

IN THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL

JUSTICE BEAZLEY ACJ
WARD JA
GLEESON JA
BENNETT DCJ by invitation
WILLIAMS LCM by invitation

ORANGE: MONDAY 20 FEBRUARY 2017

CEREMONY FOR COMMENCEMENT OF PROCEEDINGS

Mr K Smith of the Wiradjuri People
Cr J Davies, Mayor of Orange City Council
The Hon David Clarke MLC, Parliamentary Secretary for Justice
Mr W Walsh for the New South Wales Bar Association
Ms P Wright, President of the New South Wales Law Society
Ms P Arden, President of Central West Law Society

BEAZLEY ACJ: Mr Smith.

MR SMITH: I would like to welcome everyone here today to the land that we meet on, the land of the Wiradjuri people. I would like to acknowledge that the Wiradjuri nation is the original custodian of this land on which we meet and acknowledge the elders past, present and future. Just as the land survives so does the spirit of the Wiradjuri nation. So let's have a moment's silence to reflect and respect. Thank you.

BEAZLEY ACJ: Mr Smith, the Court acknowledges the Wiradjuri people and pays respects to their elders past and present and acknowledges all those who are present in the Court today.

MR DAVIES: Thank you, Acting Chief Justice Beazley AO, the Honourable Justice Ward, the Honourable Justice Gleeson, Judge Bennett, Senior Counsel, his Honour Magistrate Bruce Williams, the Honourable David Clarke MLC Parliamentary Secretary for Justice, Mr William Walsh on behalf of the

New South Wales Bar Association, Ms Pauline Wright, President of the New South Wales Law Society, Ms Tricia Arden, President of the Central West Law Society and Mr Keith Smith of the Wiradjuri people.

It is with great pleasure this morning I have the opportunity to address this very astute gathering in the city of Orange, Australia's Colour City. This is, I am told, one of the few times that the Court of Appeal has actually sat outside Sydney in its 50 year history. I think it is a great tribute to the City of Orange and a fine reward to our local justice professionals and associates who represent all spheres of law within our city in an exemplary fashion and, I must say, are very active in our community in all sections of our community activities.

I would like to invite this Court too, if there is any possible opportunity whilst you are in our city, to take the opportunity to take in some of the beautiful surroundings and indulge in some of what our city has to offer in the way of dining experiences which showcases some of the best food and wine in Australia.

Orange has seen many major developments take place over the last few years. I would like to invite the Justices and their associates to take the opportunity to visit our most recent addition to the city, our new regional museum within our civic precinct. Not unlike the sloping grounds surrounding Parliament House in Canberra, this new futuristic shape in building with its grass rooftop is a lovely space to sit and enjoy a coffee, if you have the time. On behalf of the people of Orange, a warm welcome and a friendly welcome as well to all and we hope these court sittings have their desired effect on the community of Orange. Thank you.

BEAZLEY ACJ: Thank you, Mr Davies. Mr Secretary.

MR CLARKE: May it please the Court. On behalf of the government of New South Wales, it is my great honour and joy to welcome your Honours to Orange, to this historic sitting of the Court of Appeal. The history of this city shows that it has had a strong link with the law over the years. Back in 1845, the residents – a few residents who were here – petitioned the government that this be made a formal settlement and four years later they had their first court in this area. That court was a very modest affair, a bar cut on a slab but, whilst it was officially a court, it also doubled as a church for visiting clergy and it was used as the venue for the first meeting of the municipality of Orange in 1860. Some famous and infamous personalities have been connected to the courts of this city. On one hand, we had the bushranger, Ben Hall, who stood trial in Orange for highway robbery under arms in 1862.

On the other hand, this courthouse holds the birth certificate of the great Australian poet, Banjo Paterson. This magnificent classic Victorian building is in fact Orange's third courthouse, operating since 1883 on the site of the previous two courthouses. This courthouse is a busy regional court. Each year, 3,000 Local Court cases are held in this Court and today it is accommodating the Local Court, the District Court and the Court of Appeal. Whilst this courthouse radiates great beauty and history from its two centuries of operation, it is equipped with 21st Century state-of-the-art technology.

Through its audio-visual equipment, evidence can be given by people – witnesses all over the State, from interstate, from overseas, it can be connected with inmates in prison. Whilst the Supreme Court has sat here in Orange on many, many, occasions, including only some days ago, never before has the Court of Appeal crossed the Blue Mountains to sit in the Central West, but that day has arrived and that day is this day. This is important, it is

central to our system of justice that it is readily available to all the people - people in the country, the people in the city and today that is what is happening here in Orange, here with the Court of Appeal. This is further testament to that fact, what is happening today.

Your Honours, the Government of New South Wales and the people of New South Wales are proud of our judges. We honour them. We uphold them. We have confidence in the justice that they dispense. I thank your Honours for coming to Orange to preside over today's hearing of the Court of Appeal. This really is an historic day for justice, an historic day for the people of Orange and an historic day for the great City of Orange as a regional centre. Thank you.

BEAZLEY ACJ: Thank you, Mr Clarke. Mr Walsh.

MR WALSH: On behalf of the barristers of New South Wales and, in particular, the regional Bar, I welcome the Court of Appeal and your Honours personally to Orange. I note that in 2016 the Court celebrated 50 years since it was established and it seems to be that this is the first occasion that the Court has sat outside of Sydney. Last decade, we saw the Court of Criminal Appeal visit areas of the State, including the Western area, with the sittings at Bathurst and Wagga Wagga.

The presence of this Court in Orange is an important reminder to the citizens of the region that we have an appellate system in this State which stretches from various courts ultimately to this Court and which is available to every citizen of the State. The presence of this Court today is important for another significant reason. It reminds and reaffirms to regional practitioners that our appellate system is real and effective.

In recent years, we have seen not an insignificant number of members of the bar living and practising in regional areas of the State. Invariably, sometimes

we have seen the permanent appointment of judges of the District Court to regional areas. Things in the legal world slowly but surely are changing for regional New South Wales. The presence of this Court today is part of that important change.

Finally, on an historical note, justice has been administered on this site since 1849 when the first Court of Petty Sessions sat. May it please the Court.

BEAZLEY ACJ: Thank you, Mr Walsh. Ms Wright.

MS WRIGHT: May it please the Court. I would also like to acknowledge the Wiradjuri people on whose lands we meet and pay my respects to their elders both past and present and to their youth in whose hands is held our hope for a truly reconciled future.

It is a real honour to be here to represent the solicitors of New South Wales amongst so many members of the local profession and the local community to welcome the Court of Appeal to the City of Orange. As a regional solicitor myself practising in Gosford, and as president of the Law Society of New South Wales, it is heartening to see the highest civil court in the State sitting in country New South Wales.

Regional practitioners and their clients benefit enormously when they have direct access to our State's highest courts at the origins of their matters. Commerce and community thrive in regional centres with active courts. Last year, my predecessor spoke at the 50th anniversary of the creation of this Court of Appeal in 1966, and 1966 was also the 20th anniversary of the proclamation of Orange as a city 100 years after the village in 1846, and it is a testament to the significance and maturity of this region that these historic sittings of the Court of Appeal are taking place here likely, as has been said, the very first outside Sydney.

It is also likely an historic first that the profession and the bench alike hope that counsel in the proceedings later this morning don't lead off with, "We are happy to advise that the matter has settled". What an anti-climax that would be! With its proximity to the goldfields, Orange has long been a central trading centre. The blessing of fertile soils and great climate brought orchards, vineyards and pastoralism and today it is a thriving centre of business, agriculture, gastronomy and tourism. Someone, of course, who has been referred to, who captured the spirit of the plains was Banjo Paterson, and this little excerpt of Clancy of the Overflow might apply to Orange:

“And the bush hath friends to meet him,
and their kindly voices greet him,
In the murmur of the breezes
and the river on its bars

And he sees the vision splendid
of the sunlit plains extended
And at night the wondrous
glory of the everlasting stars”.

A B Paterson was, of course, a solicitor in Orange, completing articles with Herbert Salwey and forming the partnership of Street & Paterson here in 1889. Orange was something of a hub for solicitors in the 19th Century. The number of practising solicitors outstripped that of the larger centre of Bathurst and the solicitors of that time, all men, of course, were of a particular mould. They were successful court advocates, particularly in criminal cases. They were men who formed the backbone of civic society. Many went on to become mayor or town clerk. Others established their careers here before venturing on to other rural centres or the major cities. One such man was Orange's pioneer, solicitor George Colquhoun, who moved to Sydney and became Crown Solicitor in 1894, and Ernest Roper, judge of the Supreme Court from 1940 and later Chief Judge in Equity, was born in Orange and educated in

Armidale.

Proud of its heritage, Orange has looked after its civic buildings and created new ones, the new museum and the Orange Civil Theatre are examples encouraging a vibrant cultural life. In addition to creative genius, Banjo Paterson, Orange is also home to rising star of theatre, award winning musical director Andrew Worboys, who is making a huge name for himself at the Hays Theatre in Sydney and abroad.

Central to civic life in Orange has always been access to justice and while the settlement was finding its feet and its fortune in the 19th Century as we have heard, a courthouse was a first priority and one of the first buildings to be established here.

It actually started with a wooden slab hut with eight cells built on the site in 1847. In 1849 it was replaced with a blue stone building and then 1883 saw the construction of this courthouse and today, 170 years after that wooden lock-up was built for a small settlement called Blackmans Swamp Creek, a modern city is hosting the highest civil court of the State in its courthouse.

By sitting here in Orange, the Court has affirmed the importance of the administration of justice to life in this sophisticated region in a significant way. As the Court pleases.

BEAZLEY ACJ: Thank you, Ms Wright. Ms Arden.

MS ARDEN: Your Honours, on behalf of the 190 practitioners in the Central West, I would like to welcome you to Orange and welcome the Court of Appeal. Some of the history having opened – well, the Court of Petty Sessions I understood was 150 years, but it may be a little less, with Orange having been proclaimed a city in 1847, and the Court opening in 1846.

There were numerous buildings during that time which were part of the

courthouse. The part we are in now was designed by James Barnett and built in 1881, and the new part was completed in the 1990s. I thank the Court for coming to Orange today.

All of us here today strongly believe in the rule of law and the right of people to access justice. For this to occur, people must be able to attend the Court. Unfortunately, as the costs increase we see the smaller courts closing, and small courts like Blayney may be at risk. It opens twice each week but only sits a day a month and sometimes a day every second month.

I have also appeared in very remote courts in Boggabilla, Mungindi and Lightning Ridge. We are all aware of the level of disadvantage of many of those appearing in the Local Courts. They often do not have a motor vehicle, due to literacy issues some may never have had a licence and there is no public transport in these areas. We see licences and registrations being suspended due to unpaid fines which leads to more charges of drive unlicensed, unregistered and uninsured. Those in custody are granted bail. They often do not have access to transport to travel home if they are not appearing in their Local Court.

Justice Beazley, in 2016, you kindly opened the Centre for Law and Justice at Charles Sturt University and you also presented a paper for us at the Central West Law Society Conference in November in 2016.

As president of the Court of Appeal, you have now been instrumental in having the Court of Appeal sit here in Orange. This helps in making the highest court in New South Wales transparent and available locally. We see our judicial officers as ordinary human beings, people of compassion who are undertaking an extremely important role. You are demonstrating that the rule of law is paramount in our democracy and available to the people. My hope is that it

also continues to be available in our remote regions. May it please the Court.

BEAZLEY ACJ: Thank you, Ms Arden. It is a great pleasure to preside over this ceremony and the sitting of the New South Wales Court of Appeal at the Orange Courthouse. It is certainly the first time that the Court has sat in Orange. As it is not apparent from the court records that the Court of Appeal has ever sat outside Sydney, it would appear that this sitting is historic in both respects.

History, including the history of the Wiradjuri people represented here today by Mr Smith, is very important and it has been really quite wonderful to hear each of the speakers refer to the history of this place. It is that history which has made Orange an impressive place and will continue to make it an important centre of New South Wales and for the people of New South Wales.

Although the presence of the Court of Appeal as an institution is new in this region, that is not so for the individual judges who have the privilege of constituting the Court today – or at least by a majority which, of course, is sufficient for the Court of Appeal. For example, my ancestor on my father's side was the first Archdeacon of Bathurst, not Orange, I do understand that, but at least it is along the way, and on my mother's side, the family came from Trundle.

I am not going to proceed in order of strict seniority and I will next refer to Justice Gleeson, who sits on my left. Justice Gleeson's son was, until recently, a young doctor at Orange Base Hospital and as so often happens, there are now in-laws in this region.

Justice Ward, who is on my right, has had to create her own historical connection with Orange but now, as part of the history of this courthouse in particular, and Orange more generally, she is the first judicial officer to wear

orange stilettos onto the bench.

May I also welcome onto the bench Judge Bennett of the District Court who is sitting on my right, and on my left, Magistrate Williams. We very much welcome their presence on the Court and we also acknowledge the amazing work that they do in administering justice in this region.

Law making, custom, community and the administration of justice have long and storied histories in Australia including in regional and rural communities. I would like to again mark the Court's acknowledgement of the Wiradjuri people who, as the traditional owners and custodians of the land in these parts, are the original lawmakers in this area. The Court again pays respect to their elders past and present and acknowledges their customs, their long history and their continuing relationship with this part of New South Wales.

We have heard much already of the history of this courthouse and the Court system in Orange from the other speakers, but let me add to it a little. In 1832, the *Offenders Punishment and Justices Summary Jurisdiction Act* was introduced by the colonial legislature. That Act sought to consolidate and clarify the basis upon which the Courts of Quarter Sessions (now the District Court) and the Courts of Petty Sessions (now the Local Court) exercised summary jurisdiction throughout New South Wales. By the Act, the Governor was empowered to appoint, by notice in the Government Gazette, places at which the courts of Petty Sessions were to be held. In 1847, some 15 years after the enactment of the Act, a Court of Petty Sessions was opened in the township of Orange.

I do have to say from that rather severe beginning, where the jurisdiction of the courts was very much directed to penal matters, the jurisdiction of the courts operating in Orange is far more extensive now, extending to civil matters,

allowing for the peaceful adjudication of all disputes between the citizens in the area.

When we speak about buildings we are not only speaking about physical structures. A courthouse represents a place where justice is administered and in which the rule of law is embedded – hence the importance of the Court of Appeal sitting here today. The first Orange Court House was far humbler than the surroundings in which we presently find ourselves. According to one description, the original Orange court house was comprised of a wooden slab police lock-up which also served as the court house. We owe our current surroundings to the great Colonial Architect James Barnet, who was responsible for many of the finest historic courthouses throughout New South Wales. You have no doubt all seen the foundations of the original police lock up unearthed and preserved during the renovations of the current courthouse in the 1990s.

The Supreme Court traces its existence to the Third Charter of Justice which established the Court and its full jurisdiction in both civil and criminal matters, with effect from 17 May 1824. Up until fairly recent times, the Supreme Court regularly went on circuit to towns through New South Wales. However, with the growth in the workload and the jurisdiction of the Local and District Courts, the Supreme Court of New South Wales now has less frequent occasion to sit outside of Sydney. With that said, there is no less importance today in ensuring contact between the broader community and the various levels of the Court hierarchy in New South Wales.

During the time of Chief Justice Spigelman, the New South Wales Court of Criminal Appeal sat in a number of regional locations, including Wagga Wagga, Dubbo, Lismore, Albury and Bathurst, and the more metropolitan

Newcastle. The Supreme Court in its criminal jurisdiction continues to sit in regional towns to hear criminal trials, including in Orange. Justice Fagan sat here last year. More recently, Justice Hoeben sat in Orange in the Supreme Court's civil jurisdiction.

Any system of law, respected by lawmakers and the community alike, depends fundamentally on respect for, and an understanding of, the rule of law in our society. The direct exposure of the public to the court processes, both at trial level and in an appellate context, is fundamental to community respect for the rule of law, the principle of open justice and public confidence in the administration of justice, matters to which Ms Arden has referred.

The New South Wales Court of Appeal celebrated its 50th anniversary last year as an intermediate appellate court. With the history of the court system in Orange in mind, it is fitting that in the Court of Appeal's 51st year, it is able to sit here today. We are very privileged to constitute the court that is engaged in that sitting.

In response to Ms Wright, we would not mind hearing that the matter listed for today had settled, if only so that we might be able to enjoy the delights of Orange about which we have heard so much from the bar table. I suspect that is not going to be the case, so we will sit and administer justice as we are sworn to do.

So, again, I would like to thank you all for the very warm welcome that you have extended to the Court. I would also like to extend my thanks to the Registrar of the Court of Appeal, Jerry Riznyczok, who really was the creator of this idea. When he saw that there was an appeal in a matter where the underlying proceedings emanated from Orange, he considered that it was appropriate for the Court to make the move and engage in this historic sitting

in the region and to administer justice in the very community in which the proceedings originated.

I would also very much like to extend my thanks to the Registrar here at Orange, Olivia Lee, and to her deputy, Peter Tudor, for their efforts in making all of this possible. I would also like to extend my thanks to the Registry staff who serve the courts so well, extending that also to our Court Monitor here today, to our Sheriff, and also to the Profession.

Once again, Mr Smith, can I extend the Court's thanks to you, and to all the fine Registry staff who serve the Court in its task in administering justice. The Court will now adjourn until 10am.
