



## **“Stories of Success” Summary of Talk by Maithri Panagoda, AM at CSA General Meeting in Sydney on Sunday 26 February 2023**

“Success” has been defined in several different ways. A drug lord may consider that being able to import millions of dollars’ worth of narcotics as success. It is therefore important to incorporate moral and legal concepts when defining “success”.

I believe most of us here at this meeting were born in and grew up in Sri Lanka. We left our beloved motherland for various reasons.

Sometimes the youthful enthusiasm for adventure overseas for a short time becomes a lifetime. That’s what happened to me. At the age of 25, I went to England with the idea of completing a one-year course of study and returning to Sri Lanka. But life took a different turn. In a couple of years, it will be half a century since I boarded that Air Ceylon flight in 1975.

In January I visited Sri Lanka and attended several get togethers organised by school friends and university colleagues. Most of them have done well in life. They have had a decent education, embarked on a career of their choice, and raised a family. Despite a multitude of problems in the country, which are well known to all of us, some of them never entertained the idea of settling down in a foreign land.

Some had gone overseas for higher studies and returned to Sri Lanka to live and work. Had they desired, they did have the option of relocating to another country. But for different reasons, they decided to put up with all the practical day-to-day problems in the country and settle down in Sri Lanka. They lived through the youth uprising in the south, the separatist war in the north, the 2004 tsunami, more recently the Covid pandemic, insurmountable economic problems, widespread corruption particularly on the part of the politicians, and so on.

To me, they are the real heroes.

I can tell you hundreds of stories of hardship and disappointment they faced, from getting a child into a school of their choice to being frustrated by the legal system. Compared to their experiences, I feel that I have had an easy life.

Sure, settling down in a foreign land is no easy task. You face discrimination, you face racism. You soon realise that it is not a level playing field.

The legal profession in most countries does not exactly lay down a red carpet for newcomers. It is

a tight knit community. If you come from an established family, it is easier to set yourself up. Otherwise, you face roadblocks. This happens in England; this happens in Sri Lanka. Of course, Australia is no different.

When I first landed in Australia as a young lawyer, with qualifications from Sri Lanka and England, I thought I could just walk into any position. I had no qualms about working hard, long hours. I applied for over 40 jobs. I was qualified for all those positions. Apart from a handful of interviews, the reception from prospective employers was disappointing.

When I was fortunate enough to be granted an interview, I always thought I did well. However, when the letter came a few days later, it was almost always stating politely that due to lack of local experience, they had to turn me down. The pertinent question is how you get local experience without being given an opportunity.

After three months of trying to secure a position in Sydney, I saw an advertisement for a lawyer in Dubbo, a place I had never heard of. The organisation was the Western Aboriginal Legal service (“WALS”). I sent an application and was called for an interview. Despite serious misgivings about moving to an unknown country town, I boarded a train to Dubbo.

I was offered the job and we stacked all our meagre possessions on to a small pick-up truck and headed west. The plan was to work hard for a few months, gain experience, and move back to Sydney.

We adapted so well to the new landscape and made many friends, particularly in the Aboriginal community, that we ended up staying in Dubbo for ten years.

The WALS served a vast area, almost the whole of north-western New South Wales. The trust I built up among Australia’s First People would define my legal career in years to come.

This brings me to what has been described as my legacy.

After moving to Sydney in 1990 and joining Carroll & O’Dea Lawyers, one of the oldest law firms, I embarked on building a practice in personal injury litigation. An important aspect of my work was taking on issues confronting Aboriginal people. These

included Deaths in Custody and compensation for the Stolen Generations.

The term “Stolen Generations” refers to a period in Australia’s history where Aboriginal children were removed from their families through government policies. This happened from about 1883 to the 1970s. The underlying policy was to eliminate the Aboriginal race and force them to gradually assimilate into the mainstream Anglo-European society and culture.

These children were placed in various homes, where they suffered all forms of physical and emotional abuse.

At Federal and State level, several attempts had been made through litigation to seek compensation for the pain and suffering that they endured. Apart from in a couple of instances, these were largely unsuccessful.

In 2014, with the backing of the Stolen Generations Council, I was able to convince the then State government to devise a scheme of compensation, without going through the cumbersome, costly, and unpredictable Court process.

We ended up successfully completing over 250 claims. I believe this was the most important achievement in my legal career.

In many respects, law is a tough field. A practising lawyer invariably works long hours. There are difficult clients. There are nasty opponents. And there are unforgiving judges.

I was once on my feet at the bar table when the judge lost his temper at something I said and threw the file at me. It was embarrassing. He later called me to his Chambers and offered an apology. I told him that if he was sincerely sorry, he should apologise in open court because that’s where he committed the act. He agreed and did that.

We are all human and we all make mistakes. What is important is the ability and the decency to admit one’s mistakes and make amends.

Despite inherent difficulties, disappointments, and frustrations, in my view, law is a great profession. You meet interesting people. They tell their life stories. They confide in you. Listening to some clients is like reading a novel with twists and turns.

Are good lawyers smart? Are they cunning? Do they use common sense more than some others? Let me tell you a story:

A father tells his three sons, I am spending a lot of money on your education. When I die, I want you to do one thing. I want each one of you to put \$1,000 in my coffin. They agreed to do that.

The boys studied hard. The eldest became a doctor. The second became a financial adviser. The third became a lawyer.

Many years later, the father died. The boys, now quite wealthy grown-up men, remembered the promise they had made. The doctor took out \$1,000 in \$100 notes and placed them in the coffin. The financial guru took out \$1,000 in \$50 notes and put them in the coffin.

When it was the lawyer’s turn, he took out his cheque book. Appearing very generous, he wrote a cheque for \$3,000 and placed it in the coffin with his right hand. With his left hand, he removed the \$2,000 cash placed by his brothers.

You decide - was he smarter, or was he cunning?

I believe that the law as it operates in Sri Lanka is in crisis today. This I attribute to undue interference, lack of respect, poor understanding, and lack of vision.

Aristotle was on the mark when he wrote, “At his best, man is the noblest of all animals; separated from law and justice, he is the worst”.

As law students we learned the value of the Rule of Law. The separation of powers between the Executive, the Legislature, and the Judiciary. We learned about the independence of the Judiciary. These are the basic ingredients of a civilised nation. The situation in Sri Lanka today, and in the past few years, proves this noble truth. Elementary physics will tell you that when the pillars crumble, the building collapses.

I was fortunate to do my apprenticeship under the late Bunty Soysa, who had a reputation for being a fearless criminal lawyer. He once represented a group of young leftist radicals who had been charged with offences relating to their political activities. At a conference in his Chambers, one of the group said to Bunty, “You lawyers only do these things for the money”. Bunty retorted, “One day, when you don’t have lawyers, then you will understand their value”.

It seems to me that the power and influence of lawyers in Sri Lanka have greatly diminished. I believe that the constitutional changes in 1972 and 1978 expanded the power of the Executive to the detriment of the Judiciary. The institutional safeguards that once prevailed in the legal framework in Sri Lanka have undergone transformation. The Executive seems to have such wide powers that it can make orders without being accountable to the Judiciary, using for example Emergency regulations and national security laws. In my view, this sad situation in Sri Lanka has diminished our moral engagement, a person’s commitment to positive social interactions, and thoughtful care for others.

In Australia, by and large, the legal system operates well. This is because there are checks and balances. The judges are totally independent.

I remember a story about Sir Donald Bradman. He was once stopped by a policeman in Adelaide for a minor traffic offence. When Sir Don produced his driver’s licence, the cop was so excited to meet him that he asked for his autograph. Sir Don duly obliged. The cop returned to the police vehicle and came back and handed a Penalty Notice to him and said, “Sir Don, you have 4 weeks to pay this. I am honoured to meet you”.

When you are a practising lawyer, you must be fearless. If you crumble under the rich and powerful, you fail in your duty to the client. If you believe in your case, if you have convincing arguments, then you

should proceed to represent your client to the best of your ability.

Recently, a main talking point among the Sri Lankan community has been the case of the cricketer charged with certain offences. Lawyers follow this case with keen interest because on the 1st of June 2022, the NSW Parliament passed legislation that gives a somewhat restricted interpretation to the word “consent”. As a result, sexual consent must be free and voluntary. If a partner is forced or coerced into sex, it is not consensual. If the person is very drunk or under the influence of drugs, they may not have the capacity to give consent.

Moreover, consent is an ongoing process. A person can change their mind and withdraw consent at any time. If a person consents to one sexual act, it does not mean they have consented to others.

In these types of cases, in the absence of other evidence, it is one person’s word against the other. The judge or the jury must decide who is telling the truth.

The law is a tough field. There is no reason to sugar coat it. Although it is a most rewarding and meaningful career, it is also a lot of work. Success requires effort. There are difficult days. There are frustrating days. Persevering through these challenging issues is what sets you apart.

One thing I have been able to achieve is a degree of work-life balance which has resulted in a reasonably happy family life while not compromising on my obligations to clients and the legal profession in general. One needs to be always conscious of these competing interests and find a way to deal with those issues.

The pressure can be quite overwhelming. Just like we act for clients who sue their doctors, surgeons, employers, etc, lawyers also get sued.

I want to end this presentation, with a funny story. Although humorous, this could well be true, particularly in the context of Sri Lanka.

The son of a successful lawyer wanted to follow in his father’s footsteps. He went to law school and graduated with honours. The proud father gave employment to the son in his own firm.

At the end of his first day at work, the young lawyer triumphantly rushed into his father’s office and said, “Father, in one day I broke that case you have been working on for so long”.

There was a look of horror on the father’s face. He yelled: “You idiot, we have been living on the funding of that case for ten years”.

On that note, I thank you for listening.

## SOME PHOTOS FROM THE EVENING



*Maithri Panagoda*



*Presenji Jayawickrema and Pauline Gunewardene*



*Section of the audience*



*Maithri Panagoda and Harry de Sayrah*