

DUST DISEASES TRIBUNAL OF NEW SOUTH WALES - SYDNEY

BEFORE HIS HONOUR JUDGE SCOTTING

HIS HONOUR JUDGE RUSSELL

HER HONOUR JUDGE STRATHDEE

SPECIAL SITTING OF THE DUST DISEASES TRIBUNAL TO MARK THE PASSING OF
HIS HONOUR JUDGE JOHN LAWRENCE O'MEALLY AM RFD
THE FORMER PRESIDENT OF THE DUST DISEASES TRIBUNAL OF
NEW SOUTH WALES

TRANSCRIPT

Tuesday, 8 October 2024

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1 JUDGE SCOTTING

2 Thank you for joining us this morning, at a special sitting to mark the passing of his Honour Judge
3 John Lawrence O'Meally AM RFD. I will ask Judge Russell to make some remarks on behalf of
4 the Tribunal.

5
6 JUDGE RUSSELL

7 Thank you, Judge Scotting.

8
9 John Lawrence O'Meally passed way last Friday, aged 84, after a long illness. He was admitted
10 to the bar in 1964, he became a judge of the Compensation Court in 1984, and he became member
11 of the Dust Diseases Tribunal in 1989. He was the President of the Tribunal between 1998 and
12 2011, when he retired. In recent years he has sat on NCAT. Much will be said in coming days
13 about his service on the Compensation Court, and indeed, on several overseas courts. Today we
14 focus upon his contribution to the work of the Dust Diseases Tribunal.

15
16 His Honour heard the first ever case in the Tribunal. In the first years of the Tribunal, every case
17 was a hard case, which litigated existence of duty of care, breach of duty, causation, and
18 contribution. Before the amendments to the Act, which preserved general damages after death,
19 cases had to be finalised before a plaintiff passed away. It was not unusual for a judge to sit all
20 day on one case and then sit into the night on a second case. Judge O'Meally and his
21 contemporaries decided these difficult issues and established a comprehensive body of
22 jurisprudence which is followed in every state in Australia and often overseas. As President his
23 Honour ensured that the Tribunal had courtrooms, chambers, staff, and resources to perform its
24 functions.

25
26 Judge O'Meally established the ethos of the Dust Diseases Tribunal. All parties were to be fully
27 and fairly heard, but they had to be quick about it. In achieving this result, it must be acknowledged
28 that the profession embraced such an approach. In spite of the ineffable sadness of each and every
29 dust case, Judge O'Meally made sure that during any break in proceedings, counsel were welcomed
30 into his chambers for a cup of tea. We sat around his long table, watched over by a large, and it
31 must be said, creepy statue of St Patrick. After a morning tea at the conclusion of the evidence,
32 Judge O'Meally would return to the Bench, walking past a poster of Ned Kelly, which he made
33 sure was momentarily visible to all those at the Bar table. He would then deliver an extempore
34 oral judgment which was word perfect, grammatically perfect, fair, and completely thorough. His
35 judgments had the added advantage that they were usually irrefutably correct.

36
37 Everyone in the profession has a number of John O'Meally stories. Allow me to conclude by
38 telling one. Judge O'Meally heard a contribution case known as Steep's case. He was overturned
39 by the Court of Appeal. Later he was asked why his judgment was reported in the Compensation
40 Court Reports but the Court of Appeal judgment was not. His answer was, "It's simple, the Court
41 of Appeal was wrong". I have told this story many times over the years to illustrate his Honour's
42 impish and Irish sense of humour, but like all humorous stories, it is also funny because it is true.
43 Steep's case was the last hurrah of the discredited single fibre theory of causation. The Court of
44 Appeal judgment has sunk without a trace. Judge O'Meally's formulation that all exposure to
45 asbestos is causative, is so well-known and accepted that we can all recite it in our sleep.

46
47 On behalf of the judges and staff of the Dust Diseases Tribunal, I acknowledge the towering
48 contribution of John Lawrence O'Meally to this Court and I convey our sincere sympathies to
49 Mary and his family. Thank you, Judge Scotting.

1 JUDGE SCOTTING

2 Mr Gardiman.

3
4 MR GARDIMAN

5 I thank the judges for affording me this opportunity to say something this morning on behalf of
6 the profession.

7
8 Judge John O'Meally served on the Workers Compensation Commission of New South Wales, and
9 on the Commission's abolition, the Compensation Court of New South Wales. It was from that
10 Court that he was appointed to the Dust Diseases Tribunal of New South Wales on
11 1 November 1989, the Tribunal's first judge. From the Tribunal's inception, his Honour set about
12 managing the business of the Tribunal through intensive case management. No mean feat in its
13 early days, given the limited resources at his disposal.

14
15 He proved to be a very innovative judge, cutting through rigidity to achieve outcomes. Rule 4 of
16 the Dust Diseases Tribunal Rules is an early example, a forerunner to section 25(3) of the Act.
17 The rule was a novel approach to dealing with historical evidence of the same facts before a
18 specialist Tribunal. Whilst some argued it was a radical departure from the traditional rules of
19 evidence it proved to be highly efficient and cost effective, streamlining procedures for the taking
20 of historical evidence.

21
22 More was to follow. Standard discovery lists and reliance on admissions previously made, were
23 further examples of pragmatic innovation.

24
25 In its early years, the Tribunal's work was done in an environment where general damages did not
26 survive death before judgment and the difficult provisions of the Limitation Act had to be
27 navigated in each case. The Tribunal was required to work under intense pressure to complete
28 cases. At that time, the Tribunal was his Honour.

29
30 In its early years, the Tribunal resolved the discovery and the interrogatory wars between parties.
31 The vast amount of documentary material that now sits on databases was accumulated in the first
32 decade of the Tribunal's work; his Honour adjudicating the great number of those disputes that
33 were litigated between parties on these issues. It was not always as easy as it is today.

34
35 His Honour once famously heard an entire case whilst an in-patient himself at the St Vincent's
36 Hospital, including the judgment. After reading his own hospital notes on a daily basis whilst a
37 patient, his Honour never again trusted hospital records at face value.

38
39 The 1993 amendments to the Limitation Act brought a flood of previously statute barred cases to
40 the Tribunal. Hundreds of claims were filed in a short period of time, all requiring case
41 management, many of the plaintiffs affected by end stage asbestosis and silicosis. Call over lists
42 with in excess of 50 matters became common practice. The Monday list was born and many young
43 practitioners learnt to become very good advocates from appearing in that list. His Honour was
44 never impressed by hollow explanations for orders that had not been complied with. It could be a
45 very harsh experience for the uninitiated but it was essential in the control of the litigation, with
46 the ever present need to finish cases.

47
48 It is important to remember that the jurisprudence of the Tribunal was highly respected by
49 intermediate appellate courts. In the first decade, his Honour led the way. His judgment in Olson
50 v CSR was delivered in extraordinary circumstances. A fully contested trial on all issues that ran

1 for three week, the Tribunal sitting in the evenings and even on a Saturday to complete the evidence
2 and the submissions. His Honour convened the Court at 9am on 24 December 1994, Christmas
3 Eve, and delivered an extempore judgment over five hours. As his Honour said, word perfect,
4 grammatically perfect. The judgment was upheld on all liability issues by a majority of the Court
5 of Appeal.

6
7 His judgment in Wren v CSR established important legal principles in relation to liability of a
8 parent company for the acts of a subsidiary. The jurisprudence ventured into legal territory not
9 previously traversed by any Australian Court. His Honour's judgment was again upheld by the
10 Court of Appeal, this time, unanimously. The principles established in that case have featured
11 prominently in academic writing over many years.

12
13 The Tribunal, under his leadership, was regarded with considerable admiration in other common
14 law jurisdictions; that cases could commence and complete within a matter of weeks was
15 considered an extraordinary achievement. For a long time we had the best system for managing
16 and deciding dust diseases claims in the common law world.

17
18 I believe his Honour's greatest insight was that the Tribunal could not do its work without the
19 cooperation and collegiality of the practitioners who appeared before it. He fostered a sense of
20 fraternity within the legal practitioners who appeared before him, on many occasions
21 complimenting parties in relation to their approach to cases before him. That ethos continues to
22 this day.

23
24 No doubt, as a consequence of his deep faith, his Honour understood that for the individual litigants
25 who were appearing before him, the need to provide financial security for their loved ones was
26 paramount. Completion of the litigation allowed men and women, dying from a brutal disease, to
27 die with dignity. What more could one ask from a judicial system practising in this area than to
28 allow death with dignity?

29
30 Judge John O'Meally was a good man and a very fine judge. We here are all privileged to have
31 known him and to have worked with him. I say to him, con spirito pace.

32
33 May it please the Court.

34
35 JUDGE SCOTTING

36 Thank you, Mr Gardiman.

37
38 The Tribunal will now adjourn.