

John Lawrence O’Meally AM RFD

1939 – 2024

Judge and President of the Dust Diseases Tribunal

John O’Meally, who passed away on 4 October 2024, was appointed a judge at the age of 39 years. When he retired in 2011 he had served as a judge for 32 years, and was then the longest serving judge in the state. John was educated at Marcellin College in Randwick and then at the University of Sydney where he was awarded an LLB. He was admitted to the Bar in 1964 and was appointed to the Workers Compensation Commission (1979-1984), the Compensation Court (1984-2003) and then the District Court (2003-2011). John also served as an acting judge of the National Court of Justice of Papua New Guinea (1977), a judge of the Eastern Caribbean Supreme Court (2001) and a judge of the High Court of Antigua and Barbuda (2001).

In 1989 the NSW parliament recognised that the number of claims made by sufferers of asbestos-related disease was increasing, yet such claims were not being finalised before death. The terminal disease of mesothelioma only manifested about 40 years after initial exposure to asbestos dust, meaning that claimants were often elderly and close to death when a claim was filed. Parliament passed the Dust Diseases Tribunal Act 1989 (NSW) to establish a specialist court, the first in the common law world, to hear dust claims expeditiously. The government could not have chosen a better lawyer to head the Dust Diseases Tribunal than John O’Meally. He heard the first case in November 1989.

At a special sitting of the Tribunal held on 8 October 2024 Mr Armando Gardiman, the principal of Turner Freeman, paid tribute to John O’Meally as “a very innovative judge, cutting through rigidity to achieve outcomes”. Speeches at that special sitting recalled that in the early years of the Tribunal, every case was a hard case which litigated the existence of a duty of care, breach of duty, causation, contribution and damages. Judge O’Meally and his colleagues heard these difficult cases under intense pressure, given that in those days general damages died with the plaintiff. It was not unusual for the judges to sit on one case during the day, and then sit on a different case into the night. The evidence of seriously ill claimants was often taken at a “bedside” hearing in the hospital, or in the plaintiff’s home. It still is.

At the special sitting, Mr Gardiman recalled two examples, among many, which demonstrated the dedication of Judge O’Meally. In *Olson v CSR* a fully contested trial on all issues ran for three weeks including some nights and a Saturday. Judge O’Meally commenced delivery of his *ex tempore* judgment at 9am on 24 December 1994, concluding five hours later. A majority of the Court of Appeal later upheld all of the liability findings. In another case, the terminally ill plaintiff must have been non-

plussed when a man wearing a hospital gown turned up at his bedside and was introduced as the judge. It was Judge O’Meally, who was an in-patient at the hospital at the time. His Honour heard the entire case, and delivered judgment, well before he was himself discharged from care.

Judge O’Meally ensured that cases were heard expeditiously (sometimes commencing on the same day that the Statement of Claim was filed) by intensive case management. He successfully encouraged the profession to recognise the urgency in dust cases, and it must be acknowledged that the success of the Tribunal to this day is dependent upon practitioners and insurers doing their utmost to complete every case before the death of the plaintiff. Part of that case management was the Monday list, of which Mr Gardiman said:

“His Honour was never impressed by hollow explanations for orders that had not been complied with. It could be a very harsh experience for the uninitiated but it was essential in the control of the litigation, with the ever present need to finish cases”.

Judge Phillips, the President of the Personal Injury Commission, recalled another side to the Monday list, saying that an appearance in the Monday list “tested not only one’s knowledge of the law, but also the history of Australia, Ireland and the Catholic Church (not always in that order)”.

Both during and after his judicial career, John held a strong commitment to social justice. A long time member of the International Commission of Jurists, John was a state president of the NSW branch of the ICJ, and in 2015 became a Commissioner of the ICJ, Geneva. Some of his pro bono contributions were: leading a delegation to Timor-Leste to assist in dealing with asbestos; Chair of the National Appeal and Review Panel for the Australian Catholic Church; travelling to Kiribati (with Judge Finnane) to assess the risks of climate change; assisting the government of St Lucia on restructuring the District Court; and consulting in relation to the restoration of the legal system in the Solomon Islands. John was an Honorary Colonel in the Australian Army Legal Corps, resulting in the award of a Reserve Forces Decoration. For his service to the judiciary and the community, John was appointed in 2002 as a Member of the Order of Australia.

At the special sitting of the Tribunal, the court recognised that Judge O’Meally, and those who came after him, established a comprehensive body of jurisprudence in dust cases, which is respected in every state and territory, and often overseas. Judge O’Meally established the ethos of the Tribunal, which exists to this day. Judge Phillips said of him:

“Those of you who knew him saw a man of great learning, intellect and compassion. To hear the cases that he did in the DDT, replete with human suffering and the imminent prospect of death, required the special man that John was.”

What Judge O'Meally achieved was best summarised by Mr Gardiman at the special sitting, when he said:

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

John O'Meally was a fine man and an excellent judge. He will be remembered fondly by all who knew him and appeared before him. The Bar Association extends its sincere sympathies to his wife Mary, his sons and his extended family. St Patrick's Day will never be the same again.

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