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## FAREWELL

**ADDRESS AT THE FAREWELL FOR  
HIS HONOUR JUSTICE ROBERT OSBORN,  
JUDGE OF THE SUPREME COURT OF VICTORIA  
IN THE BANCO COURT OF THE SUPREME COURT,  
ON THURSDAY 21 JUNE 2018 AT 5:00PM  
BY JIM DELANY QC,  
ON BEHALF OF THE VICTORIAN BAR**

THIS SPEECH FOLLOWS AN  
INTRODUCTION AND ACKNOWLEDGEMENT OF COUNTRY BY DR  
MATT COLLINS QC,  
PRESIDENT OF THE VICTORIAN BAR

It is a great privilege to address the Court on the occasion of your Honour's farewell on behalf of the members of the Victorian Bar.

Your Honour is a fine lawyer and a very wise Judge. Your Honour is a thoughtful, considered and outstanding judge who has treated all members of counsel and, indeed, litigants in person, with respect and, when the occasion has required it, extreme tolerance.

When your Honour was appointed to the trial division in 2002, you came from a stellar practice in planning, acting on all sides of the fence, and, with a substantial practice in what your Honour would describe as, "public law work". That work included a large pro bono practice for organisations such as Odyssey House and Windana.

Following your appointment, your Honour rapidly established a well earned reputation as a great judicial all rounder and a particularly good lawyer.



Your Honour's ruling in *Tofilau*<sup>1</sup> came very soon after your appointment to the Court. In *R v Marks*<sup>2</sup>, one of the next cases in the same series, Coldrey J said<sup>3</sup>:

"In *Tofilau*, the trial Judge, Osborn J meticulously set out the relevant authorities. It would be quite superfluous for me to slavishly attempt to emulate his scholarship"<sup>4</sup>.

In the planning and environment area, one of your Honour's leading cases, whilst in the Trial Division, was the *Brown Mountain* case<sup>5</sup> involving the endangered Long-footed Potoroo. Your Honour's love of the Australian natural environment was no doubt called for in the *Brown Mountain* case where the potoroo in question was described in the judgment as a "medium sized terrestrial rat". There is some conjecture as to whether the painting that your Honour has in your Honour's chambers is of that same terrestrial rat or is instead of a Leadbeater's Possum in whose fate your Honour also had a hand. In *My Environment Inc v VicForests*<sup>6</sup>, a 2013 decision of your Honour, unlike the potoroo in the *Brown Mountain* case, the Leadbeater's possum lost. Your Honour was upheld in the Court of Appeal<sup>7</sup>.

Your Honour was a terrific trial Judge who simply got things right and did so in a very timely way. Your Honour has always had that highly desirable quality for a Judge, the ability to make up your mind and to actually make a call. Your decisions have always been supported by very thorough factual and legal reasoning. From personal experience, virtually impossible to roll on appeal.

As a Judge in the Trial Division, your Honour was always happy to go on circuit. Circuit has been described by your Associates as very much the family holiday. In the mornings before Court, a run past the vineyards of Milawa or along beaches at Warrnambool or Queenscliff followed by a swim often concluding with your Honour cooking breakfast for your Associates.

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<sup>1</sup> *R v Tofilau* [2003] VSC 188

<sup>2</sup> [2004] VSC 476

<sup>3</sup> At [59]

<sup>4</sup> See also the observations of Callinan, Heydon and Crennan JJ *to like effect in Tofilau v The Queen* (2007) 231 CLR 396 at 530

<sup>5</sup> *Environment East Gippsland Inc v Vic Forests* (2010) 30 VR 1

<sup>6</sup> [2012] VSC 91

<sup>7</sup> (2013) 45 VR 456



Those who went on circuit would find themselves introduced to “Osbo's Guide to the Country Cafes of Victoria”. Cafes were ranked both by quality of food and dodgy-ness of music. Much time was spent re-tracing steps in search of your Honour's oft forgotten fedora or Panama hat. I am told that, being a member of the Osbo J chambers was like being part of a wonderfully eccentric family. Your Honour is very down to earth and has a genuine concern for people's welfare.

An associateship in your Honour's chambers has come to be referred to as time served at “the Osbo School of Life”. The curriculum was broad spanning much more than law to take in history, art, music, literature and poetry. One quickly learnt there is a poem, song and piece of art for almost every occasion; sometimes humorous, sometimes heartfelt. An entire wall of your Honour's chambers was devoted to poetry. Sometimes, literary references found their way into your judgments<sup>8</sup>.

In 2009, your Honour took charge of the Common Law Division of the Court presiding over a significant period of growth in the work and stature of the Court. Your Honour's hard work and even temperament contributed greatly to the camaraderie and the cohesiveness amongst members of the Division. Your Honour tried to inspire Judges to be the go anywhere and do anything division – the “can do” division – which they became.

On the Court of Appeal, your Honour sat on cases of great significance, including the *Bendigo Mosque* case<sup>9</sup> and the *Melbourne Fire Brigade* case.<sup>10</sup> Both judgments exhibit thorough scholarship.

The *Bendigo Mosque* case concerned the intersection between the Charter of Human Rights and Responsibilities Act (1986) and the Planning and Environment Act 1987. The Court held the provisions of the Charter concerning the right of every person to freedom of thought, conscience, religion and belief, and that no person should be denied the right to declare and practice their religion, inform the objectives of planning under the Planning and Environment Act. Further, that in addition to the Charter being relevant to the proper construction of the

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<sup>8</sup> Example: *Stonnington City Council v Southern Property Corporation Pty Ltd* [2006] VSC 435, footnote 1, concerning the Argo Hotel in South Yarra contains reference to Jason's mythical ship the Argo.

<sup>9</sup> *Hoskin v Greater Bendigo City Council* (2015) 48 VR 715

<sup>10</sup> *Yarra City Council v Metropolitan Fire and Emergency Services Board* (2017) VSCA 194



objectives of planning and to the proper understanding of the notion of significant social effects, section 38 of the Charter imposes an obligation to have regard to the human rights of the proposed future users of the mosque when deciding whether or not to grant a permit.

The 2017 reasons for judgment in the *Melbourne Fire Brigade* case provide a detailed pathway through the liability labyrinth found in the Environment Protection Act 1970 concerning environmental clean up costs. The Court's decision was the subject of an unsuccessful application for special leave in November 2017.

On the Court of Appeal, your Honour has been described by one of your colleagues as an “all round good bloke”, a terrific team player and a great supporter of your fellow Judges. You have been one of the leaders of the Court, a mentor to a lot of Judges and an adviser to many others. You have the happy knack of knowing when people around you need encouragement and/or support and providing it to them.

Neave JA recalls that your Honour would, on occasion, leave a poem on a judicial colleagues' desk – not just any poem – but one apt for the situation at hand. She describes your Honour as a wonderful team player on the Court of Appeal, very supportive but also very intellectually rigorous, a lovely colleague.

As a member of the Court of Appeal your Honour continued to preside over criminal trials. Your last jury trial was at Shepparton in 2015, *The Crown v Bradley*<sup>11</sup>. The murder had taken place 32 years earlier. It required your Honour to apply the law as it was in 1983. Bradley appealed against sentence. The appeal was dismissed.

Your Honour has also been known within the Court as “Bob the Builder”. As well as playing a central role in the major renovations in 2007 - 2008, your Honour is largely responsible for what is now the paved and landscaped courtyard, available to all Court users. It is testament to your Honour's standing amongst judicial colleagues that you were able to persuade them to give up their car spaces on the cobblestones to provide open space for practitioners and Court users.

Your Honour loves music. Your Honour would often come into chambers singing loudly. On some occasions, the subject matter of the songs was targeted to the case at hand.

Retiring as a full time Judge will enable your Honour to spend more time on poetry and music. You will be able to spend more time with your wife, Jane, with your daughters and with your grandchildren to whom you are devoted.

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<sup>11</sup> [2015] VSC 768



Your grandchildren wanted to be heard before your Honour and, like all barristers, I needed a client.

I am instructed that:

- (a) at the football, your Honour always shouts about how the Pies are not holding formation and how they have to sack Bucks. An example of this is started by a loud exclamation and followed with “another one, they just need formation, it’s all Buck’s fault”;
- (b) I am instructed that your Honour has quite a taste in music. I am told that, when your Honour is in a good mood, you are always signing and occasionally dancing.

My instructions do not disclose whether or not your Honour is an Elvis fan.

A story concerning Elvis readily demonstrates your Honour’s great wisdom and compassion as a Judge.

Elvis was an Australian champion Chihuahua. Dispute arose between the breeders of the dog and two ladies who had had custody of the dog for a number of years. The breeders wanted to take the dog back to retain control of his “genetic potential”.

VCAT decided who should get the dog on the basis of “the best interests of the animal”. The breeders came to the Court saying that VCAT should have applied the contract between the parties. There was some force in that proposition.

Your Honour softened them up, pointing out that the Queensland Kennel Club Rules were incorporated into the contract and that they had not produced them in evidence below. You then said to the women who had custody of the dog that perhaps the matter might settle if Elvis’s ability to father “Little Elvises” was removed.

The custodians of Elvis said they would be very happy to proceed in this way as long as they could keep Elvis. Your Honour sent the parties outside to reach agreement. They did in principle quite speedily but there was difficulty reaching agreement as to the arrangements for removing Elvis’s “genetic potential”.

When they returned to Court, your Honour suggested that you could direct that your Associate castrate the dog but it would be much better if they made their own arrangements ... which they then did.

Whilst somewhat diminished, Elvis, the original owners and the 2 women went away very happy - a very wise Judge in action.



When asked recently why your Honour was retiring on 21 June you replied, “Winter solstice mate. After that, everything gets lighter”.

Your Honour’s wisdom and experience will not be lost to the Court. The Victorian Bar is delighted that your Honour has decided to continue as a reserve Judge for the foreseeable future.

On behalf of the Bar, I wish you Honour well in your role as a reserve Judge and in your eventual retirement.

May it please the Court.