



Law Council
OF AUSTRALIA

Farewell to Justice Robert Benjamin, Judge of the family Court of Australia

Speech delivered by Dr Jacoba Brasch QC, President of the Law Council of Australia at the Family Court of Australia, Hobart, Tasmania.

20 MAY 2021

May it please the Court.

I too acknowledge the traditional owners of this land, the Muwinina people, and pay respect to their Elders past, present, and emerging.

I also acknowledge all dignitaries: Your Excellencies, Madam Attorney-General, Judicial Officers, and most of all, Your Honour and your family and friends.

Today we celebrate the part that your Honour has played in the administration of justice for the good of Australian families, both in Tasmania and around the Commonwealth. On behalf of the Law Council of Australia, and the 65,000 lawyers around the Commonwealth: thank you.

In Your Honour's nearly sixteen years serving this community as Judge, you quickly became one of the Court's most experienced and well-respected judges. I celebrate, as recognised in 2015 when you were made a Member of the Order of Australia, your significant service to the judiciary and to the law, legal education, mediation, arbitration and to professional standards.

When Your Honour joined Sydney law firm Watts McCray as senior partner in the early 2000s, you made an impression with your enthusiasm, ideas and involvement in the wider world of law and were a valued mentor for junior solicitors and a promoter of female counsel, with that approach continuing throughout your tenure.

The fact that a number of partners and former partners of that firm have made the trip over the Bass Strait to wish you well is testament to their high regard.

Having spent your early childhood in Hobart and Launceston, being appointed a Judge of this Court was something of a homecoming for Your Honour. You were valued for your background as President of the Law Society of New South Wales, longstanding Chair of its Family Law Committee, and contributor to the College of Law. From the outset, Your Honour made a mark by encouraging less adversarial practices, as well as a focus on the future needs of children rather than past issues and recrimination between parents.

You were an absolute pleasure to appear before – something I say with direct personal experiences having appeared before you many times in the sunny 'Cairns days'.

There are a host of significant reported cases for which your Honour will be remembered, including *Bailey & Bailey*, Your Honour's analysis in *West & West*, *Elsbeth & Peter*, *Cannon & Acres*, and *Wallace & Stelzer*.

I will only elaborate on *Wallace & Stelzer*...which is commonly referred to within legal circles as the "pole dancer case". To my colleagues, never overlook the footnotes – number two in this decision is a cracker, where Your Honour quoted Lord Justice Ward's, somewhat oblique elucidation of the phenomenon of the 'lapdance'... "To tantalise but not to satisfy"...you don't see that in a judgment very often.

Your Honour is driven by a genuine intellectual curiosity. You are unafraid to be a provocateur in stimulating other's ideas. Your interest in the law extends to a cross-section of topics, including the intersection of law and technology.

Your Honour is devoted to family. Your wife Maureen and your children have been a supportive presence by your side as Your Honour has contributed to your firm, Law Society and now this Court. Thank you. Today, you enjoy life as the quintessential 'smitten grandfather'.

Your Honour has been committed to spreading awareness of the law. Sometimes that commitment was shown in unlikely places, for example, in Zimbabwe, where you travelled to help write its Family Law Act.

Let's stop and think about that – that is a legacy of legend.

At the time, Zimbabwe was single-handedly ruled by President Mugabe. On a day off, Your Honour thought it would be a good idea to go to the cricket, as the Australians were playing.

The venue was only 2km from your hotel, so you thought you would walk. The road to the cricket ground on one side was very muddy and had a lot of people walking along it and on the other side was nicely paved with nobody walking along it.

Naturally, Your Honour decided to walk on the pavement. You were immediately confronted by a paramilitary with an AK-47 with a bayonet attached, squarely pointed at you. You were interrogated as to what you were doing and tried to explain you were merely walking to the cricket. You were told in no uncertain terms to cross to the other side.

When Your Honour subsequently inquired of the Australian ambassador as to why you had been treated this way, he had three questions.

A. *Why did you walk?*

B (more of an observation). *'Normally when that happens to someone they are incarcerated for a number of days until I can get them out'*; and

C. *Why did you think it was a good idea to walk in front of President Mugabe's house on his private footpath?*

Your Honour, as this chapter closes, you will continue to champion the rights of the child in every context, in your role as a Commissioner to assist the Inquiry into the Tasmanian Government's Responses to Child Sexual Abuse in Institutional Settings.

That will be a critical task, where you move now from individual cases in this court, to the opportunity to cause systemic change for our most precious resources: our children.

We honour today your significant contribution to the Bench of this Court, but your peers have a strong sense that there is much more service in Your Honour.

I wish you the best for the future and thank you for your critical role in the administration of justice.

May it please the Court.

Disclaimer:

This document remains the property of the Law Council of Australia and should not be reproduced without permission. Please contact the Law Council to arrange a copy of this speech.