VALEDICTORY SITTING TO MARK THE RETIREMENT OF HIS HONOUR JUDGE BS TRAVIS

SPEECHES

EMPLOYMENT COURT AUCKLAND
COURTROOM 2.01
4 PM FRIDAY 3 MAY 2013

CHIEF JUDGE GRAEME COLGAN
on behalf of the Employment Court

Welcome to this special sitting of the Employment Court to acknowledge and celebrate the service, as a Judge of the Employment Court and the Labour Court, of his Honour Judge Barrie Stephen Travis. I am especially pleased to welcome Judge Travis's family and other invited guests including the Judge's wife, Gail, their children, Deborah, Lisa and Michael and their spouses, Johannes, Eric and Anna respectively, and the Judge's sister, Mrs Valerie Bermel. If I were to mention other family members and friends by name we would not have time for the anecdotes that I, for one, am looking forward to hearing, so although I may not have mentioned people who are all very important to Barrie, please accept my apologies. You are no less welcome.

I also want to welcome Judge Travis's colleagues, both current and retired, many of whom are in court today and some of whom are on the Bench with us. I should introduce them so that you know who they are and we acknowledge their presence. On the far right hand side there is an empty seat. That was to have been occupied by the Honourable Justice Kit Toogood whom Judge Travis had invited to be present. Justice Toogood is the duty Judge at the High Court and got an interim injunction application at 3 pm this afternoon he tells me, and if and when he is able to make it he says that he will quietly slip into the cheap seats. Next to the absent Justice Toogood is Judge Ford, a current Judge of the Employment Court. Next to Judge Ford is Judge Christina Inglis in the same capacity. To my left (your right) is Judge Tony Couch and Judge Mark Perkins, both current Judges of the Court. Seated slightly behind us as honoured guests today are retired Chief Judge Tom Goddard, retired Employment and Labour Court Judge Dan Finnigan, and retired Employment Court and Labour Court Judge Bruce Palmer. The one other survivor of this Court, Judge Coral Shaw, wishes she could be here with us today but is committed to sittings in Nairobi of the United Nations Disputes Tribunal of which she is now a member. She sends her best wishes, not to mention positive role modelling, Judge, for your retirement.

I acknowledge the presence of most of the Auckland Members of the Employment Relations Authority. They assure me, Judge, that they are here to honour your tenure in office and not to celebrate the end of being overturned on appeals.

A number of people have asked me to express their regrets that they are not able to be with us today and extend their best wishes to Judge Travis for a long and happy retirement. They include colleagues in these Chambers, Acting Principal Environment Court Judge Laurie Newhook and Judge Melanie Harland, Bruce Corkill QC, Harry Waalkens QC, Hugh Fulton, Nigel Fagan and Christchurch employment lawyers Kathryn Dalziel, Jeff Goldstein and Lynda Ryder,

Today's sitting will consist of a number of addresses from the Bar, a short address from me on behalf of Judge Travis's colleagues, and finally the right of reply from the Judge himself. After the sitting has concluded you are all cordially invited to adjourn

for drinks at the Rydges Hotel, next door to the Court. I acknowledge the generosity of the firms, the chambers, and the practitioners in hosting this after-match function who are listed in your programme.

MR MICHAEL HERON QC, SOLICITOR-GENERAL
on behalf of the Attorney-General and the NZ Government

May it please your Honour, Chief Judge, your Honours, I am, I confess, rather humbled and privileged to be here today on behalf of the Government, the Attorney-General's representative, and I must extend my apologies on behalf of the Attorney. I believe he is currently in the Chatham Islands although he moves around as you know, so may be flying somewhere else, but he sincerely regrets that he is not able to be here sir.

I want to convey the Government's appreciation for your service as a judicial officer and to offer our best wishes in your retirement. I want very briefly to reflect on some facts I've been given and some anecdotes that I've received about your Honour's service and remarkable legal career which has been more than 45 years I am told. When I look around today and I look at the leaders of the Bar, many of whom I've practised with - and I won't name you all, but I can see many of my friends and colleagues – it's clear from the number and calibre of people that are here that you are greatly admired. When I spoke to a few that knew you in my preparation, that was confirmed.

You graduated from a fine university, may I say, in 1965, admitted in 1966. One of the reasons I said I'm humbled is I wasn't yet born. I'm sorry about this but there's nothing more I can say about that your Honour but you joined Chapman Tripp in 1970. As everyone knows that is a fine law firm, producing outstanding lawyers. You took up partnership in 1972 and that would last in many ways but right through until your appointment in 1989. And the reason I can say that you're so highly regarded is one of my deputies, Cheryl Gwynn, Deputy Solicitor-General, worked for you at Chapman Tripp and described you, amongst other things, as kind, patient, and a good teacher. Now she has an oath to the Court: she's telling the truth. She also said you were very calm when stressed and a tactic you had was that you used to hum and sing 'Startrekking'. I don't quite know how that goes but everyone wants to help …

Your Honour practised in a great number of areas of the law. I'm sure others will mention that you, I'm told, were involved in industrial law from an early stage including the academic side, the practical side, even proof reading *Matheson's Industrial Law in New Zealand* I see, published in 1970. More recently you have contributed to the scholarly landscape, lecturing in employment law and, amongst other things, an involvement in the New Zealand Law Society employment law conferences. Your commitment to legal education has been evident and is certainly honoured and respected.

Your appointment to the Labour Court in 1989, again a slight coincidence in my career – that was when I graduated – and then the Employment Court in 1991 - that is a remarkable career. I know that the life of a Judge is lonely and tough in my respectful submission. My father spent 17 years and I know there were times when it was really tough and one of the key things, in my respectful submission, about this Court is you need real humanity and you need to engage with real people every day. Clearly from the references I've been given, including my former partner, Mr McIlraith who's at the back of the Court, you have all the abilities in that regard, together with good humour I'm told, which we look forward to.

Your Honour's retirement has been well earned and you are much respected. On behalf of the Attorney-General and on behalf of the Government I wish you all the very best for the future and thank you for your dedication to the community and to the law and to this Court.

May it please your Honour.

MS PENNY SWARBRICK
On behalf of the New Zealand Law Society and the Auckland District Law Society

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May it please your Honour, I bring best wishes from the President of the New Zealand Law Society, Chris Moore, from the Auckland Branch President, Tim Jones, and from Frank Godinet, the President of ADLS Incorporated.

Sir, it's with great sadness that we farewell your Honour from this Court. This is a very special jurisdiction. Not only does it involve a challenging and interesting area of the law, but its Bar is unrivalled for collegiality. That has come about in no small part as a consequence of your and your fellow Judges' willingness to be accessible to members of the profession outside of this four wall court structure.

You have served as a Judge of this Court since 1989 when it was the Labour Court and it was configured with Judges and lay members when you commenced. You brought with you on your appointment a wealth of experience and wisdom as counsel, which you have continued to apply throughout your judicial career. Difficult though it is to believe, it is 47 years, I understand, since your Honour was admitted to the Bar and, until your elevation to the Bench in 1989, you were one of only a handful of practitioners within New Zealand to develop a specialist practice in the area of employment law. You numbered among your loyal clients Air New Zealand, a party not unknown to this Court, and you've been at the forefront of development of the law, both as counsel and as a Judge.

Many practitioners who have appeared before you may not, however, be aware of your significant contribution to the retail industry of New Zealand and the massive

social change which occurred with amendments to the Shop Trading Hours Act in 1979. Your Honour's efforts as counsel for that group of retailers known in the late 1970s as the 'Queen Street Rebels', because they dared to open their stores to the public on Saturdays, only to be prosecuted week after week, were instrumental in persuading the Government of the day to change the law to enable trading on the weekend.

Those who were involved in those historic times, regardless of which side of the debate they fell on, can only recall with awe the actions of the store holders at what used to be the International Markets in Queen Street when, noting that there was no legal requirement to keep records in English, dutifully recorded their name and address details in writing, as required by law, in a combination of languages, none of which used our alphabet in their written form. The store holders complied with their legal obligations to allow the Labour Department inspectors to view, but not remove, those records, thus requiring handwritten transcription of the records, and consequently frustrating the ability of those very inspectors to bring prosecutions against the alleged wrongdoers. While I'm sure an invoice was rendered in the usual way for your time and attendances, your Honour's advice to your clients was manifestly priceless.

When your Honour was first appointed to this Bench in 1989, it appears that what may have been your first decisions were given orally following three defended hearings in the same day. Almost unbelievably to counsel who had practised only under the contract based statutory regimes which had prevailed since 1990, at issue in each case was whether, under the more or less compulsory unionism laws of the day, employees, or workers as we then knew them, should be required to become members of the Northern Clerical & Legal Employees Administrative & Related Workers Industrial Union of Workers. Due perhaps in part to the eloquent submissions of counsel for the Union, one G Colgan, all three litigants were ordered by your Honour to become and remain members of the applicant Union.

That these cases now appear quaint and, indeed, irrelevant to our lives 24 years later, underscores the massive changes which have taken place in employment law over the past nearly quarter-century on your Honour's watch. What has not changed is that this area of the law deals with people and relationships and that fundamental precept has always been at the heart of your Honour's approach. Importantly for counsel, in your Honour's Court, counsel, advocates, parties, and witnesses are treated with utmost courtesy and consideration. Parties can always be certain that they have been given every opportunity to put their case and that it will be carefully and impartially considered.

Your wisdom, encyclopaedic knowledge of the law and precedents, good humour, and evident humanity have made it a pleasure to appear before you over the years. Your contribution to this jurisdiction has been enormous and your contribution to the profession has been ongoing. You have always gone out of your way to support continuing legal education initiatives, you have taught the Masters class at the Law School, and you have been a most popular speaker at countless conferences and seminars. You have been known to occasionally enjoy the associated social events.

It has been a personal privilege, sir, to have known and worked with you for many years in your various capacities and to be invited to appear before you on this auspicious occasion. On behalf of the Law Societies I thank you for your distinguished service and wish you well for the future. We have been fortunate indeed to have you in our Court.

May it please the Court.

MS HELEN KELLY
On behalf of the New Zealand Council of Trade Unions

May it please the Court, I am very pleased to be speaking here today and I want to start by thanking you, Judge Travis, for your service to this Court.

There are three things that I consider capture your service here. The first is that you made your decisions firmly in the context in which the facts occurred. You have a deep understanding of the consequences for workers of unfair treatment at work and how, for people whose entire economic wellbeing depends on having a job, the Employment Court is a central piece of the infrastructure that provides protection against losing that security unfairly.

The second but related feature of your service was an ability to spot trickery and a ruse. You constantly have challenged the use of seemingly lawful ways of dismissing workers where they appear shonky. This includes your views on *Hale* which you would have been pleased to see recently is now being modified by others, but of course most famously in our world is for the wharfies in this city. It might be too political for me to talk too much about that today but, your Honour, it is not too much for me to say that you saw that case for what it was and you saved the jobs of hundreds of hard-working men and women who did not deserve the treatment being meted out to them. And in fact if it weren't for the Court as an institution, these workers would now be day labourers down on that Port.

I think the third feature of your service is the manner in which you work with working people in this Court. You make them feel comfortable. You allow them to speak and you encourage them to understand that they have as much right to be here in this Court as any of the other parties and to appeal to the Court for justice. You want to know why they're here and what they're here for and you listen to their point of view.

Your Honour, things are very tough for working people in this beautiful country of ours and the recent changes to employment law and changes to come will make them tougher. This does, and will continue to, make the job of this Court tougher in the sense of providing justice to these workers treated unfairly and these changes are unnecessary and, along with rumours that the future of the Court itself may be under discussion, mean that we very much regret that you're leaving us at this time. We

need people with your commitment and experience and your understanding of the law in the context of work at this very time. But regardless, we do wish you well and personally I hope that our paths continue to cross.

Thank you

MR PETER KIELY
On behalf of Business New Zealand Inc

May it please the Court, in these few remarks, Business New Zealand would like to recognise the service of, and thank and farewell, Judge Travis from the Bench of the Employment Court.

Business New Zealand is the largest of the employer organisations in New Zealand and, as such, wears the same role as its counterparts, the Council of Trade Unions, a role that goes beyond servicing simple membership. The role manifests itself in a number of ways: public commentary on government policy, sitting on task forces and review teams reviewing government policy, working with industry and sector groups on messages they wish to send to the Government and, perhaps most importantly, working with Government on the construct and operation of the rules and laws that govern the behaviour of people and enterprises, but not the least on employment law itself.

Business New Zealand says that its interest is for a strong advocate of fair and easily applicable employment law and wishes to acknowledge the role that you have had in interpreting the law.

Often judgments become the interface between the law and business and Business New Zealand has had a long association with this Court. We know that employment law and this Court have to strike a balance between fact and law, rules and reality. Judgments are not just decisions for sparring litigants. They are also a key vehicle for guiding future behaviours. Judge Travis has been a longstanding and well regarded contributor in this regard. His decisions, without exception, have been balanced, guiding and informative. Indeed, Judge Travis has been an exemplar of the need to provide not just a decision, but the explanation and reasons for it. In this regard, we wish to acknowledge the contribution that Judge Travis has made to employment law jurisprudence.

Sitting on the Bench of this Court is not an easy task. The issues before it often have emotion, a smattering of ideology, and occasionally even a little theatre. These, of course, are red herrings in the majority of cases and it's fair to say that Judge Travis has not been distracted by such theatre at all. His ability to cut to the chase and get to the point on occasions has informed and uninformed observers in the Court noticing with great admiration his ability to get to the point so quickly.

Today's world is more complex perhaps than when Judge Travis first sat on this Bench. The Labour Court and the Employment Court, and doubtless the four sets of employment law regimes that you've worked for, have all changed. People seek wise counsel, they come to this Court, and in that regard the Employment Court is so important in the interface with business. It's Judges such as Judge Travis on the Bench who give it so much credibility. Business New Zealand says it will miss him, remember him with affection and the expertise and style that has uniquely been Judge Travis, and extends to him best wishes for a long and happy retirement.

May it please the Court

MR ALAN TAYLOR
On behalf of the Employment Law Institute Inc

May it please the Court, your Honours Chief Judge Colgan, Judge Travis, Judges of the Employment Court, members of the profession, and other interested parties, and also friends and family of Judge Travis, on behalf of the Employment Law Institute of New Zealand I bring you best wishes from our National President, Alan Knowsley, and the Executive and members of our organisation, as we meet today to recognise the significant role your Honour, Judge Travis, has played in the history of New Zealand employment law.

One of the key objectives of our organisation is to advance and promote the cause in an appropriate process for resolving employment relationship disputes that is fair to all parties.

After an extensive law practice for Chapman Tripp, your Honour became a Judge of the newly established Labour Court, at the same time that the Labour Relations Act and the State Sector Act came into force, to significantly change the way in which employment disputes in this country were resolved. Only three years later the implementation of the Employment Contracts Act saw the Labour Court evolve into the new Employment Court with extended jurisdictions and roles.

During the 1990s there was a perception that the employment legislation tended to favour the employer. However, your Honour was involved in making a number of decisions including the *Baguley v Coutts* or *Berthelsen v Washer* cases that ensured that the rights of employee parties were also preserved. The implementation of the Employment Relations Act in 2000 resulted in further enhancements to the roles and functions of the Employment Court and we recognise that your Honour played an influential role in making sure that the changes were successful and worked for the benefit of all parties involved in New Zealand employment relationships.

Today, we acknowledge the significant role your Honour has played in the history of New Zealand employment law and in the development and evolution of the

Employment Court into the institution we have today that strives to provide an appropriate process for resolving employment relationship disputes that is fair to all parties.

Another of the key objectives of our organisation is to ensure that our clients receive high quality advocacy and representation by our members. Throughout the years many of our members have received the benefit of the many keynote addresses your Honour has provided to various employment law conferences and training seminars and webinars. Appearing as a party or as a representative in the Employment Court can be a very daunting experience. Our members appreciate the genuine attempt of your Honour in making sure that all people involved in your court sittings, not just the lawyers, feel comfortable and fully involved in the process.

Comments made by your Honour in a 2001 case involving hospital doctors and district health boards provided valuable assistance to our organisation when we were developing guidelines for our members relating to 'No win/No fee' or contingency fee arrangements.

Sir, in addition to being an Employment Court Judge, you have provided valuable training to lawyers and lay advocates, helping them to become more effective in their roles.

In conclusion, the Executive and members of our organisation extend our thanks to you for the service you have provided in the employment law field and we wish you a long and happy retirement.

May it please the court

ASSOCIATE PROFESSOR BILL HODGE

May it please the Court, Chief Judge, and your Honours, the Dean of the Law School, Andrew Stockley, has asked me to say that those enrolled in employment law courses at the University of Auckland Law School have been truly fortunate to have enjoyed and benefited from an extraordinarily generous contribution by successive Judges of the Employment Court and mutatis mutandis the Industrial Court, the Arbitration Court, and the Labour Court, and I'm trying to remember if Judge Travis was an adviser to William Pember-Reeves. I can't quite remember.

It has been my intellectual excitement to be part of that and to have enjoyed working with, and listening to, Judge Travis in particular. Judge Travis is not the first and he won't be the last since Judge Inglis and Judge Perkins have already been pressed into service in making contributions, but the Travis contributions I think have been some of the most memorable and some of the most intellectually exciting moments penetrating in my 42 years of teaching at the University of Auckland Law School.

I'm going to give you a couple of anecdotes when I get back to this. The contributions have been diverse. There have been ad hoc presentations to the employment law class, ad hoc presentations to the advanced employment law class, stepping up to be the Judge, as Judge Perkins and Judge Inglis have done, to our very illustrious employment law Kiely Thompson Caisley employment law moot, and also, most significantly – and this has been a truly intellectual excitement feast for me – Judge Travis following on Judge Finnigan, taking responsibility, not just coming in for the evening, but teaching and marking the LLM employment law class. And that was truly exciting and enjoyable and those students had a treat that can't be repeated elsewhere in the Law School.

I do recall I think, Chief Judge and Judge Travis, we had an incident toward the end of many happy series of years that one of the students, in spite of Chatham House rules, and in spite of the fact that it was all academic, decided that "Oh well, I do have a problem with some of the things that one of the Judges said in one of the classes about one of the cases that I have or one of the areas of law which I have" and I think we had an issue with that, and I won't go into the detail because I'm still embarrassed and pained to think of that, but it shows the courage of the Judges to persist with that.

Judge Finnigan was the first. I think he was in the Arbitration Court at the time, he talked to the LLB course, and then you took over, Judge Travis, when I think Judge Finnigan went to the beach – sorry the Bench – in Tonga. But actually the first Judge, and I think most of you will have forgotten, Judge Jamieson, and I just want to pass on one or two sentences. Judge Jamieson was the first Judge of the Industrial Court and he invited me up to his office and I think it was in the old UEB building. I'm trying to remember where it was but this was published in the first volume of the New Zealand Volume of Industrial Relations. It's an interview with Judge Jamieson, and he believed in the Bufton School of Industrial Hospitality. I have no memory of it whatsoever. But what he told me was – and this can be a piece of wisdom for all of us – "There are several types of case argued regularly in the Industrial Court which could be avoided altogether with a minimum of legal forethought. Amongst these are unjustifiable dismissals and employment of non-union labour." Well we haven't followed that but that was Judge Jamieson's wisdom back in 1975.

Now, as I say, Judge Travis and Chief Judge Colgan did take co-responsibility for this LLM course but I want to move on to the most exciting single moment in all my employment law teaching and whether Judge Travis remembers this or not - I know the students do - it's almost like a lightning bolt and I can tell that because the students' hair stood on end. It was pretty exciting.

It was the first semester in the year 2005. Now that's significant because in December 2004, the Government in its wisdom had passed the section that we know fondly now as s 103A and that was in the days when the "would" formula was in s 103A. Now I had covered 103A exhaustively in my class. I had covered it completely. I explained the *Oram* case. I explained the draftsman's memo which preceded the Bill, that this was to clarify uncertainties in the *Oram* decision in the Court of Appeal. I explained the history of the *Oram* case and particularly the involvement of Andrew Little and why this was a misconduct provision and

exclusively a misconduct provision. That's all it was. Couldn't change any other area of the law. And that's what I told the students.

So we come to the moot and what was the moot about? Well it was an old problem I'd made up. It was a sort of a musical chairs case where there were sales reps for all of New Zealand and there were five regions covering all of New Zealand. The new CEO didn't like one of the sales managers for one of the regions. But genuinely, he decided to restructure and reorganise those five regions into four and they had musical chairs. Believe it or not, that particular unpopular sales representative wasn't successful. The other four of those five moved into the four. That was the problem and clearly 103A had nothing to do with that, nothing to do with that at all.

The first student stood up and said something like "If it pleases the Court, my name is Smith" and I think Judge Travis immediately said "Well tell us exactly us what is the impact of s 103A on this redundancy provision?" And the student was absolutely – and I was sitting there as the registrar and I think my jaw dropped and the student looked at me and I sort of shrugged and said "Well I don't know" and I think the student fudged it as best he could. You may remember it and maybe Peter Kiely was there that evening because it was the Kiely Thompson Caisley moot but very heroic of the student to have managed my incompetent teaching, because *Aberhart* hadn't been decided. We weren't even thinking about *Aberhart* yet. And I think the student managed brilliantly, in spite of my inadequate teaching, to cope with a question that still we focus on today and it hasn't gone away yet.

So I was present for some of the most intellectually exciting moments in the Law School and I am forever grateful for that and I think the students will never forget it either.

All I can say is that you may be retiring but you can count on me trying to persuade you to have some future involvement in legal education and teaching employment law at the Law School.

Thank you.

CHIEF JUDGE GRAEME COLGAN
On behalf of the Employment Court

Judge Travis, I am both pleased and a bit sad to address this sitting on behalf of your colleagues on the Employment Court Bench, current and former, who have honoured you by their presence today - pleased because it is appropriate that you are farewelled from the bench, but sad also because you will no longer be amongst us in Chambers and on the Bench.

I can think of only one case in which both you and I, as Auckland labour law practitioners in the 1970s and 1980s, were involved together. Because you were successful and I was not, the story bears retelling. It was surprising also that we had no more than one case against each other, given your representation of a certain airline which could then have been described as a frequent flyer or bulk user of the Court's services and my representation of a range of its employees.

That case was one in which my clients, a group of skilled aircraft engineers, who were otherwise represented by the Engineers Union, thought that they were getting a raw deal in collective bargaining. That was because the Engineers Union also represented a range of less skilled but more numerous employees at the airline. My clients thought that their interests were being compromised by their Union, so right on Christmas I issued proceedings for judicial review and sought interim orders. We appeared at short notice before Chief Judge Jack Horn at the Labour Court's premises in Newspaper House in Boulcott St in Wellington. Mr Barrie Travis, as always in those days, represented Air New Zealand and Miss Barbara Buckett, who was then in-house counsel, represented the Engineers' Union. I remember that Mr Travis let Miss Buckett do the heavy lifting in argument, as only she and a union could do against their own members. It was a canny strategy, your Honour and it enabled your client to be seen not to be too hard on its employees upon whom it depended to keep its planes flying, literally.

I can tell you the combined might of Mr Travis for Air New Zealand and Miss Buckett for the Engineers Union (what an unholy alliance that was!) was too much for me, and interim relief was refused peremptorily and the substantive proceedings also faded away. I strongly suspect that JRP Horn had made up his mind against my clients before I'd travelled to Wellington and, I have to say, not unjustifiably.

As Ms Swarbrick has already alluded to, I had the honour of being, I think, the first counsel to appear before you as a Judge in the Labour Court. In 1989 the Court's work included hearing applications for compliance orders requiring employees to join unions. That was a somewhat arid exercise because unwilling conscripts were never likely to be committed union members. My appearance, as Ms Swarbrick said, was on behalf of the Northern Clerical Workers Union and a morning of compliance applications against largely absent defendants, with the Judge awarding High Court level costs, made it very lucrative for me. I suspect that you modified your costs awards after a common room conversation about the levels of costs in this Court, including probably with Judge Finnigan.

It was only at your swearing-in, Judge, in February 1989 that I discovered that we lived in the same street, as indeed we still do now. I am very disappointed that other Auckland judges have declined to move to our street and that my powers do not extend to directing that. Living on the same street, and indeed side by side in Chambers, for the past 24 years brings me – you will groan but think it inevitable - and others of our vintage to the 1970s pop song by a group called Dr Hook and the Medicine Men: "Living next door to Alice". I hasten to add that the Alice next door to whom I have been living for the past 24 years, is not the lawyer who occasionally calls himself "Miss Alice". I might have been able to recuse myself from a recent case if that had been so but, alas, not that Alice.

You will be relieved that I don't propose to sing even Dr Hook's catchy chorus today. In a very real sense though, we have been living next door for 24 years, but if you know the lyrics, the analogy shouldn't not be taken too far. Contrary to the inimical words of the song, although you're leaving after 24 years and I will miss you, I do think I know where you're going and what you're going to do. It will, nevertheless, be very different after 24 years with you no longer living next door.

May I sum up my experience of your time on the Bench with this simple truism. Whenever counsel or advocate, making submissions, have said to me said "There's a case on this point by Judge Travis", I knew that it would be essential to read it and that it would be very persuasive.

As earlier speakers have alluded to, redundancy (others', not yours of course) has been your forte and special interest. In the 1990s, in particular, you seemed to get what were destined to be the leading redundancy cases that went to the Court of Appeal. I suspect that you may agree that we don't seem yet to have found the best way to deal with this blameless, often brutal and confidence-shaking, phenomenon that happens all too commonly to those who are least equipped to deal with it, let alone to turn it to their advantage. I hope that, whatever else you do in retirement, you consider not ceasing to think and write about what we can do about these most difficult of cases.

Only in multi-member courts can Judges see their colleagues in action and we have, of course, sat on numerous full Courts together. So I can say that you've been an active Judge in hearings, asking pertinent questions of witnesses that representatives have failed to ask or have studiously avoided, and you've challenged robustly submissions in argument from the Bar. I must admit to thinking occasionally that you still hankered after the opportunity to cross-examine.

Although I suspect we all like to keep a low profile as Judges, you, as others of us, have been reported in the Press from time to time but one battle that you have lost, I regret to say, is to get the journalists to spell your given name correctly.

Your door has always been open for discussions with colleagues and you have never stinted in your willingness to share your knowledge and experience with us, your colleagues.

You are a raconteur with an interesting life beyond the law – military history generally, the US Civil and the Second World Wars in particular, movies, sporty and fast cars, Italy, France, and fine red wine. These interests should serve you well in retirement.

Your time on the Bench has been marked by a steadfast refusal to take short cuts or to do things in half measures in your judging. Litigants have had full hearings and full reasons for your decisions. You are, if I may say so, a Judges' Judge.

So, farewell from the Bench (but not otherwise I hope), good colleague, wise jurist, and friend.

JUDGE BARRIE TRAVIS

Thank you Chief Judge Colgan for those kind remarks and for your excellent organisational skills in organising this special sitting.

I would have been honoured to have shared the Bench this afternoon with Justice Toogood but unfortunately, as you heard, he's caught up in an injunction in the High Court. He played a major role in legal education giving unselfishly of his knowledge at many employment conferences. He was for many years one of the pre-eminent leading senior counsel who appeared in this Court.

It is also my pleasure to acknowledge my colleagues, a past Chief Judge, Tom Goddard, and two other former Judges of the Employment Court Bench, Bruce Palmer and Dan Finnigan, who kindly have agreed to sit with me this afternoon. I think this is actually the fullest Bench ever of this Court.

I have greatly valued the support, encouragement, stimulation and unfailing good humour of all my colleagues on the Bench over the years and I particularly acknowledge the efforts of the former Judges of this Court to come here today from southerly parts of New Zealand.

I also acknowledge the kind and thoughtful words of all of those who have spoken this afternoon and confess to some embarrassment at many of their comments. It would be delightful to be able to take issue with some of the things that have been said and one thing I cannot miss saying, however, is that in the matter raised by Ms Swarbrick, my client was convicted eventually of failing to keep the records in English, notwithstanding the absence of any statutory requirement to do so, and was fined the huge sum of $50. He decided to pay the fine on a negotiable cow but could not locate one. Instead, he decided to pay it on a negotiable ass but the nearest he could get was a donkey on which he had this huge ANZ cheque for $50 in favour of the Magistrates Court printed and led it down the corridor of what is now the plush hotel in town to the Fines Office, at which point the donkey lost control of itself and made a greater deposit than the $50.

My wife, Gail, and my children, Lisa, Deborah and Michael and their spouses, Eric, Johannes and Anna, and my sister, Valerie Bermel, I acknowledge and revel in the presence of them here this afternoon and thank them for their love, generosity and support. I look forward in my retirement to being able to spend more quality time with my children and my grandchildren.

As a Judge of this Court and its predecessor, the Labour Court, I have always benefited from the work of the Registry staff, librarians, the research clerks, and particularly the Judge's Assistants without whom the performance of my judicial duties would have been far more difficult, if not impossible. Both my JA, Nadine

Gibson, and Barbara Sokolich, the Chief Judge's JA, have worked tirelessly to organise this function and I publicly record my gratitude. I shall miss Nadine's humour and loyalty and extensive knowledge of music, film, TV and other trivia!!

My friends, many of whom were present at my swearing-in and are here again today, 24 years later, I thank you for coming and for the times we have shared and will share again in the future, and the joy that you have given me over the years.

I would like to thank Her Majesty's Counsel, Dr Rodney Harrison and Mr Colin Carruthers, for attending today and, of course, Mr Heron, Mr Solicitor-General. Your grandfather was the Principal of Rongotai College which was the old school that I attended in Wellington so I have a long association with the Heron family. Thank you for your kind words. I wish to pay tribute to both the Queen's Counsel who have appeared today, who frequently appear in this Court, and acknowledge their legal acumen and enormous contribution they have both made to the law in New Zealand, particularly, if I may say, on behalf of the underdogs. They have always had great advocacy skills in having you both engaged.

I also thank the practitioners and advocates who have come today from their busy practices to be present this afternoon. I also wish to endorse the Chief Judge's comments about the generosity of the legal firms who are providing the after-match function, to which of course you are all heartily invited. I have enjoyed working against and with those practitioners over the years and have delighted in having them appear before me. I have benefited from their wit, charm and erudition which has lightened, and sometimes increased, my judicial load.

I also wish to remember absent colleagues and, in particular, John Haigh QC and my former partners, John Timmins and Bill Reece. They are sadly missed. I found a letter the other day from John Haigh congratulating me on my appointment to the Labour Court and acknowledging my wisdom which he said I had not obviously received from Air New Zealand or its instructions.

As I reach this milestone, it has been a time for contemplation and those who know me well know of my love of history and particularly military history. There is a common chant in my home from my family saying "Don't mention the War!" and, for that matter, any war.

One of the wishes highest on my bucket list is to be present outside the little Somme town of Flers at 0620 hours on 15 September 2016, to remember the 100th Anniversary of the first attack by the New Zealand Division on the Western Front, and the first in history to be supported by tanks.

Looking back over the years, I started my law degree in 1962 at Victoria University when I was 17 years old. I could have skipped what was then called the upper sixth and gone to University at 16. I firmly believe that is far too young to start a law degree. Indeed, I wish we would adopt the American approach of having law as a post-graduate degree.

English was then a requirement and you had a choice of two other units. The other 16 units of the 19 unit law degree were a matter of choice, entirely choice. You could either do them or not do a law degree.

Completion of the LLB, however, gave you a meal ticket because you were entitled then to be admitted as a barrister and solicitor of the Supreme Court of New Zealand (as it was then called) without any further Bar exams or training.

I had wonderful, inspirational teachers, George Barton and Don Inglis, who are sadly no longer with us, Don Mathieson and Ken Keith (as they then were).

I was admitted and I graduated technically in 1966. There were 50 graduates from the University which included a future Prime Minister, a couple of Judges, an Employment Tribunal Member, two later bailed and then struck-off solicitors, but only one woman, Maeve O'Flynn. That, unfortunately, was a major feature of the times. In 1966 there were no women in any of the Higher Courts and few I believe, if any, in the Magistrates Court. None were partners in the major law firms and very few were represented at the Bar.

That is a situation which has changed far too slowly, but for the better. While the latest survey shows 40 percent of lawyers are female, women are only 28 percent of the judiciary. Female Judges constitute 40 percent of the Supreme Court, 20 percent of the Court of Appeal, 21 percent of the High Court and 31 percent of the District Court. And in this Court, the Employment Court, at this particular moment in time, 16.66 (recurring) percent. But very shortly, after I leave, it will rise to 20 percent. This is still nowhere near enough, especially if one uses the percentage of female law graduates and in particular those in the A-stream, or Honours, which I venture to suggest is now as high as 80 percent. This is something the law profession, as a whole, must address.

Industrial law (or employment law as it is now called) was not available in my day as a subject in the LLB course. It was touched on lightly in the law of contract and torts, especially when considering claims for workplace injuries and workers' compensation.

As mentioned, my first real exposure to employment law came when, along with Dr Robin Congreve, I was asked by Dr Don Mathieson to check the proofs of his excellent text "Industrial Law in New Zealand", published in 1970. It was, and I believe still is, a master work. I pay tribute to Don Mathieson's contribution to the law in New Zealand.

When Don went off on one of his many sojourns to Oxford University, I was left attempting to teach his Jurisprudence class. One of the popular topics of the day was the study of the American Realist Movement - a group of jurists and legal philosophers who concentrated on Judge-made law and how it was actually created. Oliver Wendell-Holmes Junior, a Justice of the Supreme Court of the United States (and, I think, wounded three times in the Civil War) in one of his publications, "The

Path of the Law", published in 1897 stated: "The prophecies of what the Courts will do in fact, and nothing more pretentious, are what I mean by the law."

I pronounced to a class of about 70 students, many of whom were much older than me, how Judges made their decisions. I was about 23 at the time. Having since been involved in trying to get Judges to make their decisions in favour of my clients and then having to make my own decisions on the Bench, I look back and blush at the arrogance of youth for purporting to expound on the topic. After 24 years as a Judge, I still do not know the answer!

In 1966 the vast majority of workers in New Zealand, those who are not self-employed, were members of unions and covered by National Awards made through the process described as conciliation and then arbitration. They were governed by the Industrial Conciliation and Arbitration Act of 1954 which had many similarities with the original enactment that created the predecessor of this Court, the 1894 Act. That Act conferred on the Court of Arbitration the jurisdiction, which is now found in s 189 of the Employment Relations Act 2000, for the Court to determine matters before it "as in equity and good conscience it thinks fit". That is a unique jurisdiction which has been a fundamental inspiration to the Judges of this Court and all its predecessors.

The National Awards issued by the Arbitration Court, in its various guises, governed the terms of employment and, in many workplaces, union membership was compulsory.

There were no personal grievances. The only recourse a dismissed worker had was to bring an action for wrongful dismissal in the Civil Courts. If the worker was successful, he or she could recover as damages only the wages the worker would have earned during the period of the notice that should have been given. If wages were paid weekly that would be one week's pay. There was no compensation for the manner of dismissal or for injured feelings or for the fact that the dismissal made fresh employment difficult to find. There was no right to be reinstated. An employer could defend such a claim by showing that it had good grounds for the dismissal or that it had simply paid adequate notice, often in lieu, which precluded the action completely.

Not surprisingly, actions for wrongful dismissal were largely seen as useless. Strong unions could threaten or carry out industrial action to support members who had been dismissed. By 1966 some 60 per cent of the strikes in New Zealand were over dismissals.

In some workplaces, for example the freezing industry, a worker could be caught red-handed loading a side of beef into the back of a Ford Zephyr. But if he was popular with the union, a strike which could cripple the export markets would lead to his reinstatement.

The National Government, as part of its manifesto in 1963, noted the lack of procedures for settling disputes and grievances concerning wrongful dismissal and was considering introducing procedures which would avoid strikes.

Initially there was little support from either the New Zealand Employers Federation or the Federation of Labour as there was full employment. In 1966 there were only 463 registered unemployed. That this had risen to 6,881 by 1968 caused great concern. When we view such figures from today's perspective, they would be the cause of great rejoicing, not concern.

However, it led to the National Government introducing, with the support of the Employers Federation and the Federation of Labour, an amendment to the 1954 IC&A Act in 1970. This introduced for the first time statutory procedures in New Zealand's private sector for settling disputes and personal grievances. It covered dismissals but not disadvantage grievances. It allowed for reimbursement of the whole or any part of the wages lost and reinstatement to a position not less advantageous. It also allowed for the possibility of compensation. Grievances could only be brought by unions (with some few exceptions) on behalf of members covered by the relevant Awards. If the matter was not settled before a grievance committee it would then go on to the particular Tribunal specified in the relevant Award. In addition to the Arbitration Court there were a number of specialised industrial tribunals.

The 1970 amendment to the IC&A Act also established a service to be known as the Industrial Mediation Service. This, in the sexist language of the day provided the mediator "in the exercise of his office to have the functions and powers of using his best endeavours to prevent industrial disputes and to offer his services to settle them". I wish to pay tribute to the work of the Mediation Service, which has solved thousands of employment relationship problems in the ensuing years. Without them the system would, frankly, collapse. It has been such a successful example and I suggest it ought to be adopted for all civil disputes in every Court.

Some of my fondest memories are of judicial settlement conferences where I have been accompanied by one of the Mediators and we play good cop/bad cop. I will be the bad cop, telling the parties what I think of their respective legal positions, and the Mediator will then take the opportunity of charming them into settlement.

May I also say how much I have enjoyed judicial settlement conferences. This Court treats them quite uniquely by providing the Judge with sufficient time to fully prepare and master the issues and to form preliminary views. If these are asked for during the course of the ensuing conference, and usually we can ensure that they are, they have often assisted the parties by providing reality checks which have led to settlement of what had appeared to be insoluble problems. The conferences are also given sufficient time for negotiations. The Court considers this all provides the opportunity for the settlement of employment relationship problems without the need for formal intervention by trial.

Returning to the personal grievances, I note that it was again a National Government in the Employment Contracts Act 1991 which opened them to every employee in New Zealand. The Court then dealt with all employees, including chief executive officers with "golden parachutes", as well line workers. In doing so, the valuable filtration process that the unions previously applied was lost and some meritless matters, I must say, have clogged the system from time to time.

In 1966 lawyers had very little involvement in industrial law. In some areas holders of practising certificates were expressly excluded unless both parties consented and such consent was never forthcoming. It was a very small group of lawyers who were involved in industrial law in the 1970s and 80s and I'm delighted that several are still sitting on this Bench or are present in the body of the Court.

The 1991 Act also removed the restrictions on lawyers acting in all matters from the negotiation of collective agreements to disputes and personal grievances and that is why we have so many here today.

I also note that the 1973 Industrial Relations Act provided that once the disputes or personal grievance procedures had been invoked, this prevented any party to the dispute discontinuing or impeding normal work, or the employer dismissing any person directly involved in the dispute. Strikes over disputes of rights, including interpretation matters and personal grievances, were absolutely prohibited and unlawful.

The legislation did not initially stop unlawful wild cat strikes. Attempts to stop these by obtaining injunctions from the Supreme Court, now named the High Court, were not always successful. A glaring example was that in the case of the Hydrofoil Ferry Service introduced by Mr Dromgool's companies which ran between Waiheke Island and Pakatoa. Mr Dromgool wished to dispense with the employment of two seamen on his Hydrofoil "Manu-Wai". The Union succeeded before the Shipping Industry Tribunal in requiring their employment. Mr Dromgool sought a review of that decision and attempted to put other vehicles into service in substitution for the hydrofoil. The Union's response was to black Mr Dromgool's companies and called on the Drivers Union to assist it in ensuring the he could not get any fuel. RI Barker QC (as he then was) acted for the companies and was successful in getting an injunction from Mr Justice Mahon in the Supreme Court. Frank Haigh who, as a matter of interest, was also a resident in Bell Road along with the two Judges here and indeed I think John Haigh was brought up in that street – a proper street to be in - and Bob Adam-Smith unsuccessfully appealed to the Court of Appeal which upheld the injunction. The Unions promptly ignored the injunctions and Mr GH Anderson, the Secretary of the Northern Drivers Union, was jailed. There were near-riots and widespread stoppages as a result and as close to a general strike as we've had in many a year. These resulted in Mr Anderson being released to lead a triumphal march down Queen Street. The hydrofoil sat and rotted at the end of what is now the Container Wharf, as a monument to the failure of the Civil Courts to resolve industrial disputes. The residents of Hauraki Gulf lost their high speed ferry service.

The Labour Relations Act of 1987 took the injunction jurisdiction from the High Court and gave it to the Labour Court. Since that time, and to this day, this

Court has had the full and exclusive jurisdiction to grant injunctions to stop strikes or lockouts and to deal with the economic torts of conspiracy and the like.

The effect of this has been to virtually eliminate wild-cat strikes over disputes and personal grievances because the Unions appreciated from the outset that it was the Labour Court that they would ultimately have to go to resolve those issues. It would not be helpful if they had acted unlawfully or, even worse, disobeyed a Labour Court imposed injunction.

When the Seamen's Union did precisely this in September 1989 over redundancy dismissals on the Inter-Island ferries, Chief Judge Goddard, well after 7 pm on the 28th of that month, ordered sequestration of the Union's funds for their contempt, notwithstanding the settlement of the dispute between the parties. This produced a headline from the National Business Review: "Chief Judge Goddard - Saviour of the Nation". Subsequent editorial comments in that newspaper were not quite so favourable.

When I was invited onto the Labour Court Bench in late 1988 - this was during a Labour Government - I had not, at that stage, ever acted for unions. I had also never thought of judicial appointment. Chief Judge Horn invited me to discuss the matter with Judge Finnigan, which I did, and I shall always be grateful for the advice he gave me. I also discussed it with District Court Judge David Robinson and I again value the sage advice he gave me which I have always followed.

As has been said, my first case as a new Labour Court Judge was on 3 March 1989 when a bright young counsel with a full bushy beard and no grey hair appeared for the Northern Clerical Union. The response of the recalcitrant law clerks to his applications for compliance order and penalties was to apply for exemption from union membership, as you could then to in those days, by sending in applications to the Union Membership Exemption Tribunal. It was rather like being a conscientious objector in World War I which usually ended up with you being tied to a cross in the middle of No Man's Land on the Western Front. They sought adjournment of the Union's applications until the Tribunal could deal with it. The Union did not consent to the adjournment. I accepted Mr Colgan's submissions and in the first case granted the applications he sought and then the subsequent two. He sought costs. Very foolishly, I did not ask him how much he was seeking. Having freshly come from appearing before Justice Barker in the Commercial Lists where any appearance produced costs of $1,000 or $2,000, I awarded what I thought was a very modest amount of $500. That bore absolutely no resemblance to what was expected in the Labour Court at the time, but it did ensure that virtually all of the recalcitrant law clerks immediately joined the Union.

I would also like to recognise the role played in the Labour Court by the Panel Members with whom we sat hearing personal grievances, demarcation disputes and the like. One of those valued Members, Mr Tom Kiely MBE, the father of Peter, is present today and I'm delighted to acknowledge his presence. On one of my first cases with Panel Members, an unjustified dismissal claim, after hearing the evidence, I asked them what they thought about the matter. The employer's Panel Member said that he thought that the employer had acted quite wrongly and should have given the

worker a fairer go. The Union Panel Member, on the other hand, said that he thought the worker was guilty of misconduct, although he used somewhat more basic language, and he was surprised that the Union was even supporting his grievance. Needless to say, we were able to achieve unanimity in the decision we reached. I learned a great deal about day to day employment relations from those Panel Members and it was an excellent start for a new Judge.

I also wish to pay tribute to my fellow Judges from those Labour Court days.

Judge Dan Finnigan I have already mentioned. Can I add my regard for his efficiency and charming wit. I particularly enjoyed his articles for the Nigerian Law Review in which he expressed his views about Court of Appeal decisions. They were then published in the round filing bin also known as File 13!

Chief Judge Horn - his thoughtful unflappable good humour and his incisive mind. He could express his judgments in a very few well chosen words. It is sad he was not spared to enjoy a lengthy well-earned retirement.

Dear Judge Derek Castle - his cheerful good humour, even through times of great personal difficulties, and his excellent commonsense. We were all saddened when he died in office.

Judge Bruce Palmer - his warmth, his cheery smile, kindness and absolutely unerring sense of justice. He has a fathomless depth of legal knowledge and I greatly value his firm friendship.

Chief Judge Tom Goddard. He was a great leader, unselfish, generous and fearless. He was a stalwart through some serious crises and his support could always be relied on. His legal knowledge was unsurpassed. He knew also what the law should be and was ahead of his times. His prescient, beautifully expressed judgments developed employment law and now form part of the key provisions in the current legislation. I regard him as the father of good faith in New Zealand.

This is a unique Court, as the practitioners who have appeared before it in their clients' interests will know and understand. It is responsive to the needs of the parties from underdogs to powerful companies. It tries very hard to ensure that they have ample opportunity to settle the matter at issue between themselves without the imposition of legal judgments. When those judgments are required, this Bench has always tried to achieve predictability and certainty in order to guide employers and employees for the future. It works hard to achieve that result with the assistance of excellent Registry staff who efficiently endeavour to tailor fixtures to the availability of the representatives and their clients and witnesses.

Wherever there is a need for urgent intervention of the Court, particularly where there are unlawful strikes and lockouts, or the need for injunctions to prevent unlawful actions, this Court will drop everything and hold hearings at any time, day or night, in any place including, I must say, Christmas Eve and New Year's Eve. The procedures

and practices of its trained and skilled staff have been honed to this end. The Court is here to resolve employment disputes and to try to achieve industrial harmony.

Unfortunately, since the year of my appointment and I hope it was not coincidental, it has been subject to political interference with proposals ranging from its abolition to others which would have seriously curtailed its ability to carry out its essential functions. Proposals for reform have often been based on a lack of research and particularly on a failure to consult with those persons directly involved with the Court who understand its functions. In that group I include the practitioners, both legally qualified and lay advocates, and their clients who are frequent users of the Court. I am a great believer in the law, especially the law of unintended consequences. We have seen all too often that reforms that have passed into law have achieved precisely the opposite of what the legislators intended.

With few exceptions, I have greatly enjoyed my time on this Bench and it is with mixed emotions that I have elected early retirement and say farewell to my excellent colleagues.

The attendances here today, and at recent special sittings of this Court, are a tribute to the regard in which this Court is held by the users of its facilities. I wish my colleagues on the Bench, and all those who appear before this Court, the very best for the future and I express the hope that the Court is permitted to discharge its duties in the way it was originally intended, that is to say to promote industrial harmony with equity and good conscience.

Thank you all again. The Chief Judge has kindly delegated to me my last judicial duty at a sitting of this Court, which is to formally state - This Court is now adjourned.

THE VALEDICTORY SITTING CONCLUDED AT 5.17 PM