

What factors contribute to Indigenous students completing law degrees?

CAROLYN PENFOLD gives some answers.

It is now far more common to find Aborigines and Torres Strait Islanders in law schools than it was even ten years ago, but Aborigines and Torres Strait Islanders remain heavily under-represented in the ranks of graduating law students. While at UNSW Law School the proportion of students who are Aboriginal or Torres Strait Islander has increased enormously¹ and the number of graduates has also increased,² attrition rates remain high, with only about 60% of commencing Indigenous students progressing through degrees.³

Many programs have been introduced to assist Indigenous students complete tertiary studies. The Federal Government, universities, and individual faculties and schools have all been involved in developing strategies aimed at increasing access, participation and retention rates. These have included the provision of additional tutoring (ATAS), living allowances (Abstudy), discretionary admission schemes, Indigenous student centres, faculty-based student support schemes, bridging programs, and the introduction of courses designed specifically for Indigenous students. However, with so many programs available, and with so many other interacting factors, it is sometimes difficult to know which factors really do contribute to Indigenous students completing law degrees.

In an attempt to discover what really contributes, and thus to continue to improve rates of participation and success, a research project was undertaken at UNSW in which 19 Indigenous law students and graduates were asked by an Aboriginal interviewer what they thought contributed to Indigenous students completing law degrees.⁴ Analysis of responses showed that students believed their own motivation and determination to be the most significant factor involved in completing law studies, but they were also greatly assisted by both structural factors such as programs for Indigenous students, and environmental factors such as positive attitudes and behaviours of staff, and the presence of other Indigenous students.

All students and graduates interviewed displayed an overwhelming personal determination to complete law degrees, and many suggested that nothing and no-one could stop them from fulfilling this aim. While difficulties with study, Law School and university generally were repeatedly mentioned, students almost unanimously felt that their own determination was the main factor enabling them to overcome these difficulties and to continue in their studies.

Indigenous student networks and the availability of a meeting place which facilitated these were also hugely important. The support offered generally by Indigenous stu-

dents to one another was particularly beneficial, as many students found Law School and law studies a threat to the retention of their own culture, and felt out of place in the university environment. Networking with other Indigenous students helped to generate a feeling of belonging, and brought together students who understood and shared one another's anxieties. Having other Indigenous students in classes also made students feel less isolated.

Student responses stressed the overwhelming benefit of having role models who could assure them that successful completion of the course is possible for Aborigines and Torres Strait Islanders. Because so few Indigenous people have graduated from law schools the most exalted role models may themselves still be students or very recent graduates. Most students recognised that the dearth of Indigenous role models meant that their own progress through the law degree elevated them to the position of role model for other students. They felt strongly the responsibility this carried with it, as well as the opportunities it gave them to improve the situation for those students following them.

Students were assisted in their studies by the atmosphere of the Law School which they found to be supportive and encouraging. While some reported experiences of alienation and intimidation, they felt that this was largely tempered by a genuine desire within the School that they succeed. It was clear from student responses that the behaviour and attitudes of teachers had a significant impact on how Indigenous students progressed. The perception of a positive atmosphere came partly from students' belief that the Law Faculty takes Indigenous issues seriously. Having the Aboriginal Law Centre at UNSW was seen as an indicator that the School is interested in and willing to act to benefit Indigenous people, and this focus on Indigenous issues greatly encouraged Indigenous students.

Students also saw the inclusion within the curriculum of material relating to Indigenous issues as a very positive contributor to success. It made students feel that their culture was valued, and that they were important within the Law School. Students felt this raised awareness amongst both staff and non-Indigenous students of the diversity of Indigenous cultures, and through doing so improved the Indigenous students' experience of the Law School. There was some negative reaction to the inclusion of Indigenous material, with students sometimes feeling pressure to be expert on Indigenous issues, to correct the misunderstandings of the teacher or class, unable to distance themselves from the topics being studied, and feeling that some teachers presented the material superficially. The inclusion of this material was, however, predominantly seen as positive.

The support scheme for Indigenous students within the Law School was seen to contribute greatly to successful completion of degrees, and the existence of the scheme itself lent weight to the students' perception of the School's supportiveness. The benefits of the program included academic, personal and social support which helped to build student confidence, assistance with specific mediation and negotiation tasks, a channel for dealing with Indigenous student's complaints, and the provision of a link between Indigenous students and the School.

The Aboriginal Tutorial Assistance Scheme (ATAS) also contributed greatly to students completing law degrees. ATAS tutors were used for far more than strictly academic tutorials and it was clear that the academic and personal aspects of ATAS tutoring were intertwined. Students found it extremely helpful to have tutors who could tailor tutorial programs to individual needs, and to have contact with tutors who had studied in the Law School before them. While recognising the help that tutors could give, many students were keen to rely on themselves as far as possible, and to seek ATAS tutoring only as a last resort.

Cadetships, scholarships and traineeships were sought after by Indigenous students, who recognised that these could change the situation for Indigenous people generally, as well as assisting individual students to complete degrees. The financial aspects were extremely important, but so were the personal support and encouragement students received. Many felt that cadetships contributed to successfully completing degrees by exposing them to the workplace, giving experience which could then be applied directly to their studies, helping to gain a longer term focus, and helping in future employment, both in gaining jobs and in performing in them. However, cadetships did have some negative impacts as well. Students mentioned administrative difficulties, and some felt the weight of stereotyping and tokenism in the administration of cadetships and scholarships. They were keen, however, to fight for change.

An exchange program for Indigenous students also contributed greatly to the completion of studies for those who took it up. Students who went on the exchange program reported that it helped with motivation to study, and broadened their horizons generally, as well as giving an opportunity to compare the laws and life of other Indigenous peoples.

While acknowledging the many positive factors assisting Indigenous students to complete their studies, students also made suggestions for further improvement. These included the introduction of more preparatory programs, and the continued encouragement of networking and role modelling.

Further, students commonly suggested that a great deal of cross-cultural training was required within the university and the Law School. Responses suggested that the study experiences of Indigenous students would be much improved if teachers, administrators and other students had a better understanding of Aborigines and Torres Strait Islanders. Although they felt supported in their studies, Indigenous students also believed there was a marked lack of knowledge of Indigenous history and culture. Students anticipated that the appointment of Indigenous people to the academic and administrative staff of the Law School and to the counselling section of the university would significantly contribute to the completion of degrees. Students wanted university staff who understand how they feel, and who share their experiences.

Throughout these interviews, the impact of positive staff attitudes and behaviour was seen as crucially important, and respondents often evaluated even lecturing, tutoring and cadetships in terms of the personal encouragement and support given, rather than in terms of academic or financial assistance. While it is clear that student motivation is a major player in student success, it is also clear that that motivation can be bolstered through the encouragement of student networks, role modelling, a supportive law school, relevant and appropriate curricula, a far reaching student support scheme, ATAS tutoring, cadetships and exchange programs. Further, if universities will accept responsibility for the establishment

and maintenance of structures which support and encourage Indigenous students, such as a centre for Indigenous students, discretionary admissions schemes, and faculty specific support schemes, the recent improvements in access, participation and graduation rates of Indigenous students should continue.

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References

1. In 1984, 0.81% of UNSW law students were Indigenous Australians; by 1994 that figure had risen to 2.09%.
2. Eleven Indigenous students graduated from UNSW Law School in the 15 years prior to 1991, a further 12 students completed their degrees in the years 1992-95.
3. Penfold, C., 'Support for Indigenous Students in the Faculty of Law, University of New South Wales, 1989-1995', Report to the Dean, held on file UNSW Faculty of Law.
4. A comprehensive report on this project was published in: Penfold, C., 'Indigenous students' perceptions of factors contributing to successful law studies', (1996) 7(2) *Legal Educ Rev.*

HUMAN RIGHTS

'A' v Australia

NICK POYNDER reports the adverse finding of the UN Human Rights Committee in the case of a Cambodian boat person.

On 30 April 1997 the UN Human Rights Committee adopted its Views on a Communication lodged on behalf of 'A', a Cambodian boat person who had been held in detention by the Australian immigration authorities more than four years.

The Communication, lodged in Geneva on 20 June 1993, was made pursuant to the First Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR), which entered into force for Australia on 25 December 1991. The First Optional Protocol provides a procedure where, after exhausting all available domestic remedies, an individual may allege to the Human Rights Committee that he or she has been a victim of a breach of the ICCPR by a state party. This procedure was used successfully in the case of *Toonen v Australia* in March 1994. The case of 'A' was only the second time that the Committee had adopted Views adverse to Australia.

'A' had been taken into custody by immigration authorities along with 26 other Cambodian asylum seekers on their arrival in Australia in November 1989. He remained in custody until January 1994, when he was released because his wife had been granted refugee status. During the period of his custody, 'A' was moved between detention centres in Broome, Sydney, the Northern Territory and Port Hedland in Western Australia. He was not provided with any government-funded legal advice until almost a year after his arrival. His detention was effectively non-reviewable, under Division 4B (now Part 2, Division 6) of the *Migration Act 1958*, which had been rushed through Parliament in May 1992 in order to head off an application for release by Cambodian boat people. The latter provisions were held to be valid by the High Court in a constitutional challenge in *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1, and it was this 'exhaustion' of domestic remedies which allowed the matter to be taken by 'A' to the Human Rights Committee.