

31 July 1996

J G Miles QC  
Barrister  
PO Box 4338  
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COPY

Dear Julian

**Creche Appeal**

1. As you know this matter is set down for hearing for two days commencing Wednesday 21 August. Submissions must be exchanged seven days in advance.
2. I have now prepared a full draft of these submissions (including a schedule as to the final amounts awarded to all of the Respondents). I also enclose a chronology with cross-references to the Case.
3. Inadvertently, an earlier copy of the Gray brief of evidence was incorporated within the Case and I enclose a replacement brief for insertion.
4. The submissions approach the "magic" length of 40 pages which the Court of Appeal has said is the maximum. They may well be too long in their present form but I thought I should err on the generous side. After all, it is easier to exclude than include.
5. For all that, the convoluted and obscure reasoning of the Employment Court does entail a full response.
6. On re-reading the Court of Appeal authorities, particularly Brighouse, it becomes more apparent why Richardson J was suggesting a full Court of seven. In that judgment, he set out his list of "rules" in relation to redundancies. In that case, however, he was in the minority. It is possible that he sees this case as a vehicle for establishing his views as the prevailing law.
7. There are a couple of points:
  - (a) I am not much inclined to argue the point that receipt of unemployment benefits should be netted off. This seems a relatively minor point (paragraph 83 of draft).

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- (b) I have not directly faced the Judge's comment (Case 3.775) that I foreshadowed evidence from the Ministry but did not eventually call a Ministry representative to give evidence. Arguably, this is relevant to the Judge's quite unsubstantiated conclusion that suspension was not inevitable (contrary to everybody else on the topic). The reason that the Ministry witness did not eventually give evidence was that at the last minute he tried to change his evidence and I formed the view that he would be perjuring himself if he gave evidence in the amended form. I was not prepared to be a party to that and took the hard decision not to call him.
- (c) I am not sure that Horsburgh and Trotter are sufficiently put to rest (paragraph 73).
- (d) I am not sure that Lawson's costs are adequately covered (paragraph 102).
8. I also enclose the decision of Phipps which appears to be Goddard's latest word on redundancy. I have not referred to it in the submissions but perhaps we should do so. Plainly, Goddard is completely ignoring the Court of Appeal.
9. We need to organise the logistics. From this time onwards I am going to be largely committed to preparation for a trial commencing on 12 August and set down for a week. Thus, I am going to have little time to spend with you settling the submissions prior to the exchange. I will, however, be able to spend time with you on the Monday or Tuesday prior to the hearing and perhaps we could meet in Wellington to run through our preparation. No doubt, we could discuss this by telephone.
10. In any event, once you have given consideration to the above perhaps you could give me a call so that we can map out a plan of attack.

*T C Weston  
Barrister*

Kind regards

Yours sincerely

**TOM WESTON**

cc Marshall Wright/Peter Mitchell  
Christchurch City Council