

TRANSCRIPT OF SPEECHES DELIVERED BY:

1. MR C.G. HILLMAN, S.C., on behalf of the Director of Public Prosecutions, Mr Paul Coghlan.
2. MR O.P. HOLDENSON, Q.C., on behalf of the Victorian Bar.
3. MR SIMON DOWNING, on behalf of the Wimmera Law Association.
4. THE HONOURABLE CHIEF JUSTICE
(Speech in Reply).

AT A GATHERING

On

MONDAY 23 AUGUST 2004

TO WELCOME THE COURT

THE HONOURABLE CHIEF JUSTICE (JUSTICE WARREN)

THE HONOURABLE PRESIDENT (MR JUSTICE WINNEKE)

THE HONOURABLE MR JUSTICE ORMISTON

· WARREN, C.J.:

Mr Hillman.

MR HILLMAN:

If the Court please, I appear on behalf of the Director of Public Prosecutions, Mr Paul Coghlan, one of Her Majesty's Counsel, and on his behalf I welcome the Court to Horsham.

Horsham is the centre of the Wimmera wheat and wool-growing district. I am told that it was named by James Darlett, the first squatter to take up land here in 1842. It was named after his native town in England. Horsham was declared a town in 1932 and became a city in 1949. It is aptly named the capital of the Wimmera.

This is the second occasion upon which the Court of Appeal has sat on circuit at Horsham. The first occasion was in August 2000, when the Court was constituted by your Honour the learned President, Mr Justice Winneke, and their Honours Mr Justice Brooking and Mr Justice Chernov. That was an occasion of great significance, being the first ever sitting of the Court of Appeal at Horsham. Now, four years on, the Court sits again at Horsham.

Since its inception in 1995 the Court has heard appeals twice yearly at all the Victorian Supreme Court circuit towns with, I think, the exception of Hamilton. The current sittings are particularly important, for two reasons. One, it is the first time in the history of the Court of Appeal that the Chief Justice of the Supreme Court of Victoria has presided over the Court on circuit. The second reason is that it is the first occasion that the three most senior judges in this State have sat as the Court of Appeal outside of Melbourne. The Court is constituted by your Honour the Chief Justice, your Honour the President of the Court of Appeal and your Honour Mr Justice Ormiston, the next most senior judge of the Court of Appeal. Thus the Court is constituted by the three highest-ranking judges in the State. In less formal language it might be said it is the 'A Team'. In the spirit of the Olympics, it might be said that we have the gold, silver and bronze medallists. The reason for the Court of Appeal sitting on circuit is because it is recognised that it is as significant to people in rural Victoria as citizens in Melbourne that justice be administered locally. The

sitting of the Court of Appeal on circuit not only demonstrates the Court's commitment to the administration of justice in regional centres, but it provides the opportunity for local citizens to observe the highest court in the State at work.

Horsham has a strong legal history, with the first sittings of the Supreme Court of Victoria in 1878. It is therefore appropriate that Horsham should be the venue for these sittings of the Court of Appeal when, as I have said, for the first time the Chief Justice will preside, and for the first time outside of Melbourne the Court is constituted by the three highest-ranking judges in the State.

On behalf of the Director of Public Prosecutions, I welcome the Court to Horsham on this significant occasion and applaud the continued determination of the Court to sit in circuit towns. If the Court pleases.

WARREN, C.J.:

Thank you, Mr Hillman. Mr Holdenson.

MR HOLDENSON:

May it please the Court, I appear before the Court today on behalf of the Victorian Bar for the purpose of welcoming the Court to these sittings in the City of Horsham.

One could take this opportunity to inform the Court of something of the City of Horsham. As the Court has just been told, this City is the centre of the Wimmera district, and it is in this district that some of the best crops produced in this country are grown.

One could also inform the Court of the history of this area - as to how it was that the first white settler established a "run" not too far from this building in 1842, and then, some seven years later, in 1849, a store and a post office were established. Two years earlier, in 1847, a police office was established, and it was in 1849 that a court house was built. One could even proceed to tell the Court just how wrong it was when Mark Twain, in visiting the town (as it then was) in the early 1890s, described the landscape not only as "remarkably flat" but as "grey, bare, sombre, melancholy, baked and cracked, in the tedious long droughts ...". And one could go

on.

But in representing the barristers of Victoria, I think that I should take this opportunity to tell the members of this community what it is that this Court will do here this week. In sitting here this week, this Court will hear and determine some five criminal appeals. This Court will therefore be charged with the responsibility of administering justice, a short and simple phrase which means that this Court will perform the function of ensuring, in each of those five cases, that there has been no miscarriage of justice; that is, that the law has been complied with in each of the criminal proceedings from which these five appeals have been brought. This Court, in performing that function, will, with the assistance of a number of solicitors who have prepared these appeals, and the members of counsel who will represent them, analyse the facts and circumstances of each case, determine the legal principles relevant to the case, and then apply those legal principles to those facts and circumstances so as to ensure that justice has been done. In doing so, this Court will, in and by its reasons for its judgments, thereby provide guidance as to the law and the application of the law to both the magistrates and judges of not only this State but also the other States in this country, and, of course, the barristers and solicitors who are required to advise their clients, ordinary people, as to the law. And so the members of this community can come to this court room and see and hear for themselves how it is that this Court will perform this very important function.

And it is particularly important that this Court does this work - its work - in country Victoria, because the people of country Victoria can thereby see how their Court works and be satisfied that the Court, by applying the solemn procedures of the criminal law, ensures compliance with the law. And I say "their Court" because this Court is at the apex of the system of courts which administer justice in this State, and it does its work for each and every citizen in this State.

In conclusion, this community has been presented with an opportunity of observing this State's ultimate appellate court discharge its onerous responsibilities, thereby ensuring that the rule of law is maintained - a matter in which each and every right-thinking member of our community has a real interest.

There is, of course, one additional matter. In sitting in this place, this Court will be afforded an opportunity to meet some of the members of this community and, in doing so, will come better to appreciate the common sense, the sense of fairness, and indeed the wisdom, of those people who live and work in country Victoria - because it is the people who are close to the land who very much have those qualities - indeed, the very same qualities which will guide this Court in its work here this week.

And so on behalf of the Victorian Bar, I welcome this Court to this part of country Victoria.

WARREN, C.J.:

Thank you, Mr Holdenson. Mr Downing.

MR DOWNING:

If the Court pleases, I seek leave to appear unrobed.

WARREN, C.J.:

Certainly, leave is granted, Mr Downing.

MR DOWNING:

Thank you. May it please the Court, it is a pleasure and with great honour that I appear before the Court today on behalf of the Wimmera Law Association and extend a warm welcome to the Wimmera.

Although geographically removed from this regional centre, the Court of Appeal and the honourable judges comprising it do exercise considerable influence here, both in the operation of the courts and legal practice and in topics of idle converse. Indeed, Chief Justice, your suggestion that the wonderful and historic court building on William Street in Melbourne may have to be exchanged for newer premises was met with some lament at the possible end of use for that significant building. We are, however, consoled to hear that this magnificent complex will not share the same fate. Built in 1967 for the sum of \$97,000, the Mayor, Mr Tom Windsor, commented at that time that it looked somewhat like a kindergarten. On

opening the building, the Attorney-General, George Reid, announced, somewhat strangely, "You know, Martians might be appearing in this court in a hundred years' time." I believe there might be some jurisdictional issues if that were to happen.

The building this one replaced was reportedly of a chunky, respectable, colonial style and was built in 1879. Although some buildings from that era survive in the district and provide a beautiful relief from the matters contained therein, the old Horsham court house supposedly suffered the problems of age, and indeed, with the shifting soils here in Horsham, a building need not be too old before it suffers from those problems.

If I might draw the Court's attention to the lights in the main part of this building, you may notice that they are in fact skylights with fluorescent lights through them, and this has an interesting effect that when there are clouds overhead the court darkens with them, and occasionally it almost seems as if a divine ray illuminates justice here. The first matter heard in this complex was an application for a second-hand dealer's licence. Indeed, things are looking up today.

The practice of law here in the Wimmera, as elsewhere in the country, has its own peculiarities. One soon becomes aware of cropping terminology: grain and truck types, the differences between superfine and ultrafine merino wool, and the absolute importance of water. Practitioners need to be conversant in many areas of the law, as almost any problem can arise at any time. This has a habit of keeping our work interesting. For young lawyers in the area, Wimmera practice also presents a different picture to that of peers in more populous locations. We have a level of responsibility unknown by our colleagues in larger cities. This is both an opportunity and a burden. We speak to clients often. We appear in court as regularly as many junior barristers might, and are given real support in our tasks. We go home for lunch. We do not time cost, and outside of work we like to think we really live. There are many differences to practices in other places. However, there are also many similarities. Problems caused by drugs and alcohol issues, mental health issues and family breakdown seem almost inescapable. Were it not for these, there would be significantly fewer matters for the court to deal with and for legal

practitioners as well. As in other places, much of the work of the court seems to be in crisis management, and this solves fewer problems than we may like. Other similarities to the rest of the State are that we do have a well functioning legal system, providing protection to all from arbitrary punishment or wrongdoing. We have a permanent magistrate here, who often sits through his lunch break and has a work ethic as an example for us all. We receive two County Court circuits a year, and they do their utmost to resolve all outstanding matters fairly. And here, as for the rest of the State, this Court ensures that there is no error in the administration of justice.

It is important that this Court makes these visits. I have been questioned by many since it became public knowledge that the Court of Appeal was to come, as to the role of the Court, and it has been a joy to explain that role and to see people gain a better understanding of our judicial system. And indeed, sometimes they need it. In a nearby court recently, a person was heard to say, on invitation by the learned magistrate to seek independent legal advice, that she felt she had no need for a lawyer. She stated, "I am a nurse, and I have watched many court television shows." As interesting as Law and Order, CSI and LA Law surely are, this Court provides a more relevant, if occasionally less exciting, example.

I take this opportunity again to welcome you to the Wimmera, and to recommend the magnificent Grampians, Mount Arapiles, the Little Desert, and those waterways still containing water, as being well worth a visit if the opportunity presents itself during the week.

If the Court pleases, those are my submissions.

WARREN, C.J.:

Thank you, Mr Downing. Mr Hillman, Mr Holdenson and Mr Downing, and all the distinguished guests who honour the Court by your attendance here today, we are most grateful for the warm and gracious welcome to Horsham.

Today, as Mr Hillman has observed, marks a particularly special occasion, indeed historic. It is the first time that the three most senior judges of the State of

Victoria have sat together. We are sitting together, not in Melbourne but here in regional Victoria, in Horsham. We have done so because of the commitment of the Supreme Court of Victoria to do as its title and role signifies, namely, sit as the most superior court across the whole of the State.

The Court of Appeal sits here in Horsham today and throughout this week as a continuation of the practice and convention re-affirmed by his Honour the President when the Court of Appeal was established. Indeed, the Court observes with considerable pride the recent marking of the ninth anniversary of the Court of Appeal, having first sat in 1995. When the Court of Appeal last sat in Horsham in August 2000, four years ago, significant things were said by those who addressed the Court - I note then by Mr Hicks of Counsel, Crown Prosecutor, now his Honour Judge Hicks of the County Court, Ms Brown of the Wimmera Law Association, and Mr O'Callaghan, one of Her Majesty's Counsel for the State of Victoria, one of the most senior members of the Victorian Bar and a son of Horsham.

Then, in 2000, the presence of the Court in regional Victoria was applauded. His Honour the President, in bringing the Court to Horsham and to other regional centres, showed vision and leadership. He re-ignited the fine tradition of circuit work in the Supreme Court. Since then, that leadership has been actively pursued by the whole of the Court, and throughout the legal year the Supreme Court of Victoria will be seen to sit throughout its jurisdiction. Indeed, as the Court of Appeal sits this morning here in Horsham in Western Victoria, at the same time, Justice Cummins is sitting in Central Victoria at Bendigo in a civil trial, and Justice Kaye is sitting in Northern Victoria at Wangaratta in a criminal trial.

It is, of course, important that the citizens of this State have the opportunity to observe the administration of justice in practice. Victorians of the Wimmera should have an opportunity to see and hear justice operate and the rule of law applied, as much as those who reside in Melbourne. The Court of Appeal is the highest court of Victoria. It is the court of last resort for the Victorian citizen, save for the High Court of Australia, and then generally only with leave. The Supreme Court of Victoria, both at appellate and trial levels, is committed to sittings, both criminal and civil,

across Victoria so as to provide access to justice at a regional level wherever practicable.

It has been enjoyable this morning to sit as the Court and to see played out the very matters raised by the High Court in the judgment in *Giannarelli*, as to the paramount duty owed by counsel and solicitors when they appear before the court: that is, to assist the court in the administration of justice. Indeed, this morning, each of Mr Hillman, Mr Holdenson and Mr Downing has explained why we are here and why we should be here.

If I may take an indulgence of the occasion, I sit here as the first woman Chief Justice to sit on circuit. I do so with the honour and privilege of sitting with his Honour the President and his Honour Mr Justice Ormiston. The President when a barrister was renowned for his work in the common law and the criminal law and was a leader of the Bar on circuit at its height, in its heyday. Mr Justice Ormiston too went on circuit as a barrister, and Horsham was one of his tramping grounds, together with Hamilton, although then in February when it was very hot.

It is for the Court, therefore, a proud and memorable sitting. For most citizens, an encounter with the State legal system will invariably be at the Magistrates' Court or the Victorian Civil and Administrative Tribunal, or perhaps the County Court. However, it is the Supreme Court that sits above all these courts and tribunals. The Court returns to Horsham to fulfil its commitment to enabling justice to be played out at a regional level.

The Court is honoured by the welcome to Horsham. In particular, we are honoured by the presence of so many distinguished members of the Wimmera region who make such a substantial contribution to the communities of this area.

The Court will now adjourn to resume its business at 2.15.
