

Verbatim

Babak Haghighat v Local Spiritual Assembly of the Bahais of Parramatta Limited [2005] HCATrans 025

Mr Rofe: If your Honours please, I appear with my learned friend, Mr DM Wilson, for the respondent (instructed by Henry Davis York).

McHugh J: Yes, Mr Rofe. It is good to see you again. We have not seen you up here for a long while.

Mr Rofe: I either win or lose cases decisively.

Mr Hennessy: I hope that happens here.

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Air Link Pty Limited v Paterson; Agtrack (NT) Pty Limited v Hatfield [2005] HCATrans 119

Gummow J: Your state is usually in favour of extinguishing people's common law rights, is not it? You seem to be standing in two canoes, as we said last week.

Mr Sexton: It is a different river today. Now, your Honours, can I just go back for one moment to the District Court Rule.

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A number of Australian barristers have been briefed in homicide matters in the Solomon Islands. A source in the Solomon Islands sent *Bar News* this transcript, warning us of appropriate court dress codes.

Barry: Thank you my Lord. The next witness I call is Philip Magnes, please....

Court: Mr Barry you are not properly robed.

Barry: I'm sorry my Lord?

Court: You are not properly robed Mr Barry

Barry: Not properly robed?

Court: Are you aware of Regulation 16 of the Legal Practitioners Act of 1987. Legal Practitioner's Professional Conduct Rules 1995. Regulation 16

Barry: No, I'm not

Court: '4 G. A legal practitioner shall: G. appear in court wearing a long sleeved, cleaned ironed opaque white shirt or blouse with collar closed at the throat and dark trousers or a skirt and business shoes etc and if appearing as counsel properly gowned with bib that is tabs and wigs. If appearing as instructing legal practitioner, a tie in the case of a male and if appearing as queen's counsel with a legal practitioner as a junior.'

Mr Barry you are...you are appearing in court as senior counsel and also as mentor to young Solomon Islands lawyers.

Barry: Yes.

Court: The judges have been trying very hard to instil in young Solomon Islanders proper decorum in the court room and so as robing is concerned. You are not helping us in that regard, Mr Barry.

Barry: Well my Lord, this is the third week of the trial and for you to raise this issue at this point in time, I must say I'm quite surprised by it. I admit I meant no offence to the court if I'm not wearing the right coloured pants. I've worn these trousers many times in this court throughout this trial without any comment from your Lordship but I will endeavour to wear the proper colour from now on. I must say I'm not aware of the regulation with the greatest of respect

Court: Well, Mr Barry you, you are senior lawyer. You are senior lawyer.

Barry: Yes.

Court: You know.

Barry: I'm not aware of it.

Court: The Australian practices is very, very strict. Very strict in Australia and elsewhere.

Barry: In Australia is it?

Court: Very strict

Barry: I'm not aware of that.

Court: Well if you are appearing in the High Court or the Supreme Court you should be aware.

Barry: I'm aware of dress standards my Lord, generally, in relation to courts and never, at any stage in my legal career, have I sought to flout the rules. It would be disrespectful and I'm not intending to do so now.

Court: Well what I will do it, I will allow you...I will hear you on condition that when the court resumes this afternoon you will be properly robed, Mr Barry.

Barry: Well I am properly robed my Lord. I have my robes on with the greatest of respect and if you're telling me that I have the wrong coloured pants on, I will go home now and change them.

Court: Do you wish to do that?

Barry: I do, if that's such a great issue.

Court: I'm mindful of the fact that there's been two days' delay in this trial and some of our witnesses are overseas and witnesses who have come and are ready to go back. I am prepared to hear you until the court rises this morning.

Barry: No, I'm not prepared to go on in these circumstances I must say. If your Lordship's telling me that I'm improperly attired to appear in this court., I'll go home and change.

Court: Alright.

Barry: It's simple as that. I'll do it now. I might indicate to you I don't possess a long sleeve shirt so I won't be wearing one. I can't wear them, they're too hot and I don't wear them in this country.

Court: Dark trousers, Mr Barry.

Barry: Yes, I've got a pair of dark trousers and I've worn them just about everyday in this court.

Court: Well, everyday, not today

Barry: No.

Court: Not today. Well do you wish me to adjourn now?

Barry: Yes, please. I might indicate my Lord, none of the time wasted in this trial has being due to the prosecution in this stage.

Court: I've said that I'm prepared to hear you on condition that...

Barry: No, no I'm not prepared to go on, I might say my Lord. You've indicated to me that I'm improperly attired.

Court: Yes.

Barry: ...and that's a breach of the rules. I don't intend to breach any rule.

Court: Very well.

Barry: It hasn't been done deliberately, it's been done inadvertently and if your Lordship thinks it's such a moment, then I will go and rectify it immediately. In my submission, the matter should have been raised privately with me by your associate rather than raise it in open court at this point in time. It is with the greatest of respect what I consider a trivial matter.

Court: Is it?

Barry: Yes.

Court: I'm surprised Mr Barry.

Barry: I'm not.

Court: I'm surprised. You are a senior lawyer in this jurisdiction and you are here as a mentor, right. You are being watched.

Barry: Obviously.

Court: You should be setting a good example for young lawyers in this country. Alright.

Barry: I am my Lord, I am.

Court: You are not at the moment. They're going to wear scrappy uniform in this court. That is the point.

Barry: Well if you're suggesting that I'm wearing scrappy clothing, I take offence to it.

Court: I'm not saying that you are.

Barry: My Lord, I don't understand the point then. If they're the wrong colour, they're the wrong colour and I apologise, but I'm not gonna stand here and be insulted by your Lordship about my clothing.

Court: It is not an insult. It is normal practice in other jurisdictions.

Barry: Alright. Well, I apologise for not being aware of an obscure regulation in relation to it and I'll rectify it

Court: Very well. Court will adjourn until 2.00pm this afternoon. Court will rise.

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