

MEMORIAL SITTING FOR JOHN HAIGH QC

4 pm Friday 8 June 2012
Employment Court, Auckland (Courtroom 2.01)

A D D R E S S E S

CHIEF JUDGE GRAEME COLGAN - INTRODUCTION

John Haigh's life was spent on his feet, or preparing to be on his feet, in courtrooms, many of them the courtrooms of the Employment Court and its predecessors, the Labour Court, the Arbitration Court and the Industrial Court. I have been unable to find whether John ever appeared in the Court of Arbitration before 1973 but I would not be surprised if he had. Ironically, I don't think John ever appeared as counsel in this courtroom except at a ceremonial sitting last year but it is a mark of the esteem in which John was held that we have had to come here to this largest courtroom to allow those of us who wish to pay our respects, to do so.

I should first introduce my colleagues sitting on the Bench with me today and simply, in directional order, on my far right is Judge Coral Shaw, formerly a Judge of the Employment Court and now a Judge of the United Nations Disputes Tribunal. Next to her is the Honourable Justice Kit Toogood. To my left is his Honour Judge Barrie Travis, next to him her Honour Judge Christina Inglis, and on the far left is his Honour Judge Mark Perkins, formerly a Judge of this Court.

Next, I want to welcome very warmly the members of John's family who have kindly agreed to share this commemorative sitting with us. Sue, Anna and Ben, Alastair and Breezy and other extended family members, we are honoured by your presence today.

Next, I want to acknowledge the presence of current and former members of various Benches. At the risk of omitting anyone, for which I apologise in advance, I welcome former Court of Appeal President the Right Honourable Sir Owen Woodhouse (who is also a member of John's extended family), the Honourable Justice Rhys Harrison of the Court of Appeal, the Right Honourable Ted Thomas, Sir Ian Barker QC, the

Honourable Peter Salmon QC, District Court Judge Brook Gibson, and retired District Court Judge Bill Mitchell. I welcome of course also members of the inner Bar, the junior Bar, the legal profession, the employment law advocacy profession, members of the Employment Relations Authority, and mediators.

There are a number of people who have asked me to express their regrets that they cannot be with us today. They include the Chief Justice the Right Honourable Dame Sian Elias, the Minister for Courts the Honourable Chester Borrows, and the Honourable Paul East QC who was one of John's closest friends. Sophie East is, however, here today and as counsel so that the East link is maintained. Others who are unable to be with us include my predecessor Tom Goddard, and former colleague Dan Finnigan, who are both out of the country, retired Judge Bruce Palmer whose health has kept him from attending, and Harry Waalkens QC who has been called overseas at the last moment. They all wish me to extend their condolences to Susan, Anna, Alastair and John's family.

I have also received an email from John Timmins who is unable to attend today's hearing but which he wishes me to read and I think it very appropriate to do so. John Timmins says:

“For many years I frequently appeared as opposing counsel to John Haigh in matters before this Court. He was a stern opponent and he fought hard for his clients. But throughout he maintained an always courteous approach often touched by humour. He always honoured his commitments and valued the rules surrounding the role of counsel.

Later after I was the victim of a violent crime John was the counsel to whom I turned to represent me as the victim in the ensuing criminal trial. In that role I benefited from his compassion and genuine concern for me. That continued well beyond his period as my counsel.

Those of us who practised with John were lucky. He was a fine man and an excellent lawyer.”

We will begin this afternoon with a number of addresses from the Bar and then from the Bench. After the hearing concludes, everyone is very cordially invited to share our memories of John more informally in the Rydges Hotel next door to this building in Federal Street. I acknowledge the generous support of the following that will enable us to do so: the Auckland District Law Society, Swarbrick Beck McKinnon, Simpson Grierson, Russell McVeagh, Langton Hudson Butcher, Buddle Findlay and City Chambers, John's Chambers in Auckland.

RODNEY HARRISON QC

Your Honours, Justice Toogood, Chief Judge Colgan, Judges of the Employment Court, and former Judges of too many Courts to mention, Sue and John's family and friends, colleagues in the profession, I appear today, and it's a privilege to do so, on behalf of the New Zealand Bar Association at this special setting to commemorate John Haigh QC.

On behalf of the Association, I need to acknowledge John's strong support of it, attending seminars, conferences, and leading seminars as well. I also must apologise on behalf of Miriam Dean QC, the President of the Association, for her absence today. Miriam said to me that John exemplified what the independent Bar stands for and that does fairly much sum it up.

John and I were at Law School together and he took Silk about a year or so before I did. When John Priestley was appointed to the High Court, we sat side by side in the line-up of Silks on formal occasions. That was great although I would have preferred someone a little less physically imposing as an immediate neighbour.

John was a strong believer in the importance of the rank of Queen's Counsel, not only for the benefit of the profession but also in the wider public interest and I'm sure he would join with me in hoping that the four year gap in the appointment of Queen's Counsel, or indeed Senior Council for that matter, soon comes to an end.

In a trial situation John was a redoubtable but eminently fair and honourable opponent. If he knew you, the banter could sometimes resemble what, in an Australian cricketer, might well be termed 'sledging'. Very early on in my career as a litigator I took an injunction case against the Tramways Union for Christopher Harder, then a law student and later a controversial criminal defence lawyer. My opposition included John's esteemed father, Frank Haigh, and Bob Adams-Smith QC. That case nearly brought about a general strike and, for many years after that, John would happily bring up on every possible occasion my union bashing past. However,

as John gradually took on more work for employers himself, these reminders of my past deeds strangely fell silent.

Our last case together was a major dispute involving dismissal of a top Tainui executive. John was for Tainui and I was for the dismissed employee. I had inherited the brief from Kit Toogood upon his sudden ascension and first up we came before Coral Shaw as mediator – it's a small profession. The case was heading for two weeks in the Employment Court, John, I have to add, before Kit's time having carried all before him in the Employment Relations Authority. John and I were both looking forward to what promised to be an entertaining scrap.

A day or so before the mediation John had pulled off a major victory in the Employment Court. He had obtained the reinstatement of a dismissed airline pilot who had enjoyed an interesting flight stop-over involving both alcohol and at least one, if not two, stewardesses. I entered the mediation room where John was already sitting with his employer client and I fulsomely congratulated him on his latest triumph adding, very sweetly I thought, "There are so few true champions of the worker these days". Well aware of what I was driving at, John grinned but was uncharacteristically silent.

At the start of the mediation – I have to go on with this – John and I were all set to fire off opening salvos which I, for one, was looking forward to. But Coral Shaw charmingly and firmly sidelined us both by insisting that the clients should speak first. The mediation then took an unexpected turn as each man, in turn, spoke passionately to the other at length in Maori. Coral followed the exchanges closely but I, and I think John, remained completely in the dark. When the Te Reo exchanges concluded, John and I were summarily made redundant with Coral whisking the two men away for one-on-one discussions. For the next two hours, John and I were left with instructing solicitors and supporters making polite conversation across the mediation table. Then back came Coral with the two protagonists – dispute settled. While that was a great outcome for the mediator, being deprived of a promising courtroom stoush with John was a considerable disappointment.

Shakespeare observed of adversaries in the law that they “strive mightily but eat and drink as friends”. That was certainly John’s way but we all know there was a great deal more to him than that. John was a true leader of the Bar and of the legal profession. His courage as an advocate, his industry and his independence meant that he was always in demand in the specialist fields of employment and criminal law. Throughout numerous high profile cases John fought his corner to the highest standards but always, always without grandstanding.

Like other outstanding leaders of the Bar, John led by example and set standards of integrity and conduct for others to aspire to. Indeed, he inspired others to emulate his example. John’s departure has deprived the independent Bar of a true leader. But our loss is nothing compared to that inflicted on Sue and his family.

On this commemorative sitting, the New Zealand Bar Association wishes to acknowledge both their loss and their contribution to, and support of, John’s stellar career played out both in this Court and in other spheres.

May it please your Honours

KATHRYN BECK

Your Honours, colleagues, and especially Susan, Anna, Alastair, Breezy, Ben and Tim, it is a privilege to speak today on behalf of the New Zealand Law Society and ADLS.

When I was asked to speak my first thought was “What on earth will I say?” which became “What won’t I say?” and then “Where will I start?”. And then I heard a voice and all it said was “Don’t cock it up!”, a simple and straightforward message and one I had heard a number of times over the 20 years that I knew and worked with John. John used to have his office on the second floor of Prince’s Chambers. He had a bird’s eye view of passers-by, which he enjoyed, and a balcony. I was striding earnestly to whatever hearing it was in the High Court and will never forget hearing bellowed from across the street “Beck! Beck!” and when I looked up, “Don’t cock it up!”. There was all 6 foot 5 of Mr Haigh QC leaning out as far as he could over the balcony with no regard whatsoever for other people on the street or his own personal safety.

John made an enormous contribution to the profession over his more than 40 years of legal practice. He did this not only through the development of the law but also through his mentoring and support of other practitioners and his work on behalf of the profession as a whole. He made submissions on law reform, sat on panels, and did more than his fair share of pro bono work over the years, all while handling an extraordinary workload. Importantly, he seemed to be someone that people could, and did, come to if they had a problem. He gave time when he didn’t have it and made sure that he was available to listen and advise when it was needed.

As has been said in much of the recent material written about him, John was a fine example of what it means to be a lawyer and a member of the profession. He was admitted as a barrister and solicitor of the High Court on 18 December 1970, so he probably did appear in the Arbitration Court, and subsequently became a partner in Haigh Charters. He went out as a barrister in 1984 and was appointed as Queen’s Counsel on 26 May 1993. As we all know, he was the first Queen’s Counsel to

specialise in employment law which was something of which he was justifiably proud. He appeared in the Courts at all levels and even made it to the Privy Council in London on more than one occasion, and in the weeks leading up to his death, however, it was not in this Court but in the courtroom over there that he spent much of his time, so it is really fitting that we're here today.

For someone who worked incredibly hard and felt the burden of his responsibilities enormously, John didn't take himself too seriously. He wasn't at all pompous or self-important. He could be intimidating but that was almost always strategic and directed at the opposition. He was renowned for his advocacy in court and this was not limited to his submissions to Judges and examination of witnesses. There will be a number of people in this room who have been in the middle of what they thought was a particularly effective piece of re-examination, only to have hissed at them in less than dulcet tones "Don't lead!" or "Stop leading!". John saw no need to involve the Judge in a tedious objection when he could deal with it himself. That, combined with the famous Haigh "Hrumphs", made for fierce opposition.

His cross-examination of witnesses could be lethal. In the *Air New Zealand* drug testing case in this Court, John was the epitome of charm and kindness with a particular expert. He used his classic phrase of "I'm not trying to trap you Mr so-and-so" and got the poor man to completely open up and concede all sorts of things in an effort to try and help John understand and resolve his obvious puzzlement. In the break, the late Robert Fardell QC, opposing counsel, said to John "I did warn him about you John but I forgot to tell him that you're most dangerous when you are being nice".

John had a great sense of the ridiculous and in that same case he took the full Bench of this Court through the various paraphernalia and methods that were employed to beat drug testing. The evidence was of little probative value but was hugely fascinating. In fact, poring through "beatyourdrugtest.com" was one of the first times John, a relative technophobe, took a real interest in the Internet.

John took on hard cases and gave hard advice if it was needed. For him, it wasn't about the dispute: it was about the outcome. He had a keen sense of when a case

needed to settle and was a master of getting more than what anyone else, including often the other side, thought was on the table. He took on unpopular cases and put as much work, if not more, into them than was ever appreciated. He genuinely believed, and put into practice, the principle that everyone has the right to be heard.

He was not a moral arbiter and he didn't think that the Court should be either. Maybe that came, in part, from his criminal defence background but it was more than that. He did not personally judge people or their situations. He accepted that people were flawed and he simply dealt with them as he found them.

He was always practical. Even when he was unsuccessful in court, he could still get the desired result for a client. Having failed to get leave to appeal when acting for a bank, his advice was "If the bugger has to be reinstated, appoint him to the Wainuiomata branch: that should sort him out", advice that the bank acted on, the Court upheld, and the manager resigned within weeks – a practical solution.

John was an incredible supporter of women in the law. It wasn't a matter of lip service for him: he actively promoted and mentored a number of women in this jurisdiction over the years. Your honour Judge Shaw, Phillipa Muir, Margaret Robins and I all had the extraordinary benefit of his fierce support and encouragement. He gave us opportunities early on that made a real difference to who we are today, and we are not alone.

We in the legal profession will miss him greatly. It was a pleasure and a privilege to know and work with him.

Sue and family, we're really sorry that you have lost a wonderful husband, father, brother and father-in-law.

May it please your Honours

PETER CRANNEY

Chief Judge Colgan, distinguished Judges and past Judges, it is a great honour to address this Court today on this occasion in memory of John Haigh and it's very appropriate, as has been said, that his memorial sitting is being conducted in this particular Court.

The name "Haigh" has been with this Court for a very large part of its history. John's father, Frank, argued cases in an earlier version of this Court from the early 1930s and John himself argued cases here from the early 1970s right up until a few weeks ago. This is, therefore, a very important occasion for the Court.

John was a distinguished practitioner in many areas of the law but was held in particular affection by members of the employment law Bar. He was our most senior member. He had very high standing here and that standing was a crucial factor in John's last case before this Court, a prolonged and very difficult legal and industrial dispute between the Maritime Union of New Zealand and the Ports of Auckland. His wisdom and high status were crucial to resolving the dispute, in that case only a few weeks ago. I remember exchanging words with him at the conclusion of the case, as lawyers sometimes do, and I had been subject to a couple of famous "hrumphs" from him during the case. He asked me about the health of various trade union personalities that he knew, we talked briefly about them and he wished me well and said he hoped I had a good weekend.

He was a likable man and he was popular with other members of the Bar and the profession. As has been said by others, he had no trace of pomposity or self-importance. He enjoyed his work and those he worked for and with, and although, in this last case to which I've referred, John Haigh was acting for the Port company employer and not for the Union, he will mainly be remembered by workers and unions for his role over many years as a powerful and strong advocate for workers, for organised labour, and for the underdog. To unions and workers, he was a voice for social justice and a powerful and fearless one.

John had a bit of a head start when it came to the unions because the unions, when John first came into practice, remembered his father. He had marched with them with his young son, John, in the early days of the anti-apartheid movement. By the time of the “No Maori, No Tour” movement, Frank Haigh had been advocating for workers for decades and so, by the time John graduated as a lawyer in the early 1970s, his name was already widely known.

In the mid to late 1970s and in the early 1980s, there was a significant period of industrial unrest in New Zealand and it was only natural that it was to John Haigh that the unions turned in that circumstance for their legal assistance: the Northern Labourers Union, the Seamen’s Union, the Northern Drivers Union, the Watersiders Union, the Storemen and Packers Union. In those days these unions and their leaders were household names. All of them mentioned, and many others, were John Haigh’s clients. They found in John Haigh a tough and competent lawyer and a decent human being. He was known in the trade union movement and among workers for his determination in the face of seemingly insurmountable odds. On one occasion a union had a large judgment of over a million dollars awarded against it and John was tireless in his advocacy to get the judgment set aside as it eventually was.

In those days John’s connections with workers and unions went beyond merely industrial law. A certain rugby league club was raided by the Police where quite unjustifiable allegations were made about breaches of the licensing laws by them. John not only got the charges dropped but he achieved what seemed to the unions at the time to be a miracle and managed to get the confiscated beer returned to the unions concerned where it was duly dealt with in a proper way. This greatly enhanced John’s already at that time superstar status among the workers and the unions.

So for a very significant period, John put his broad shoulders to the wheel for unions and workers. Whether the matter was an individual worker’s rights or a major issue involving mass lockouts such as those in places such as Marsden Point, John was called upon on countless occasions by union leaders, and he delivered.

Many of the leaders in those days are gone and others, such as Peter Conway who is here, have got greyer hair, but he's Secretary of the Council of Trade Unions who is here today to pay his respects to John on behalf of that organisation.

To the unions, John was seen as a fearless advocate, a tough and ethical courtroom fighter, and a formidable intellect. He was widely regarded by the workers as a voice for social justice. It was for that reason that the news of his death stirred many memories and a great sense of loss among the unions and among many workers. He will be remembered by them as a highly competent lawyer and a very likable man. He was generous, he was never other than cheerful, and it seemed to the unions that the more difficult and unpopular the particular dispute was, the happier he felt. His approach was to create confidence and good cheer among the unions and the workers right in the middle of the most serious difficulties. They found him accessible, unceremonious, and tireless in the efforts he put into their cases and into their causes.

For that reason, Your Honours, the unions and their members are very grateful to the Haigh family for enabling this special sitting of the Court to take place today. They also greatly welcome the invitation extended by the Court to the New Zealand Council of Trade Unions and to unions to address this sitting through counsel in John's memory, particularly in the knowledge that Susan and many other members of the family and friends are going to be here. So we greatly appreciate the opportunity to express these sentiments.

I am, Your Honours, asked by the unions to inform the Court today that John's name is honoured and respected as is his memory.

If the Court pleases

PAUL WICKS

Your Honours, colleagues, Sue, Anna, Alastair, Ben, Breezy and Tim, it is a significant privilege to speak today as a Chambers colleague and friend of John.

I must first acknowledge how grateful I am to John for the tremendous opportunity he gave me to work so closely with him and to learn so much. One could not have wished for a better mentor.

John, without fail, left nothing in the tank in preparing for, and running, his cases. His dedication to ensuring that he was as thoroughly prepared as possible meant that his clients not only benefited from a fearless and powerful advocate but also one who was ready for every twist and turn that might eventuate in the courtroom. He, at times of course, had his own unique approach to raising objection with the Court. In one criminal trial John's client had given evidence and was being asked some questions by the Court, ostensibly for clarification of course, but they were putting him right in it in front of the jury. So John promptly rose from his seat and asked to see the Judge in Chambers. Once the jury had left the Court he simply said to his Honour: "Your Honour's cross-examination is far too effective".

No matter the difficulty associated with either the case or the client, John was always willing to put his full efforts into seeking the best outcome. And the best outcome, of course, is not always to see the matter before the Court and in that regard, John was a fixer. He fixed cases that never saw the light of day for many high profile and public figures, cases that, if they had seen the light of day, would have no doubt wreaked havoc with the professional and personal lives of those people.

In this jurisdiction where litigation costs, for an employee, can readily spiral well beyond any available remedy, John was particularly able in fixing an employee's problem quickly and short of litigation. He would then, of course, ensure that the employer stumped up with a healthy sum for his legal costs.

In respect of the profession, John had an open door policy. His collegial approach and care about helping other lawyers in tricky or difficult situations was selfless. John was always available to help fellow practitioners, even when he was in the middle of a case or extremely busy. I recall over the years numerous practitioners coming into the Chambers where John would willingly give up his time without charge to help them with difficult issues on files or with their practice. And as a profession, senior members amongst the profession should all embrace the need from time to time to assist and guide other lawyers who call upon us. John set the finest example in that regard and it is an example worth following.

Over the years, John mentored, amongst others, Phillipa Muir, Marg Robins, Kathryn Beck and me. He taught all of us various tricks and strategies. On some occasions I encountered John becoming incensed by those that he had mentored exercising against him the very strategies that he himself had passed on. One very memorable moment was John bursting into my office after not getting what he wanted in trying to settle a case with Phillipa Muir and exclaiming that she was acting outrageously and trying to bully him.

John, of course, was always and also enormous fun to be in Chambers with. In recent years, within City Chambers, John was known as 'the General', not a reference to a couple of historical Generals of the same name but different spelling, but rather to his commanding presence within the Chambers, and the General would, from time to time, call the Chambers members together. We would be wearing shoes – he would not - as he preferred. The General would then invariably announce that if we couldn't win whatever case we were currently working on, then we should give up the law.

Over many years, practitioners and Judges walking down Shortland Street worked out that the loud banging on a window as they passed the General Building was John trying to attract their attention so he could offer a friendly gesture from the first floor.

John often walked at lunchtimes with his regular route being up through Albert Park. On occasions I accompanied John and at those times we would invariably pass colleagues and Judges. It was always a great reminder of what a special and well

respected man John was within our profession that those colleagues and Judges would always show obvious pleasure in greeting him or stopping to have a chat with him.

John was a true legend of the law and a great man whose death is a huge loss to his family, to City Chambers, and to the profession.

May it please your Honours

JUSTICE KIT TOOGOOD

Chief Judge, your Honours, members of the profession, other interested parties and particularly Sue, Anna, Alastair, members of John's family and his very wide circle of friends.

I am very privileged to have been asked by the Chief Judge to speak on this unique and very special occasion but I do so with a heavy heart. I have been asked to convey to you all the good wishes of the Judges and Associate Judges of the High Court, all of whom held John in the highest regard and many of whom, like me, counted him a good friend.

A number of my colleagues would have been here had it not been for a conflicting commitment in Wellington, and some of them have asked me to record specifically their regret at being unable to attend: Justice Robert Chambers of the Supreme Court, Chief High Court Judge Helen Winkelmann and Justices Rod Hansen, Mark Cooper, Raynor Asher and Peter Woodhouse.

Those outside the law might wonder how it could be that John and I became good friends because, although we appeared in court together on a good number of occasions and were often involved in disputes which never made it to court, we were never ever on the same side and our battles were always hard fought. In that sense, therefore, I suppose I am here as a representative of 'the dark side', both as a former counsel who appeared most often for employers, and as a former prosecutor.

It was in crime that my association with John began, in the late '70s when I was a Crown prosecutor in Wellington. On several occasions John came down from Auckland as counsel for accused whom I was prosecuting – always for serious crimes. So the stakes were high and John's clients would have expected him to regard me as the enemy and to act towards me accordingly.

But I very quickly developed enormous respect for him, not only for his exceptional ability as a jury advocate, but also for his integrity and his unfailing adherence to the

best traditions of the Bar. He was then, as he was until the tragically premature end of his long and distinguished career, a hard but fair opponent. And of course I took at once to his engaging personality. In those days, perhaps more so than now, the best traditions of the Bar included the traditions of the bar, with a small “b”.

The Wellington Supreme Court, as it then was, was conveniently located directly across Ballance Street from the back bar of De Bretts Hotel, and there counsel for the defence and the Crown would almost invariably meet after the verdict and, more often than not, before it. It was on those occasions that John’s endearing personal qualities were most obvious, particularly his sense of humour. Despite the intense rivalry of serious cases, we shared many laughs. I suppose it was often gallows humour which enabled us to lessen the tension and the emotional impact of the demanding business we were engaged in.

Among other things we learned we shared was the same birth date although, as I reminded John annually, he was much older than me.

When I moved to Auckland 20 years ago John, more than any other person, found work for me while I was trying to establish a reputation and a career here. It was typical of his concern for others that he did that. Of course most of the cases he sent me were hospital passes, to the extent that my secretary used to refer to him as “Dr Haigh”, but I was extremely grateful to him nonetheless.

John was a formidable opponent and it was no surprise – although a major disappointment, if not an annoyance, to me – that he won our last battle. The only comfort for me in the result – I have to be careful here because Judge Perkins is on the Bench – was knowing that there was probably no-one but John who could have won that case. I will miss him greatly.

But I want to end by thanking Sue and the family for sharing John with us.

JUDGE BARRIE TRAVIS

In more than 40 years of appearing before, or sitting on, the Bench of this Court and its predecessors, this, to my knowledge, is the first time we have ever held a memorial for a practitioner. This unique occasion, and the magnificent manner in which you have all responded to it, are a tribute to the regard in which John Haigh was held.

I first ran into John shortly after I arrived in Auckland and it did feel as though one had run into a brick wall. He was at the time fresh from a stunning forensic victory in the case that became known as *Hennessey v The Auckland City Council*.

That was a case brought under the Industrial Relations Act 1973 when personal grievances had to be brought by the person's union, unless that union had failed to act on the grievant's behalf. John succeeded in obtaining leave to act on behalf of Mr Hennessey personally because the union had concluded in that case that Mr Hennessey was no longer its member, having been dismissed by the City Council. John persuaded the Arbitration Court to share "Mr Hennessey's amazement at this rare gem of philosophy attributed to such a source". And leave was granted accordingly.

Mr Hennessey was a car park attendant. He was dismissed as a result of an incident in which he had punched a motorcyclist. He actually was attempting to punch the person who had attempted to hit him, missed and hit the pillion passenger. That person no doubt deserved it. At the end of his shift that day at 8 o'clock Mr Hennessey went on leave. He was duly dismissed whilst on that leave. Not surprisingly, the Arbitration Court found that Mr Hennessey was not accorded a full opportunity to defend his actions prior to the dismissal notice being issued. John succeeded in getting him reinstated together with lost wages. The City Council appealed by way of a case stated and obtained a stay of the proceedings.

In a judgment issued by Justice Somers on 29 March 1982, the Court of Appeal found that there was a failure on the part of the union to act and that leave had been properly granted. More importantly, John persuaded the Court of Appeal that the word

“unjustifiable” in the context of the wording “unjustifiably dismissed” was of wide import in the context of legislation that was intended to improve industrial relations, and in that context management had to act not only act fairly, but manifestly to be seen to be acting fairly. The Court of Appeal accepted John’s submissions that “unjustifiably” was not meant to be confined merely to legal justification but, because its integral feature was the word “unjust”, that is to say not in accordance with justice or fairness, a course of action was unjustifiable if that which was done could not be shown to be in accordance with justice and fairness.

As a result of John’s efforts, procedural fairness, as well as substantive justification, became part of the jurisprudence of determining personal grievances. They are now enshrined in the statutory test for justification to be found in section 103A of the Employment Relations Act 2000.

Unfortunately John was then able to use the *Hennessey* case to great effect in a series of cases on behalf of the Airline Stewards and Hostesses Union against Air New Zealand which I had the misfortune of trying to defend, albeit unsuccessfully.

The first involved a number of ground stewards at Mangere Airport who had their lockers searched and were then charged with theft as a result of the items found. I think if you assembled them all you probably could have constructed a Boeing 737.

The first case to come before the Arbitration Court was that of Dudley Neville Smith. While he was in the holding cells under the newly created District Court, which now ironically is the Metropolis Hotel, he was, with other members of his crew, brought out one by one and dismissed by Air New Zealand officials without the opportunity for any explanation. The Police prosecution against a number of those people, including Mr Smith, then failed, largely because the items that were found were sent off to the tip by mistake. John challenged the manner of their dismissal and, in reliance of the *Hennessey* case, it was found that Mr Smith, and in later cases the other ground stewards, had been unjustifiably dismissed and they were all duly reinstated.

I shall never forget John's memorable opening to the Arbitration Court in *Smith's* case. He referred to the fact that Air New Zealand had challenged the Erebus Commission's findings of "an orchestrated litany of lies" as far as the Privy Council on the grounds that this conclusion was unfairly reached as the company was not given the opportunity of responding to that accusation. "Contrast that with the way Air New Zealand has dealt with my client".

John used that same opening to great effect in each of the subsequent cases. The only way I dealt with it in the end was saying sotto voce behind him "Oh God, we're going to hear Erebus again" and that usually made him turn and say "That's alright for my learned friend to laugh" and he would start laughing too, which took some of the edge off.

I consider myself fortunate to have seen John again at his very best in the recent Ports of Auckland dispute to which you've heard reference. It was clear that John had put enormous effort into that case which was causing enormous hardship to both the community in Auckland, the members of the union, and to everyone who needed anything that came across the wharves.

He succeeded, I believe, and I hope I am right in saying this, in getting the parties to talk to each other again at a stage when things did not look as though they would ever reach any form of agreement, and I'm pleased to say the parties, to the best of my knowledge, are still talking.

I thought at the time that the case was causing a considerable toll to John. It was an example of his diligence and his involvement in difficult and controversial cases. It was also evidence of his deep concern for the people involved.

I personally find it very difficult to believe that I'm never going to see his towering figure striding into court again with that cheeky grin.

I extend to the family again my sincere condolences. John will be greatly missed.

JUDGE CORAL SHAW

For myself and (I've been asked to say on behalf of the family) Susan and her family, thank you so much for the opportunity for all of us to gather here today, for convening the special sitting, and for arranging it in such a thoughtful and caring way. It's much appreciated, I know, by the family who have asked me to extend their thanks.

Shortly after John died, the Herald reported that he had been described by one commentator as a "competent lawyer". I was out of the country, I read it I think in an aeroplane, and I was outraged at the gross understatement.

During his first 10 years at the independent Bar, I was practising at Haigh Lyon and was John's instructing solicitor in many cases, especially industrial and employment ones. I appeared at his side as junior counsel in several major criminal and employment cases.

John was the first to acknowledge that he was not a brilliant academic lawyer. He often said that you only needed the law if the facts didn't stack up. And he would audibly groan when Rodney Harrison or Kit Toogood, as he then was, presented the Court, as they invariably did, with casebooks and submissions weighing several tons. John would always say "[Groan] Look at ours, they're too small. Can't you get me more?".

There were many times when, after the briefest of scans, he would apparently completely disregard one of my dutifully produced, and of course immaculate, opinions or a wonderful line of cases that I thought we could rely on to bolster our client's case. However, John had the rare and innate gift of superbly sound legal and tactical judgment which I'm sure he inherited or absorbed, or both, from Frank for whom I also worked in his later years.

This was a 'first principles' approach, based on whether something felt right or felt fair, whether it smelt like a winner or smelt like a loser, and this was bolstered by his uncanny ability to read people accurately, including even the most inscrutable of Judges, none of whom of course are seated here.

From this intuitive foundation he, as we've heard already, could negotiate a settlement, craft a winning case, know when to push on or when to make a tactical but very well disguised withdrawal. He didn't start with case law but he used it as and when required to affirm his assessment of a case. Only then would he say "Isn't there a case to support us on this point?" and then there usually was.

Then there was his advocacy. Apart from sitting beside him as his junior, I saw it from both sides as well. From the Bar, as terrified counsel who occasionally opposed him, and from the Bench as a Judge, I watched him captivate juries and indeed ensnare Judges with his powers of persuasion. Such was his rock solid reputation that even the most hapless client would start his case off at an advantage. John could make what appeared to be the strongest case against him look vulnerable.

So I reject the "competent" label. He may not have been a text book lawyer's lawyer, but he was an utterly fearless people's lawyer who consistently produced results for his clients, whether it was above or below the radar of publicity. And that was another talent – and I think Paul Wicks has referred to this already – steering vulnerable clients out of the limelight and working quietly his magic behind the scenes.

In spite of all the references to his appearances in this Court, he was actually rather proud that so few of his cases actually made it here, and he would often say to me – he called me either "Judgie" or "Mum" – he would either say "Judgie" or "Mum, I won't have you Judges mucking it up".

He himself was approached several times to become a Judge. He turned down those offers without hesitation on the basis that he couldn't afford the pay cut. But actually I know that he preferred to be an advocate rather than the ultimate decision maker and he was appalled at the thought of ever sentencing a person to prison. It was something that he said he simply could not imagine doing.

I actually think he was wrong because he had most of the qualities required of a Judge, especially his fearless independence and his very fine judgment. He did lack a couple of qualities though because he did not suffer fools or boredom at all well.

I kept telling him he should take the offers, if only to escape the burdens of his practice which were growing increasingly heavy, but as usual he didn't listen to my advice. And I think that that is a great pity. The Judges' common rooms of New Zealand would have been much more entertaining places with him there and are much poorer without him, as indeed are we.

CHIEF JUDGE GRAEME COLGAN

I met John when he gave me my first job as a law clerk in a legal office in April 1975. The practice, then known as Haigh & Charters, was located in the Dickensian surrounds of the Dilworth Building in Auckland. My first desk was on a green linoleum floor underneath some hairdryers of the adjacent salon which had recently been taken over by the firm.

The partners then, Frank Haigh (John's renowned father) and Les Charters, who were both strong-willed men, had not spoken to each other more than perfunctorily for a number of years. Frank had summoned John back from his OE to New Zealand and to the practice, and Les Charters was dying. I don't think I'm disclosing anything I shouldn't when I say that John was doing conveyancing and other aspects of law to which he was not well suited and liked even less, and I was grateful that the practice was expanded modestly to accommodate me as a law clerk.

By 1975 personal injuries litigation, the bulk of the firm's business, was drying up and new sources of work had to be sought. These included criminal law and industrial law, both fields in which John later excelled in his own right.

He was certainly not a micro-manager of staff and I have always been grateful that I was thrown into litigation at the deep end, almost before I could swim. The meaningful involvement of juniors in a trial, and leaving them free to conduct their own litigation, has always been the mark of John's practice and others at least have flourished as confident and competent lawyers as a result of it.

When attempting to ensure that the firm's fees were covered in advance of a trial, John's euphemism was that "the aeroplane needs fuel to fly". The criminal practice that we were involved in saw the fuel coming in an interesting range of forms. At times, the firm owned a 1000cc motorcycle that was not going to be used for some time by its Northland drug dealing owner, a green Fiat 125 that always attracted the attention of the Police because of similar activities of its previous owner in Coromandel, and there was even for a time a firm boat that was taken in lieu of what

John used to describe as “the folding stuff”. For some time, also, John purchased from Noel Anderson QC (as he then was) a classic 1952 Riley car that UK Motorway Police of the era used for high speed chases. Each trip to the Otahuhu Magistrates Court from town required a filling stop.

To the tributes that have been paid to John and references to the leading cases and Commissions of Inquiry in which he was involved, I might just add some others.

In 1977 I was privileged to be his junior in prerogative writ proceedings in the High Court of the Cook Islands in Rarotonga. Anna, I remember that you were only literally a few weeks old at that time and I knew John really struggled with being away from his new baby for a week. Our client, a Cook Islands’ Member of Parliament vital to the Government’s majority, had been removed involuntarily to Auckland’s Oakley Hospital and certified as mentally incompetent by two medical practitioners. He thereby forfeited his seat in the House of Representatives of the Cook Islands and affected significantly the majority of the Government. The Speaker of Parliament and the Chief Electoral Officer, who were the defendants, were represented by DAR Williams (now QC) and the late Brad Giles. It was a fascinating case. Although the Chief Justice, Sir Gavin Donne, found that there had been breaches of the rules of natural justice in this extraordinary political exercise, the Judge decided, properly I would have to concede, to exercise the discretion not to reinstate him to Parliament. The case is reported as *Tangata v Speaker of the Legislative Assembly*.¹

It is not appreciated by many that John was also leading counsel in the Court of Appeal case in New Zealand which, in 1985, led indirectly to industrial (strike and lockout) injunctions being moved from the High Court to the (then) Labour Court.²

On his first formal appearance before me as a Judge John intoned, somewhat surprisingly “May it please your Honour, my name is Haigh”. I knew I should not have but I couldn’t resist asking John how he spelt his name. Predictably, of course, he got his revenge later.

¹ [1977] CKHC 1: JR 05.1977 (23 December 1977).

² *New Zealand Baking Trades Employees’ Industrial Union v General Foods Corporation (NZ) Ltd* [1985] 2 NZLR 110.

When arguing one of the first cases under the Employment Contracts Act, he submitted, with his trademark flourish that had more to do with a gesture to a jury than a legal submission, saying “Bill Birch (who was then Minister of Labour) had promised in a letter delivered to every household that employees’ terms and conditions of employment would not change!”. I interjected in Mr Haigh’s submissions to say that I had not received one of those letters in my letterbox, to which John’s prompt retort was: “Well I don’t expect he delivered them in Remuera Your Honour!”. Touché!

It is often said that good counsel know their tribunal. As Kathryn Beck mentioned, John was counsel in what ranks for me as a Judge as one of the most interesting and in some ways challenging cases that I have ever been privileged to hear, *NZ Amalgamated Printing Engineering & Manufacturing Union v Air New Zealand Ltd.*³ This is more commonly referred to as the Air New Zealand drug testing case and was one of the first major cases challenging the entitlement of an employer to impose unilaterally a drug testing regime on its entire workforce. As Kathryn said, Air New Zealand was represented by the late Robert Fardell QC and the case was heard by a full Court of three Judges of the Employment Court. The judgment might be seen, in one sense, to have been a compromise in that some, but not all, drug testing was found to be lawful. But it was a testament to John’s perceptiveness of the Court before whom he appeared that he later told me precisely and correctly what each of we three Judges had concluded individually and how this was crafted into a unanimous judgment. Kathryn was right that the drug avoidance product evidence was completely irrelevant to the case but was fascinating and Kathryn has reminded me that one of the products that one could then purchase in the United States was drug free urine which could be substituted in the testing procedure. It came with the name of “Urine luck”.

It is, for me as a Judge, important that we have senior counsel who are specialists in the field of employment law to argue important cases to the highest level and John, together with a relatively small number of other Silks, performed this function as an integral part of contributing to what we hope is best quality decision making. Although perhaps ironic to non-lawyers, it was, as others have said, in the best

³ [2004] 1 ERNZ 614.

traditions of the independent Bar and the now somewhat unfashionable ‘cab rank rule’, that one of John’s last briefs was for an employer party in litigation arising out of a very difficult industrial confrontation. I know, as Judge Travis has said, that he put the same care, skill and concern into that case, both for the client but also for a fair outcome, that was the hallmark of all his cases irrespective of whom he represented.

As Judge Shaw has alluded to, trials, no less in employment law, are essentially about facts. The law, and employment law in particular, has sufficient flexibility to be able to do justice on the facts in most cases and John was a master of the facts and of cross-examining of witnesses. He was, arguably, at his best in front of juries as had been his late father, Frank Haigh, many of whose mannerisms and attributes John shared.

Although the Court had seen less of John as counsel over recent years, it didn’t mean that he was not involved intensively in the practice of employment law. Whenever I reminded him that we hadn’t seen him recently, he promptly (and probably correctly) responded that there was little point in coming to a court that was parsimonious with its awards of compensation and damages. I of course immediately blamed the Court of Appeal, Justice Harrison, but John always said the settlements in which he was involved were for more than the courts would have allowed.

John once said that high profile lawyers are not always the best lawyers. I think that’s true generally, but it wasn’t true in his case. John was a lawyer without conceit or affectation and although it came to him naturally, it contributed significantly to his popularity and success.

Many will remember John’s throwaway remark on television a few years ago, standing outside the Auckland High Court beside his just acquitted client. In reference to what might be described as multi-participant amorous practices, John said somewhat exasperatedly: “Well, half the country’s doing it!”. Shortly afterwards I was at a social function at which John was also present. The host, now a Supreme Court Judge, explained that there were so many people there that not all of us could go to supper at once. He suggested that John Haigh’s “half of the population might like to go first”. No one moved and I think, Sue, the only sound was your exasperated

cry “Oh Johnny!”. As always, John took the joke at his expense in his usual good humour.

Legal practice, no less in the field of employment law, is satisfying but rarely enjoyable. It is difficult (not to mention wrong) to delight in the misfortunes of others although a just outcome to litigation is always aspirational. It came as close to enjoyment of the practice of law as was possible being associated with John Haigh, as I was, as an employee, a partner, a junior and a Judge. We are all both the beneficiaries of his practice of the law and deeply saddened by his untimely passing.

Before we adjourn, I ask that we remain sitting and observe a moment’s silence to each reflect on our good fortunes to have been touched in our lives in the law by John Haigh.

(One minute’s silence observed)

We will now adjourn.