

**BEFORE THE ENVIRONMENT COURT**

**IN THE MATTER** of a Special Sitting to honour  
Associate Professor Ken Palmer on his  
retirement

Court: Principal Environment Judge LJ Newhook  
Hon Justice AP Randerson  
Hon Justice ED Wylie  
Chief Employment Court Judge GL Colgan  
Environment Judge JA Smith  
Environment Judge DA Kirkpatrick  
Environment Commissioner ACE Leijnen

Addresses: Hon PM Salmon QC  
Ms BS Carruthers  
Mr AH Brown QC  
Mr RJ Somerville QC  
Professor BJ Barton  
Associate Professor KA Palmer in reply

Date: 10 December 2015

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**SPECIAL SITTING OF THE ENVIRONMENT COURT TO MARK THE  
RETIREMENT OF ASSOCIATE PROFESSOR K A PALMER**

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Judge Newhook Good afternoon everybody and welcome to what I think is a very special occasion richly deserved by Professor Ken Palmer after forty-six years of full time teaching at the Auckland University, and indeed having taught many of us. I'm not going to make a speech myself; we have six people who have agreed to address

the Court and you, Ken. My role after welcoming you is going to be to tell you of some interesting apologies that we've received. So, starting with the Chief Justice of New Zealand, who has sent a lovely letter, and as I think I've mentioned to you, Ken, I'm going to supply you with copies of the correspondence that we've received by people sending apologies and indeed some people accepting the invitation to come and be with us this afternoon. There were some lovely pieces of correspondence, as I am sure we can all imagine. Justice Whata is unable to be here. He wants me to pass on, and I'm not going to be lengthy with any of these apologies, but this one is a little deserving of mention. He says that he still hasn't quite got over the fact that he couldn't persuade you to give him a better grade for his final exam in planning law and he says: *unfortunately for me, Ken has always been able to see through fluffy argument*. I thought that was delightful. A communication from retired Judge David Sheppard, who has always regarded you as an outstanding contributor in your fields of specialisation and your influence on generations of students has been considerable; you have been scholarly and lawyerly. Environment Judge Melanie Harland is unable to be here, she is overseas. She was a former student of yours for her LLB, and, she says, for the LLM that she never finished. I don't know whose fault that was. You were patient with students. You were particularly welcoming of young women and made them feel comfortable and ready to take a worthy place in the legal world. Sir Malcolm Grant greets you from England, having known you for nearly 45 years, dating back to when you corresponded and met in the early '70s and before he left New Zealand to go to the UK; and he has some wonderful things to say about you as well. Letters from Vernon Rive, who is unable to attend because he's overseas as many people are. Martin Williams, until recently the president of the Resource Management Law Association; Gary Taylor of EDS; Robert MakGill who told me a very funny story about himself that I'll pass on to you later. It's complicated! So I won't detain people with it now. Simone Fraser, who is also overseas. Richard Brabant is "overseas" in the South Island.

Professor Bruce Harris. Prue Taylor, who I think is in Paris at the climate change conference at the moment. Professor Warren Brookbanks, Keith Berman, Justice Cooper and many others. I will provide you with the full list after we've  
5 concluded the sitting. Before I invite addresses, I wish to greet also your wife Vivienne and your daughter Sarah and son-in-law Stuart. We're very pleased to welcome you – and I think your son is here too. I haven't met him yet. So, welcome to members of Ken's family on this special day. I wish to call on  
10 the Honourable Justice Randerson to address.

Justice Randerson Thank you Principal Judge. These remarks, Ken, will be short but nevertheless heartfelt. They are short because we have a number of speakers and we are under strict instructions to keep our remarks fairly brief. I'm delighted to be invited to speak here at this special  
15 sitting of the Environment Court to mark your retirement, Ken, after forty-six years of service at the Law School at Auckland University. It's a particular privilege for me because you've been part of my own life, Ken, in the law, ever since I first enrolled at the University Law School in 1965. At that time you were just completing your LLB but that was just the beginning of a glittering academic career for you.  
20 Since then you've accumulated two masters degrees; one from Auckland and one from Harvard, and then later in 1976 an SJD from Virginia. And along the way you obtained a Diploma of Town Planning. That qualification reflected your lifetime interest in  
25 planning, resource management and local government law. You've made an outstanding contribution in all those fields; not only through your teaching responsibilities at the Law School but also through your numerous publications and the text books you have written. I particularly mention *Local Government Law in New Zealand* which  
30 ran to two editions, the last two substantial volumes, and more recently *Environmental and Resource Management Law* and *Local Authorities Law in New Zealand*. These works quickly became bibles in their respective fields, and just to take a tiny slice of one of them, I recall needing some quick and reliable guidance on the topic  
35 of the validity of conditions in resource consents. Of course I found all there was to know on that subject in your text clearly set out, thoughtfully and thoroughly as ever. This small example typifies

your approach to the law over a very long time. Careful, thorough and sound analysis, which has been a major help to students, practitioners and to the Courts. With the advantage of computer technology I've done a web search, which reveals some 900  
5 references to various of your publications at all levels of Courts – from the Planning Tribunal as it then was, to the Environment Court, to the High Court and the Court of Appeal. Speaking about the Courts, you found time to practice in the Court yourself. In your early years you were a prosecutor for the Crown Solicitor at  
10 Auckland at the firm of Meredith Connell, and you continued an interest in criminal law as an advisor to the Police for a number of years and in other capacities. Quite recently you gently, as you always do, raised with me some reservations about a decision I had written in the Court of Appeal about parties to criminal offences  
15 under s 66 of the Crimes Act. Well Ken, your reservations proved to be well founded because it wasn't long after that we received some corrective training from the Supreme Court on that particular point. Something, of course, we bear bravely. And you've appeared in a number of reported cases, including at least two reported cases in the  
20 Court of Appeal. One was a landmark case in 1997 over the rating of Māori land in which you successfully resisted an appeal by the Valuer General. That was of great significance to the value of Māori land, because you were successful in establishing that Māori land, because of the constraints on alienation, should be valued at a lower  
25 level than non-Māori general land. And the other one was in 1985 about the Centrepoint land at Albany that became famous or infamous at the time. The Law Report of that case shows you appeared with the late Michael Crew, but there were a cast of other interesting individuals; one MLS Cooper appeared for the Council.  
30 He is now of course one of my valuable colleagues; and the objectors were represented by none other than PT Cavanagh, who wasn't then a QC but he is now; and DA Kirkpatrick, who is sitting next to me on the bench. So a veritable who's who of the planning and resource management field in that case. I will leave it to others to speak of  
35 your many other achievements, Ken, but I want to close by mentioning some of your personal attributes. No doubt to your considerable embarrassment because, above all else, you are a humble man; not giving to seeking the limelight or seeking publicity

5 for yourself. You have an unenviable reputation by all who know you of honesty, integrity and kindness. These are enduring personal values that transcend in importance all the very considerable achievements you've made in your lengthy career. I know that you will continue to contribute to the Law School and in the many other ways you have had to date for the benefit of the profession, the Courts and the public at large. I wish you and Vivienne and your family a long, happy and health retirement.

Judge Newhook Thank you Justice Randerson. The Honourable Peter Salmon.

10 Peter Salmon QC Yes, thank you. It is rather odd offering a tribute to a man sitting so close to me here. It is my great privilege to do so and so I hope that the bench won't mind if I turn to my right from time to time rather than speaking to the bench.

Judge Newhook Leave is granted.

15 Mr Salmon QC A common thread to all the material that is about to be presented today about Ken is his continuing and valuable support to all organisations and committees dealing with planning, local government and the environment. And I intend to refer in particular to his work for the Auckland District Law Society and its successor the Auckland District  
20 Law Society Incorporated I think it's called, and to the Resource Management Law Association. So, dealing with the Auckland District Law Society. Ken's been a member of the continuing professional development committee from 2000 to 2014. Geoff Hardy, the  
25 convenor of that committee for all that time, tells me that Ken was involved as planner for and participant in local government, resource management and environmental seminars and webinars. I had to ask him what a webinar was, but I now know. The committee relied on Ken as a font of knowledge in all these areas. He very seldom missed a  
30 meeting, and made many helpful suggestions for the content of seminars and no doubt webinars as well. John Burns was equally as effusive in describing Ken's contribution to the Auckland Society's Resource Management Law Committee, of which Ken has been a member since 2004. And I think you still are, Ken? Yes. Ken is the longest-serving member of that committee and seldom misses a

meeting, John tells me. He keeps the committee up to date on case law and legislative development and contributes case notes to Society publications. Submissions he has made include on the reform of local government and resource management law. These are submissions on behalf of the committee – reform of local government and resource management law, the establishment of the Auckland Council, and comment on the rules in the Unitary Plan. Now the Resource Management Law Association. The inaugural meeting of that organisation was on 1 October 1992. I was there, so was Ken, and so were quite a number of other people in this room. And so Ken was one of the original members of the Association and he has been a great supporter of it since then. In particular, he's given enormous support to the Auckland Branch of the Association and at least in earlier years always attended Auckland seminars and events. The Resource Management Law Association occasionally makes awards for outstanding individual contributions to the law, theory and practice of resource management. And proof of Ken's contribution to the Association and to resource management law more widely is that in 2002 the Outstanding Person Award went to Ken. And the citation included these words: *It is no exaggeration to say that Dr Palmer is widely regarded as the guru of resource management and local government law in New Zealand, and in support of that proposition the citation noted that Dr Palmer commands the respect of colleagues as evidenced by invitations to address local and international conferences and countless references to his work in other academic writing, and then follow examples of the judiciary as evidenced by many references to his writings in judgments and invitations to address judicial symposia, and of the profession as evidenced by the number of his students who have gone on to become leading practitioners and judges, and by deference to his wealth of knowledge by practitioners who often seek his counsel on difficult matters of law.* And the citation also says this: *His opinion, advice and support has been relied upon in many areas, including in relation to heritage protection, aquaculture and marina development.* And I've been asked particularly by the secretary of the Association to make this point, that the respect in which Ken is held has led the Resource Management Law Association to pay for the catering for this event. On more general matters, Ken has also made an important contribution to the wider community. He was the chair of

the Tamaki Drive Protection Society for ten years; and he has been a member of the Remuera Rotary Club for many years. How many, Ken?

- Professor Palmer Not so many.
- 5 Mr Salmon QC Oh, not so many. Alright, not so many years. At a personal level, two instances of my association with Ken illustrate important talents which have made him widely admired as a teacher and as an academic. At his request I made a presentation to one of his masters classes, and I saw at first hand the admiration which the students had for him and which I am able to say, second hand, I know is generally the case throughout the university. I also spoke at the launch of Ken's seminal publication on *Local Authorities Law*. I had to read it before I did that, and I was deeply impressed at the depth of research and the breadth of coverage of that text. At a personal level I count Ken as a friend and colleague, and I am delighted that I have been able to add my contribution to this special sitting.
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- Judge Newhook Thank you Mr Salmon. I call on Bronwyn Carruthers to address on behalf of the New Zealand Law Society.
- Ms Carruthers Thank you sir. I am delighted to speak today on behalf of the New Zealand Law Society's Environmental Law Committee at this special sitting for Dr Palmer. In addition to your work with the Auckland District Law Society, I understand from both current and former members of the Environmental Law Committee that you have been always willing to assist and participate in the Law Society's activities, including the time-consuming "intensives" that travel the country delivering continuing education. I was reading today your 2005 analysis of recent case law developments that you did for the New Zealand Law Society. An impressive and ambitious number of cases to cover in one paper, including the Supreme Court's decision in *Discount Brands*, the latest developments in the *Wairau Pak'n Save* at the time; the apartment tower above the St James theatre which is still ongoing today; the water allocation decisions of Waitaki and Aoraki, and also the hot topics of the time of
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permitted baseline, precedent and cumulative effects, the conflicts between financial and development contributions as well as Māori rights and cultural issues. An ambitious number of cases to cover in one intensive, which must have taken a

5 tremendous time and effort to prepare. In addition to your own textbook and extensive list of publications I also wish to acknowledge that you've authored four chapters in Derek's *Environmental and Resource Management Law* textbook – the introduction, the sources and institutions of environmental law,

10 the RMA and also the heritage chapter. That itself is a significant achievement of yours. Now I wasn't taught by you, Dr Palmer, as I'm not an Auckland grad, and I knew you by name and not by face until I came across you in a case for the Tamaki Drive Protection Society that was just referred to recently. One of, as I

15 understand, many of the community groups and associations you've been involved with over time; though that wasn't a high profile case at all but just a council level community hearing. You struck me as a modest, courteous and kind individual to work with and it was a pleasure to meet you and be involved in

20 that. Finally I wish to note the great woman that is clearly behind every successful man, Vivienne in this case. I wish to acknowledge the support that I'm sure she's provided you through your career and that together, acknowledge the significant contribution you've made during a remarkable career.

25 Judge Newhook Thank you Ms Carruthers. Andrew Brown, QC.

Andrew Brown QC Thank you Judge. It's a pleasure and privilege to be saying a few words to honour Associate Professor Ken Palmer at this special court sitting. I'm here as the current Director of the Legal

30 Research Foundation, which this year celebrated its 50<sup>th</sup> anniversary and most of you here will know that the LRF is a unique partnership between the University of Auckland Law School and the legal profession, and that it publishes the New Zealand Law Review. Throughout his career, Dr Ken Palmer has made very significant contributions not only to the LRF but to the

35 whole of the legal profession through his editorship of the "Recent Law" journal which was the forerunner to the New

Zealand Law Review. Ken Palmer was there at the beginning of the LRF. As a recent graduate he was one of the initial speakers at the LRF's very first conference in 1965. In 1966 the foundation launched *New Zealand Recent Law* to fill an unmet need of practitioners for reports on legislative developments and the content of unreported case decisions. The first editor was the redoubtable John Aeneas Byron O'Keefe – lecturer, plumber and water diviner. He was followed by Professor Dick Webb, Don McMorland, David Vaver and Roger Connard – all names to remember for those of us old enough to do so. And the publication in its early days was largely dominated by notes on new legislation, with a smattering of small, short case summaries. And in those early years the publication enjoyed an almost exclusive market coverage with no competitors. Although Butterworths tried to compete with *Butterworth's Current Law* in the mid '70s, *Recent Law* really cemented its position when Ken Palmer took over as editor. And he remained editor for a formidable ten years. And *Recent Law* in its distinctive pink cover and under Ken's hand really became a must-read for practitioners and others and for those in the law schools. Sir Grant Hammond reminded us during our 50<sup>th</sup> celebrations that this was a period when finding out about the law was mechanical, not digital, and that the public benefit that the review provided would likely not be recognised by today's practitioners crouched over their computers. Ken Palmer's part in this was nothing short of total dedication. It's fair to say he evolved the journal to offer more systematic subject coverage, more comprehensive analysis of recent High Court cases with added legal comment to ensure that academic insight was maintained. Not only did he write considerable parts of *Recent Law*, but he would lay out the final case notes in the study or common room and then he would transport them down to the typesetters and printers, and when they came back he would carry out the final editorial checks and the issue was then sent off for printing and distribution – and incredibly there were eleven monthly parts in the annual subscription, so it was an enormous labour. In 1988 *Recent Law* morphed into the *New Zealand Law Review* and that was a successful transition which had its foundations well and truly

5 based on the sustained dedication which Ken made over ten  
years. And earlier this year, in recognition of Ken's sustained  
contribution, the LRF made him a life member. And finally, if I  
could be permitted a personal tribute as one of Ken Palmer's  
10 students. Ken's lectures on planning – like the man himself –  
were incredibly thorough and detailed, and when you went back  
to write up your lecture notes for exam study it was all there  
logically set out with insightful commentary – the law student's  
dream. And on your retirement Ken, the Legal Research  
15 Foundation and your many colleagues and friends in the  
profession would like to thank you sincerely for all that you have  
done for legal writing, for scholarship and the vital interface  
between the law school and the profession, and I think this whole  
occasion is a very fitting testament to the enormously high regard  
in which you are held.

Judge Newhook Thank you Mr Brown. Royden Somerville QC.

Dr Somerville QC May it please the Court. I am privileged today to acknowledge  
my learned friend Dr Kenneth Palmer's significant contribution  
20 to environmental, resource management, local government and  
building and construction law in New Zealand. When I  
commenced practice in the 1970s Sweet & Maxwell published  
two books written by Dr Palmer. *Planning Law in New Zealand*  
and *Local Government Law in New Zealand*. They were an  
excellent resource for practitioners involved in planning, water  
25 and soil, and local government cases. I recall that it wasn't until  
1980 that I first met Ken, when he was appearing as counsel for  
the respondent local authority before the Number Two division of  
the Planning Tribunal. And that was in the case of ***Smith and  
others v Waimate West County Council*** which involved a  
30 proposal by the Natural Gas Corporation of New Zealand  
Limited to establish an ammonia/urea fertiliser complex in South  
Taranaki. And as a footnote, my learned friend Mr Cavanagh  
was appearing for EDS in that case. Thirty-five years on Dr  
Palmer still holds a practicing certificate as a barrister of the High  
35 Court. I consider that it is the combination of Ken being both an  
academic and a barrister that has anchored his applied

scholarship. Ken's research and writing provides significant assistance for those appearing and arguing cases in the specialist Environment Court and the superior Courts. His textbooks and contributions to other texts, his well crafted and precise case notes, his thorough commentaries on existing law and his tempered and well considered opinion pieces on law reform proposals have greatly assisted and informed counsel and academics. Of course Ken's principal influence on the development of the law has been as an academic. For some years I've had the privilege, along with the Honourable Peter Salmon QC, of being a member of the Advisory Board for the New Zealand Centre for Environmental Law. The Centre is made up of a superb team of academics from Auckland which includes Ken, and is well known internationally for its excellent work in environmental law. I particularly want to thank Ken for his sterling work with the establishment and publication of the *New Zealand Journal of Environmental Law*. He has been general editor since it was first published in 1997. It is the go-to peer review journal in the field for those of us practicing before this Court. Ken's careful selection of topics ensures that relevant legal issues are addressed comprehensively and that there is a high level of analysis. Over the years Ken's willingness to assist fellow practitioners and academics has always been greatly appreciated. For example I am well aware that in Dunedin the academics of the University of Otago's Faculty of Law have valued Ken's guidance wisdom and graciousness. The Dean of the Law School, Professor Henaghan, sent me a message for today's sitting. He wrote: *On behalf of all my colleagues at the Law Faculty, University of Otago, we wish Ken every happiness in retirement. Ken is a model scholar and colleague who has been a kind and gentle mentor to so many. Ken has left a legacy of impeccable scholarship that will stand the test of time. His contribution has been immense. Best wishes, Mark.* Associate Professor Nicola Wheen wrote: *Way back in 1997 Ken Palmer reviewed what became my first published article. He complimented me on my impressive depth of research and I felt truly honoured. This was a bit like Mother Theresa complimenting another for kindness. Such praise from the*

*master of depth of research and the king of attention to detail. During his career this is Nicola still, During his career Ken has contributed hugely to legal research in New Zealand. Whenever you read or consult Ken's work you know you can rely on it. It is*

5 *all built on meticulous research and displays both deep and comprehensive scholarship as well as an obvious love for resource management and local government law. Best wishes, Nic.* Associate Professor Ceri Warnock, currently at Oxford University completing her NZ Law Foundation report on the

10 *New Zealand Environment Court, wrote: It is the end of an era. Ken has been my teacher, mentor and friend. He has a true generosity of spirit, a deep and substantial understanding of the law and he will be greatly missed. With best wishes, Ceri.* I also had the privilege of observing Ken operating as a supervisor of a

15 *PhD student for whom I was an external examiner. His assistance, care and support for the student were notable. I also had the good fortune to have Ken as an external examiner of my own PhD. Over the years I've greatly appreciated Ken's collegiality and wise counsel. I have particularly enjoyed sharing occasional speaking engagements with him, including at the Environment Court's conference at Hamner Springs. Now that Dr Palmer is pacing himself by focusing only on one mammoth task, namely updating his superb text *Local Authorities Law in New Zealand*, hopefully he and Vivienne will have more time to travel and even revisit the South Island. I remind you Ken that next Easter at the 2016 Warbirds over Wanaka Air Show there will be a Catalina PB5A flying boat. I'm sure you'll agree that this is a good reason for a trip south. On behalf of your colleagues at the bar I extend to you and Vivienne best wishes for the future. Haere ra. May it please the Court.*

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Judge Newhook Thank you Dr Somerville. Professor Barry Barton of Waikato University.

35 Professor Barton Thank you, Sir. Let me speak on Associate Professor Kenneth Palmer as an academic. Dr Palmer is without doubt the leading academic of environmental law and local government law in New Zealand. In teaching he has long taught courses in

planning law, resource management law and local government law. He was involved in the pioneering of teaching law in these fields for non-lawyers. He has supervised a great number of research theses and dissertations and with great skill as we've heard. In research Dr Palmer's achievements include textbooks, the importance of which has already been touched on; local authorities law, which is in fact the third of its line – twelve hundred pages – environmental and resource management law has been mentioned. Essentially he wrote a quarter of it and without causing any disturbance to contributors of other chapters, I think we could say that that 330 pages is the go-to place for an analysis of how the RMA works. Contributions to *Laws of New Zealand* for resource management and harbours; a huge number of other chapters, articles and case notes. In *Resource Management Bulletin* and *Recent Law* an academic contribution of continuing analysis and appraisal – timely, incisive, a type of scholarship that is hugely difficult but extremely valuable. Founder, as you've heard of the *NZJEL* and frequent contributor to the *Resource Management Bulletin*. And there have been numerous deferential references to this body of work by judges at all levels, and if it is 900 then I am not at all surprised. Dr Palmer has also contributed to law reform as an academic. One that has not been touched on is Select Committee submissions. In particular one of them led to removal of the power of sale for Māori lands in the event of arrears in paying rates, and since then no Māori land has been forfeited in rating sale. That was an important contribution to the Treaty partnership and to social justice in New Zealand. He has made a lot of less formal contributions such as media discussion, letters to the editor, opinion pieces and interviews. These contributions have always been well grounded in careful analysis. His work in this and everything else are detailed, accurate and insightful. And, as I said, always timely. He reads everything, apparently, as soon as it is available and is swift to form a view about it. His writing, however, has always been judicious, balanced and non-partisan. At the same time lucid, clear and even forthright in its judgment. I also have a list of people who bring their greetings

from the academic world. We've heard from Otago – thank you, Royden. Jacinta Ruru also sends her very best wishes. Vernon Rive of AUT, Catherine Irons of Victoria, Karen Scott and Ben France-Hudson of Canterbury; Liz Toomey points out that his contribution has been a remarkable one. Prue Taylor of Auckland especially draws our attention to his humility, generosity and truly collegial character. Alexander Gillespie from Waikato describes him as the perfect scholar. His attention to detail and accuracy reflect scholarship as a craft that few have ever mastered to such a high degree. Trevor Daya-Winterbottom says that Ken has always been a great friend and extreme supporter of environmental lawyers generally. Trevor first met Ken in 1995 on Trevor's arrival in New Zealand, and I think I saw him somewhere so I hope it will be alright if I mention an anecdote of the introduction he had from a distinguished British academic who set up the meeting, advising Trevor that there were two Palmers in environmental law in New Zealand and telling him that he was meeting the one who counted. From that day their professional relationship has continued and Trevor has found Ken to be an inspiring mentor. My colleague Pip Wallace, also of Waikato, declares that Ken was her favourite lecturer of all time!! And she is not sure what she will do without his writing contributions. It has been her planning and local government encyclopaedia for the last three decades. Happily Pip can rely on that source of scholarship for a good while yet. So these sentiments I think are ones that many of us would endorse from our own experience. And indeed just last night one of my own graduate students, when I mentioned I was coming here, spoke enthusiastically about how grateful she was for the help she had had from Ken when he was editing an article that she had diffidently submitted to the NZJEL. I too first met Dr Palmer as one of his students in his planning law lectures. You always knew where you were, and in those days without much in the way of textbooks, thank goodness. And you were well equipped to make sense of a very complex picture. You were someone you could stay in touch with after law school and I'm very glad that I did so. I have valued the friendship and

professional association over the year. David Grinlington is one of his closest colleagues, perhaps, in the academic world. He, however, is in the snows of Western Ontario; wishes he could be with us and asks me to say this and given the

5 closeness, if I can quote him, *Ken's colleagues at the Auckland Faculty of Law have always found him generous with his time, willing to share his immense knowledge of the law and willing to take the role of mentor when needed. He has been an excellent and dedicated teacher of generations of students, with*

10 *his knowledge and wise counsel continuing to be sought and valued as those students move into legal practice, government service or the judiciary, (as evidenced by this gathering). He is a colleague to be relied on to provide balanced analysis of issues whether they concern legal or academic questions or*

15 *university management. Ken can be sure to provide resolute support for the correct legal analysis or management outcome, but can also be a tough and implacable opponent where he believes that there has been injustice or lack of integrity in argument or decision-making. He and his wife Vivienne have also been wonderful hosts for faculty social functions and for*

20 *countless visiting overseas academics and graduate students who have happy memories of Sunday evening get togethers at number 9 Reihana Street. So, thank you David Grinlington. Overall Dr Palmer has made an outstanding contribution over*

25 *forty years to teaching, research, practice, policy, public understanding and law reform in his particular fields of scholarship, and he's done much to ensure the growth and maturity and the sophistication of environmental law as it emerged from kind of nowhere really in the '60s and '70s into*

30 *the situation that it is now. I think we can say he has been one of the outstanding thought leaders in our field. He commands the respect of academic colleagues locally and internationally. He is held in great affection, held in respect, held in honour. There is no exaggeration to say that Dr Palmer is widely*

35 *regarded as the doyen of resource management and local government law in New Zealand so I am pleased to be part of recognising his splendid contribution and thank him for it.*

- Judge Newhook      Thank you Professor. Now Ken, Professor Ken Palmer. There's a need for a sort of coming back from quite a bit of material; the task is now yours.
- 5      Professor Palmer      May it please the Court. I wish to first acknowledge my profound appreciation at the honour of this special sitting of the Court. I feel humbled by the large attendance that is here at the present time. I would like to acknowledge the fulsome tributes that have been paid by the speakers, by the judiciary and other eminent speakers. I almost feel overwhelmed by that and a lot to live up to in the next coming months and years. I would like to comment on the individual tributes but in the interests of time I won't do that, but I will, perhaps, allude to a few things that have been said as I make some comments of my own. And I hope that I am not sort of repeating things that have already been said. At least if I do it will be from a slightly different approach. So, thank you for this opportunity to say something on my retirement. It's a moment that, I think as Russell Bartlett reminded me about a month ago at a social gathering, it may not come again, I'd better take advantage of it, but it's nice to be able to be present. Thank you, Russell. So, I think perhaps I should say something about my younger days and how it has perhaps made me the person I am today. I grew up in the city of Wanganui or the town of Wanganui. It's one of those places that's relatively stagnant in growth of cities so it's perhaps a nice place to grow up in but a nice place to leave, I would think. I attended the Collegiate School. My father was a hard working lawyer in the town, and in a way his hard work sort of almost put me off law. I thought, *goodness me, what a way to earn a living*, with conveyancing fees on a scale then in Wanganui were about half those on the same scale in Auckland because of the depressed property prices. I then came to Auckland in 1959 and I elected to enrol at that stage for a degree in architecture for various reasons. So I started at the school of architecture. Over several summer vacations I worked on building sites as one does as a student to get practical experience and train as a carpenter, and one of the houses I did work on was a property next to ours in Wanganui
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owned by John Treadwell. And John knew I was on this course, and of course I knew him very well later as a judge of this Court. So with his house I think I put in all the concrete foundations, and the flooring and a few things like that. So I've  
5 always had a long affection for the late Judge Treadwell. After a couple of years at Auckland at the architecture school I decided that I didn't quite have the flair that some of my colleagues were showing as top students in design, so I thought well perhaps I'd better just take a more conservative role and  
10 change to law, which I did. And knowing also that a lot of architects get involved in contract disputes and all the rest of it, so part of their life is to deal with the law as well and to have to cope with all those pesky regulations and district planning schemes. But that time was not lost – the time at the  
15 architecture school – it was not wasted. I certainly recall lectures by the late Dr Ivan Porsolt who lectured in architectural history, and that left me with quite an enduring sense of architecture on a grand scale throughout the world, planning of the master cities, Canberra, other places, new  
20 towns. So I had a pretty solid introduction in that area. Coming to Auckland and joining the law school from 1961 onwards, as one did in those days I became a law clerk and did the degree part time. And I performed the usual tasks of going to the Land Transfer Office, looking at subdivision plans, titles and debating the acceptability of documents. After that time,  
25 when I had just graduated with the LLB, I took a year out to take a masters degree in Auckland, full time; and to be the first tutor, first fulltime tutor at the Auckland Law School. But after that year I then joined the Crown Solicitor's office, Meredith Connell, and spent almost two years doing departmental  
30 prosecutions and High Court jury trials. And those jury trials included some of the homicide cases and things under Justice Speight, so it was a very wide experience, and one that I found very interesting. One particular departmental prosecution I do  
35 remember was having to prosecute Captain Fred Ladd for flying his amphibian aircraft under the harbour bridge – this was one of his bucket list things to do before he retired. And he did it. But he flew too low and without any good reason, so I

had to prosecute him and I do remember going to his house in Parnell and serving him with the summons. I had an interest in aviation as has been mentioned, (mention of the Wanaka Warbirds), so I served the Information and he invited me in and we had a few drinks and so by the time I left I had determined that somehow or other, although I was the prosecutor, I had to make sure this person wasn't convicted. So, rather unusual for the prosecutor. I think I almost outdid the defence counsel and the Judge, who I think I used to get the bus home to Orakei with, he was very obliging and discharged Captain Ladd without a conviction – but certainly recognising his immense public services in rescuing people, and throwing copies of the Herald out the aircraft window as he zoomed over Waiheke. Subsequently, in late 1967, I applied for and obtained entry to Harvard Law School. I was thinking of taking another LLM degree. I left with my wife Vivienne and baby daughter Sarah, who is here today, for that purpose. At Harvard my main interest was in civil rights. It was the middle of the civil rights era in America. The Vietnam War, civil rights, and the takeover of the management, delivery of civil rights by the Federal Courts that ordered there should be bussing amongst schools to make sure that children from elite areas were mixed with children from poorer areas – a very controversial, but judicially-led activity. So, at Harvard I was in a way inspired by its civil rights movement and the beginning of human rights which of course is very much the forefront today. It's something that I think has remained with me in relation to fairness in a community, and it's, I think, behind an interest I have in mitigation of present day topics such as the housing shortage in Auckland and the inability to access home ownership. So that's a little bit of background. On returning to Auckland in 1969 I took up a lecturer position at the Auckland Law School under the late Professor Jack Northey, teaching initially criminal law and in the following year adding the subject town and country planning. And I think Jim Farmer was there at the time before he went off to Cambridge. The criminal lecturing continued, along of course with planning law. The criminal lecturing went for 21 years, and I have done

5 some more recently, and it included lectures to the New Zealand Police force and in that role I was quite happy and keen to try to instil into these people, who were going to become commissioned officers, a little of the ethic of civil liberties, civil rights, so I was part of that beginning in Auckland. In fact, for a couple of years I think I was President of the Auckland Council for Civil Liberties and I think my colleague Bill Hodge, who is here today, jokes with me occasionally about having led a procession down Queen Street just proclaiming there was such a thing as civil liberties. So that, of course, is very common today. I continued my barrister's practice on a part time basis, doing some opinion work; and I did some locum work for the city solicitors in Rotorua, Davys Burton. Again thinking of colleagues who went through the law school with me, both David Williams and Jim Farmer, I think I actually inherited some of this work from Jim, who had also been involved with those city solicitors. But, it was this locum work that gave rise to my first appearance before the Number One Town and Country Planning Appeal Board, chaired by His Honour Judge Turner. And I'm delighted to see you here today, Judge. This was my first appearance before what is now the Environment Court and I represented the Rotorua Council. It involved an appeal against a change of use application the city had granted to allow a new supermarket development, a big complex, along Fairy Springs Road – an area which was nowhere near the existing commercial development. So, predictably, it was appealed by the existing city supermarkets in the city itself. I do recall that on first standing to examine a witness for the appellant, I was asked by His Honour, in a rather stern manner – I still remember this – whether I elected to adopt the evidence presented, in which case I would be able to ask supplementary questions, and only if I rejected the evidence could I undertake cross examination. For several moments I hesitated in my answer; this was something I'd never learnt about in law school. I can't recall actually what I elected to do...

Judge Turner

Neither can I.

Professor Palmer I might say that the city lost the case. He overturned their decision. I think, appropriately when it comes to supermarkets, you need to do a lot of spadework to get the right outcome and Council hadn't done that research. Anyway, the result of all of this was that it imparted to me a lesson that has remained ever since, that the Appeal Board then, later the Planning Tribunal, and today the Environment Court were serious judicial bodies in which the presiding Judge directs the conduct of the Court and all counsel and witnesses should wisely take appropriate notice. So, that's something that has remained and has been part of my teaching to the students; to engender that they have the same respect for the Court. This is a very serious process, it's an area of law that is equal to any other law area. It involves huge financial decisions and is one that also requires a special approach. In my earlier years I found it quite important to try to persuade the students that this was not a criminal trial, a criminal court; you should not be overly aggressive as a lawyer or advocate, and there's a different culture about the Court and I hope that that recognition of the culture of this Court has remained in place, and I think that it probably has. So mention has been made that in 1974 I completed a diploma in town planning. This was to enhance the breadth of my planning lectures. I thought I didn't really know enough about the subject needed to cross over to the town planner's side to have a better understanding. So I did what was then a diploma – it's now a degree – and I recall in particular Mr Jim Dart, who was a member, a commissioner, on this Court later on, in lectures asking the rhetorical question whether Auckland should expand its urban zone down the motorway corridor way beyond Pokeno to solve any access problems and housing shortage. That was quite a radical suggestion. I don't know – presumably it was tongue-in-cheek. Also, production of a home garden, he said, could greatly exceed production of any farming activity, so one should be wary of urban constraints, not so restrictive on giving consents. Again, I don't know how he measured up when he was a commissioner, but I'm sure he made appropriate decisions. The locum work in Rotorua gave rise to another concern and that was that there was no comprehensive textbook on local

government law in New Zealand, which could have covered those things such as roads, sewers and rating. The opportunity came later in 1975 when I had leave in the United Kingdom. I commenced to prepare a text on local government law following two UK publications. Half way through the year I gained access to entry to the University of Virginia in Charlottesville, to undertake a doctorate in Juridical Science. So over the following academic year I was able to complete a thesis on a comparative study of New Zealand, United States and United Kingdom local government and planning law. Back in New Zealand the outcome was a revision of that thesis and the publication of the two books that have been mentioned *Local Government Law in New Zealand* and *Planning Law in New Zealand*. So that's where my books really started. I should acknowledge that four years later, in 1980, there was also published the seminal text by DAR Williams, QC, on the fledgling subject environmental law. It's interesting that in those days in 1980 environmental law was a term that hardly came into the language in New Zealand. There was town and country planning but environment as the overview, the broad approach, was only just appearing and so I just pay that tribute to David Williams. My texts have followed various iterations and my most recent book has been as mentioned *Local Authorities Law in New Zealand*, published in 2012. And that includes several large chapters on the RMA. I'd also written a part for the *Laws of New Zealand* and I also took up taking part in rewrites under Derek Nolan when he took over what was David Williams's book and has now become the Lexis Nexis text *Environmental and Resource Management Law*. And that included heritage, as an extra chapter that was written by myself as part of my interest in law and heritage. That heritage interest has been assisted by leave spent in the UK, which is full of wonderful stately homes and cathedrals and a huge history of heritage. Also, of course, those leaves taken overseas, which are a wonderful privilege for academic people, do allow comparative insights into managing things and one can reflect on the way the United Kingdom with 60 million people in an area the same size as New Zealand has been able to deliver public transport services, deliver motorways, cycleways, deal with housing

density and affordable housing – many of the situations now being faced I think by His Honour Judge Kirkpatrick in the Auckland Unitary Plan, so there's a lot to be taken perhaps from overseas we could consider. Returning to practice matters, I have, as mentioned, been involved in ADLS committees for many years, the continuing legal education, the resource management committee and I've made many submissions through them or on others' behalf. Regarding the present day, I have just seen, but have not read, the Resource Legislation Amendment bill which has just come out, 2015. One hundred and eighty pages – I sort of wilt when these new amendments come through Parliament. They are all prefaced with the idea of simplification but another hundred pages is not necessarily going to produce that outcome. But I notice that the Productivity Commission in the last month has said that they're going to have a first principles look at the whole area of planning and resource management starting from scratch, so this will be something to ponder next year – what they come up with. It could be sort of reinventing the wheel. Anyway, one thing that I can claim some success in, and this has been mentioned already, was my submission in 1987 in relation to the rating of Māori land. I had earlier written something about Māori land being taken under the Public Works Act and getting a very stiff letter from the Māori Trustee, who said that it wasn't appropriate for me to say the Māori Trustee should look after Māori interests – it wasn't his job. He then said, well, he said there's going to be a hui which you can come along to and talk about this, so I did that, down at Taupo. And I was struck by the fact that a number of senior Māori Kaumatua at this hui said they had sold up land or lost land because of rating burden, and I noticed that the Rating Act still allowed for this, so when it came up for revision I made a very strong submission that this was not appropriate any longer. The Treaty of Waitangi said the Crown would protect Māori land and I got the New Zealand Māori Council to come on side – I was very pleased that the Committee changed the law so there's no longer any sale of Māori land for rating default. Ten years later there was another question about the proper valuation of Māori land, because it also seemed, again coming out of this hui,

that some Māori land was being given excessive land values. It was being valued the same as European land and this was causing hardship because of restrictions in the law on the sale of Māori land, that it wasn't able to be sold on the open market, and certainly not to overseas investors, that Māori land would really have a different valuation. It would have a Māori sort of purchasing assessment, what is the capacity of the iwi to purchase shares in their own land? This was something which was quite radical but one of my students said I should take up the challenge and he introduced me to the Mangatu Incorporation so I was engaged to take a case on their behalf. We lost at first instance – the Land Valuation Tribunal, but then we appealed to the High Court and Mr Justice Barker, who is here today, I am very grateful to see you, Sir, was the judge and he came down on our side. He said yes, that Māori land did not have that same open market potential, it needed a different approach and he decided in our favour. This was appealed to the Court of Appeal by the Valuation Department. They lost, so the Mangatu Principles were articulated by the Court of Appeal and they have applied ever since to a proper approach to valuing Māori land. This does give rise to some difficulties. If you don't have any comparable sales, what is the value? But obviously there has to be a common sense approach and that has really worked out through practice. I've been involved in other cases and the end result, for your interest, is that Māori land generally is discounted to about ten to twenty percent below other open market values. A special situation in Auckland, which I remember at the time discussing with the City Valuer, who may be here today. I won't name him. And I think this has resulted in a good outcome for Māori land in Auckland. Now, just to move on I want to quickly mention four cases that I was involved in. It was going to be three, but I'll just make it four very quickly. There was something mentioned earlier by one of the other speakers. *Centrepoint*. Someone mentioned I was involved in the *Centrepoint* case, and that's true. I was assisting the late Michael Crew, acting for Centrepoint. They had got off the ground, they'd been given a consent I think by His Honour Judge Turner, to allow their commune to be set up and after a while it sort of

gathered popularity and was expanding and needed to be increased, and that required a resource consent. Whether a consent would be granted depended on the terms of the District Plan. The District Plan did include the wording that a conditional use, which is sort of one foot in the door, you're almost there, applied to a religious institution, so with Michael and myself, we had to argue that Centrepont was a religious institution. This might have been a bit of a challenge but I researched back in the Middle Ages and found that many of the monasteries in Europe in the Middle Ages carried on activities that weren't so dissimilar from the earlier activities, of Centrepont. After all they made garments, silk garments that the women wore, so it was quite productive like a monastery. So we had to convince the Judge. We failed at first instance with, I think, the father of Matt Casey, Mr Justice Casey. He turned it down saying that "*no that couldn't be possibly correct*". The Court of Appeal next, and there was Justice Cooke and Thomas Eichelbaum and one of the other Judges – I just can't recall who it was. Anyway, in a very erudite judgment (after we had put forward this argument), by Thomas Eichelbaum; he did say yes, Centrepont on a broad view could qualify as a religion; and after all religion has been interpreted for all sorts of broad purposes in relation to conscientious objection and that sort of thing, and he also said that Centrepont was an institution, religious... institution. But, he said, on an overview you had to take a broad view of what they were actually doing and no, no, it was not. So we lost, and I don't think they got their consent to expand. Right, so that's one thing. The other one involves one of the persons sitting on this bench who was at the time Mr Edwin Wylie QC. This involved an approach quite out of the blue, an unexpected approach in 1999 when I was contacted by Mr Edwin Wylie, who was the lawyer for the Canterbury Regional Council, to appear as an expert witness before the Local Government Commission to give evidence as to how a regional boundary should be drawn up. And the problem that had come up was that the Otago Regional Council wished to extend the boundary, which was south of the Waitaki River below the catchment of the Waitaki River. They wanted to extend the boundary north – to the middle of the

Waitaki River. And this would involve Canterbury losing some of its region. So I was enlisted to give expert evidence. And I shortly learned that the Otago Council had enlisted the Right Honourable Sir Geoffrey Palmer, so it was really going to be a question of whether his expert evidence was more persuasive than mine. So, that really was quite an interesting situation. Well I gave conventional evidence on the legislative purposes that I thought were in the RMA and the Local Government Act, that the regional council should have effective control over the whole river rather than 50/50 along the centre line of the river, because you needed effective control for allocation of water and for enforcement. Now, the evidence that came from Otago took me back slightly. I hadn't anticipated what they would say. It was firstly based on historical provincial boundaries going back to the settlement of New Zealand. That was one thing. But more interestingly, the view was put forward that the Rugby Union provincial team boundaries were really the particular crucial factor. It was given in evidence that at any rugby match between the Otago Highlanders and the Canterbury Crusaders teams, residents south of the Waitaki River who were in that Canterbury catchment area all supported Otago, and it was self evident the regional boundary had to be moved north as a matter of social wellbeing under the RMA and to align with the rugby boundaries. Well, I think as Your Honour will recall, the Local Government Commission was not persuaded by this argument. They did not wish the rugby union boundary to prevail, and Canterbury retained its area. That was an interesting occasion. The other, second case is in the heritage protection area. In 2005 I acted pro bono as counsel for Mr Robert Enright in endeavouring, on behalf of the Art Deco Society, to save the Jean Batten building at the bottom of Shortland Street from demolition, and its replacement by a glass tower for the Bank of New Zealand head office. The Council had issued a demolition consent valid at the time of issue for two years, but the law had changed to provide a five year lapse time. Art Deco under my leadership sought a declaration from the Environment Court that the extended five year period did not apply, and the two year consent had actually lapsed. This was heard before this Court,

the declaration, in fact the Judge of the declaration was His Honour the Principal Judge today, Judge Newhook. Our claim failed because it was held that the five years...

- 5 Judge Newhook Together, I might add, Professor Palmer, with the late Principal Judge Bollard. We sat as a full Court.
- Professor Palmer Oh yes, sorry. Thank you for that. Yes, John Bollard was there as well. It was a very strong Court so...
- Judge Newhook Flattery will get you everywhere!
- 10 Professor Palmer Yes, certainly no favours to myself. But we did appeal it to the High Court anyway just in case it could have been wrong, but Justice Asher who of course I'd known through university times and Legal Research Foundation, dismissed our appeal so you were correct all the way along. But, we did have a fallback strategy. All was not lost. We had hoped that in the delay that  
15 this litigation gave rise to, this application, that something else could be done. We approached the Historic Places Trust and asked them if they could consider seeking a Heritage Order, protection order, a Heritage or Protection Order under the RMA and that would be the only thing that could override this still  
20 valid demolition permit. It was the only legal remedy still available, and in a way the trump card was that the Minister for Heritage at the time was the Honourable Helen Clark and we knew that Miss Clark was quite supportive of heritage protection. She had supported the Court attempt retaining the Courtville  
25 buildings from being knocked over for High Court expansion, and I thought in particular that because it was the Jean Batten building, and Jean Batten was a very, an outstanding aviatrix, and a woman as well, that that was important at that stage in our evolving history, that there was a fair chance she would probably  
30 have a word in someone's ear and do something to help us protect the Jean Batten building. Well, that strategy did succeed. The Trust took up with the Bank of New Zealand the fact that if things were not perhaps redesigned they might indeed issue an application for a Heritage Order and I think BNZ did obviously

the decent thing, and with the Council, agreed to redesign the building, and that façade was saved. It's still there and I enjoyed seeing it there today as I walked down Shortland Street.

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Interesting enough, the Mayor and the Council duly took all the credit ... we were not mentioned.

Judge Newhook

I'm not surprised.

Professor Palmer

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The last case was in 2009, the fate of Sheds 10 and 11 on Queens Wharf. When the Government offered, as you know, the Regional Council, a large capital sum towards a replacement iconic structure on that wharf for the Rugby World Cup. Nothing in the Auckland Coastal Plan prevented the demolition of both buildings as of right, which was imminently foreshadowed with some very harsh things said about the appearance of Shed 10 etc, but it just happened that during that period, as has been mentioned, I was chair of the Tamaki Drive Protection Society, and we sort of extended our mandate somewhat into the city.

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And on my initiative we made a formal request that the Historic Places Trust to investigate the buildings, which hadn't been investigated before and perhaps list them if they came up to scratch as heritage buildings. We were taking a risk in that we didn't have the resources perhaps, or funds, to do anything in the meantime legally, but we believed that it would be politically unlikely for the Government and the Regional Council as

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publicly accountable bodies to demolish those buildings while the investigation was being undertaken by the Trust. And

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fortunately, twelve months later that expectation held good. The compromise as everyone knows between the Trust, Council and the Minister was that Shed 10 was saved. It's a solid historic building with substantial adaptability; as Derek Nolan would say, wonderful adaptive management potential, and that is still there.

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Shed 11, of course, has been removed and the Cloud is there and there's still debate about what's going to happen with the rest of the wharf. Right. Conclusions. Law school work, just to recap, re-mention, recount very briefly. Over the last forty-six years

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I've been privileged to lecture almost annually in the resource management area. For a period I was assisted by Tim McBride

who lectured in environmental law, and I have appreciated the input of many willing guest speakers and there are certainly a number of practitioners who have been invited up and have willingly given their time to the students. And I must say, in the class evaluations that the students now are given opportunity to put us on the spot as lecturers, most of them certainly say we thought the best parts of it were the guest lecturers! So that is very much appreciated and will continue next year. I was also able to lecture from time to time at the masters level in local government law and resource management law, and that's something I certainly would like to do a little more of. I have shared a masters course with the faculty of science in environmental forensic science, and that is to educate scientists in undertaking regulatory work and giving evidence perhaps on prosecutions. I have also supervised a multitude of dissertations, masters theses and a handful of PhD candidates and mention has been made today by Dr Somerville of his thesis of which I was privileged to be one of the examiners; and I also assisted Dr Grant Hewison, who is here, on his thesis on the Local Government Act and Stephanie Mead on the responsibility of local authorities and the government for environmental health. These works have all been very instructive. Mention has been made of my time as editor of the *New Zealand Journal of Environmental Law* over nineteen years. This is a prestigious, I think, internationally prestigious publication with international recognition. It supported research in the law school at the masters level which has been published along with other things, including one mentioned today by you, Barry. Your colleague Pippa Wallace, who is one of the senior lecturers at the University of Waikato. We are publishing her article this year (it hasn't come out yet) on protecting flight corridors for wildlife, so it's a journal that I think has great quality and has been a bit of a flagship. Next year, to finish, as an honorary research fellow next year I will be able to continue access to the law school facilities. I will be joining the company of the Right Honourable Sir Edmund Thomas, who is here – thank you – and he is a distinguished research fellow. I will also be able to continue to mingle with other colleagues including employment law

specialist Dr Bill Hodge who is here, and of course Bill Hodge is well known to Judge Colgan in that respected field of employment law. And also of course I'll continue my long association with Bernard Brown. Bernard, at the masters course that I took many, many years ago, took me for criminal law and I do recall, Bernard, if you'll allow me, that we would meet – there were about four of us – we met upstairs in the old Pembridge building, I think on a Saturday morning. Bernard had on his desk four big bottles of Triple X beer. We would consume those during the lecture, it probably would require a permit today, but at the end of it we were all experts on intoxication. I'd like to end by recording my acknowledgement once more at the honour of this sitting today. I am greatly appreciative and moved by what has been said by the many speakers and I'm very appreciative of the huge attendance today. Sorry that there are one or two standing. If I'd known that I might have been a bit shorter, and so it is much appreciated, this event today. And finally and lastly, but not least, I'd like to record my gratitude to my wife Vivienne who is sitting here at the front. She has stood by me for the last fifty plus years; she's put up with endless late nights, which you have to do if you're trying to write things; weekend work and also being a very willing host to many academic visitors. So thank you to everyone here. That concludes my address. May it please the Court.