Access to quality justice

By Bill Walsh

In the President's Report in the New South Wales Bar Association's *Sixty Fourth Annual Report*, Ruth McColl S.C. concluded with a wise and timely reminder:

> The role of our judicial system is to dispense justice and not to dispatch business. The speed at which a case progresses is not, thankfully, the true measure of whether justice has been done…curing Court delay must be done without destroying the quality of the end product.
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> These words are worth remembering, if for no other reason than to ensure that statistics demonstrating a high rate of case disposition do not become a greater badge of honour than the delivery of justice.

Nothing short of a crisis in the administration of justice in regional New South Wales is developing as a result of decisions being made in relation to where and how justice is being dispensed. I speak in particular of the removal of District Court sittings in country areas and the instructions issued in relation to case disposition in that Court.

Removal of court sittings

Since 1990 over twenty country towns have 'lost' their District Court sittings altogether and many more have lost either their criminal or civil sittings. Many of these towns have populations of between 8,000 and 20,000 people. Not small towns by any stretch of the imagination. The idea is to 'regionalise' sittings into a few large provincial towns with populations in excess of 30,000.

The decision to 'regionalise' country sittings of the District Court is to deny country people of New South Wales ready access to quality justice. To 'regionalise' the District Court sittings in country New South Wales to a few very large provincial towns fails to recognise that people in country New South Wales face real expenses and inconvenience in having to travel from their nearest court house to one in some distant provincial town. Public transport is virtually non-existent. Fuel costs are exorbitantly high. Yet people are now being forced to travel vast distances to provincial centres with the associated time and costs involved, as well as to seek and pay for accommodation. When I say 'people', I not only refer to accused persons or plaintiffs and defendants, but to all types of witnesses – prosecution/plaintiff, defence, expert, police, victims of crime - and, of course, the legal profession.

Decisions seem to be made without any appreciation of the needs of people or practical realities and certainly without local community consultation. The marginalised, the poor and our Indigenous people cannot cope with such a situation. Nor can the average citizen. Let me give a classic example. The District Court sittings at Condobolin were removed – within twelve months of Condobolin Court House being air-conditioned. The people at Lake Cargelligo, including the large Indigenous population there, were users of the Condobolin District Court, as were the people of Condobolin, including its own significant Indigenous population. Lake Cargelligo is one hour's drive from Condobolin. The criminal sittings went to Parkes – one hour from Condobolin and two hours drive from Lake Cargelligo. Of course, Parkes Court House was not air-conditioned when the decision was made. So for a few years, the Parkes Court House remained without air-conditioning until a judge in the February sittings of 1999 (in the midst of the summer heat) found that the 45^{0}C temperature inside the courtroom was unbearable and hardly conducive to quality justice. So now a court user from Lake Cargelligo spends four hours per day travelling to and from the Parkes District Court or the Forbes District Court (to where the civil sittings from Condobolin District Court were transferred).

Then there is the equally remarkable decision made in relation to the Cowra Court House, which had been refurbished and air-conditioned in recent years at the cost of about $700,000. The sittings of the Cowra District Court have been removed. Criminal matters have been transferred to Bathurst District Court while its civil matters have gone to the Orange District Court. The Orange Court House is being remodelled and is temporarily unsuitable for sittings of the District Court. Due to this unavailability, the Cowra Court House has been 'resurrected' for the criminal sittings of the Orange District Court. So the people of Cowra and district are forced to travel past their own Cowra Court House for 111kms to get to Bathurst, whilst the people of Orange use the Cowra Court House! So accused persons from Orange are being tried by the citizens of Cowra and the citizens of Cowra are being tried by the citizens of Bathurst. Makes sense? When it was announced that the District Court sittings were resuming at Cowra, the local State Member was ecstatic until he realised that it was not for the benefit of the people of Cowra and district. Cowra, by the way, has a significant Indigenous population. If it is good enough for the Cowra Court House to be used

for the people of Orange, then surely it is good enough to be used by and for its own citizens.

However, the people of Cowra have had some good news. A Supreme Court action involving citizens, witnesses and members of the legal profession from the Cowra district recently was part-heard from Sydney for a week's hearing at the Cowra Court House because the judge considered it appropriate. At last, some sense! Of course, it should not be forgotten that in very recent times the Court of Criminal Appeal has made history by sitting outside 'the big smoke'.

The transfer of criminal sittings from other towns to provincial centres raises other problems. According to tradition, one of the main strengths of our jury system is that a person is tried by his or her own peers – not by people of some distant provincial centre. Yet the populations of the provincial centres are not large enough to be able to carry the role of providing sufficient jurors for the 'out of town' trials without placing an enormous burden of frequent jury service upon the citizens of the provincial centres, which will soon develop a reputation of being 'jury towns', perhaps much in the same way we once had 'railway towns' in country New South Wales.

Cowra Court House

'provincial centres will soon develop a reputation of being jury towns, much in the same way we once had railway towns.'

It should be borne in mind that the loss of court sittings from all these country towns over the past ten or so years has occurred under both Liberal-National Party and Labor governments. One would have thought that the National Party and the new 'Country' Labor would have been so strenuous in resisting such moves that the bureaucracy would have been halted in its march to deny the citizens of country New South Wales their access to quality justice.

The real danger is that country people will abandon their legal rights and their pursuit of justice through the court system because justice, for them, is surely too expensive and too inconvenient. Equality before the law is passing by the people of country New South Wales.

Case management directions

Recent Practice Directions issued out of the District Court discriminate against country people and have meant that listing procedures have become a nightmare for litigants, witnesses and members of the legal profession. The item in *Bar Brief* (September 2000) of the Sydney barrister being required at country sittings at very short notice, highlights the problems which members of the Bar and solicitors face. The public and solicitors are surely entitled to counsel of their choice and to be able, except in unusual circumstances, to have their counsel appear in the very case for which he or she has prepared, in most instances, for some considerable time. We know that there is no substitute for proper preparation. Counsel develops a rapport with and understanding of the client and his or her instructing solicitor in the course of preparation of a case. Counsel, over a period of time, is able to master the facts and have a real feel for the case. This rapport and understanding helps the client to come to an appreciation of and a confidence in our system of justice.

In particular, I refer to *District Court Practice Note No.55*, 'Listing at Country Circuit Criminal Sittings', issued on 10 July 2000. As the Practice Note states in paragraph 5: 'In the ordinary course of events no trial will be marked not reached until the last week of the sittings'. So who is going to pay for counsel and his or her instructing solicitor as well as the accused, witnesses, victims of crime and members of the DPP staff to sit around for two or three weeks until a judge is permitted to decide that a trial can finally be given a 'not reached' marking and so removed from the list of the sittings? Certainly the Legal Aid Commission will not pay for such 'stand by' time and if the State, through the Legal Aid Commission, will not pay then neither should privately funded litigants be expected to pay. The system proposed by *District Court Practice Note No. 55* is designed to make it all look good 'on paper', namely, so that trials are not given a 'not reached' marking until the death knell no matter how inconvenient and how expensive it might be to achieve this administrative nicety.

Paragraph 6 of the Practice Note offends commonsense and, one might argue, the provisions of s22 of the *Crimes (Sentencing Procedure) Act 1999*. Paragraph 6 says that: 'The purpose of this listing is to enable an accused to get the benefit of an early plea…'! The accused is the last person who benefits from the administrative arrangements of the District Court in its criminal jurisdiction. The 'benefit' is to the bureaucracy to enable it to administer its outstanding trials. It goes on to say: 'Practitioners should be in a position to indicate the anticipated plea to the Court'. How can that occur when legal aid is not granted to counsel until after it has been decided that an accused desires a trial? An accused is expected to indicate any early plea without the benefit of proper legal advice. But then the Practice Note goes on to place pressure on accused persons to enter a plea of guilty as early as possible when it states: 'An indication the accused will plead not guilty at this mention when, in fact, the accused pleads guilty to the

same charge at the subsequent sittings can be expected to be a factor taken into account in deciding what discount will be given on the sentence for the plea of guilty'. This is nothing short of outrageous. It is suggested, that is not what s22 of the Crimes (Sentencing Procedure) Act says, nor was it the intention of Parliament in respect of that section.

Accused persons, who live in country New South Wales have had their District Courts closed down, are now forced to travel long distances where public transport is not practically available and have been waiting two to three years for their trials to be disposed of. For such, they have been rewarded with the 'benefits' of Practice Note No.55.

It is now frequently stated by the District Court bureaucracy that: 'The unavailability of counsel is not sufficient reason for not setting a matter down for trial'. As often happens, an accused person may have 'had' a particular counsel for some years (particularly, if the accused is from the country). Accused persons are surely entitled to 'their' counsel, especially when, through no fault of the accused, or 'his or her' counsel, the trial has not been heard or disposed of on previous occasions, or not even listed for trial for a long period of time. Wheelahan QC (*Bar News*, September 1999), in referring to this problem, stated: 'Listing a matter during a period in which counsel is available is not primarily for counsel's convenience, but to enable a litigant to be represented by counsel of their choice.' We must all understand and appreciate that the administration of justice relies heavily on the availability, co-operation and assistance of the legal profession.

The effects of *District Court Practice No.55* were highlighted very recently. Defence counsel was conducting a criminal trial in town A during a particular week (Week 1). The same counsel was due to appear in the following week (Week 2) as counsel in a criminal trial in town B. Such latter trial was listed as the No.1 trial on the Monday of the following week (Week 2). But the judge presiding over the sittings in town B wanted to 'expedite his list' so he ordered, at short notice, that the No.1 trial in week 2 be brought forward to commence on the Friday of week 1. The counsel was still involved in the trial in town A on the Friday of week 1. What was that counsel's ethical and professional position? Such a situation should never have been forced upon counsel. What chaos for the other people intimately involved in the trial - the accused, witnesses, victim, Crown Prosecutor, prosecution and defence solicitors as well as the jury panel, which had no doubt been on 'standby' for a number of days as would be the case in a country town if a trial was to commence on a Friday. In another country town, a judge, to comply with the Practice Note, held two jury panels on 'stand-by' for one and a half weeks and one week respectively until the last day of the sittings, while a two week trial was in progress.

Also, but not least importantly, the State must consider the health and well being of our judicial officers of the District Court, who are at real risk as increasing stress is placed upon them. The workload of District Court judges has increased significantly in recent years. Whilst the judges are on circuit in country towns, they are renowned for the long hours of sitting time. To be able to dispense quality justice, judges must not be faced with the pressure of 'getting through' big lists and not be expected to deal with court lists without sufficient time for proper consideration and, as is often the case, appropriate research. Remarkably, in this great technological age, District Court judges still do not have the benefit of a daily transcript of the proceedings.

Unfortunately, the Attorney General's media release of 15 November 2000, boasting of the 'highest on record' allocation of country sittings of the District Court for 2001, did nothing to address the problems raised in this article. In fact, the media release confirmed that yet another two significant country towns, namely Deniliquin and Narrabri, appear to have lost their criminal sittings for the year 2001. The additional allocation of country sittings for 2001 has come about out of sheer necessity, as a result of the totally unacceptable delays, which have plagued the District Court in the country for many years, with criminal trials taking two or three years to be disposed of. Traditionally, the District Court of New South Wales has enjoyed a fine reputation of providing quality justice and, in respect of regional New South Wales, of serving the people by 'going on circuit'. Let us hope, using the words of McColl S.C., that the pursuit of 'statistics demonstrating a high rate of case disposition do not become a greater badge of honour than the delivery of justice'.

A final word

No doubt there will be some persons who will have much criticism about what has been written in this article. But let me assure them that the criticisms expressed in this article are being discussed with considerable concern and vehemence in the corridors of country courthouses of New South Wales. This article has been written to stimulate discussion with a view to seeking solutions so that access to quality justice is available to all on an equal basis. I have written this article as 'the servant of all yet of none' in the genuine hope of contributing in some way to improving access to and delivery of, quality justice in country New South Wales. The Compensation Court in this State serves the country people very well by 'going out' on circuit to very many country towns. The listing procedures in the Compensation Court provide certainty and avoid chaos. The Local Court also provides certainty through its existing listing procedures. District Court procedures must be improved.