



**SWEARING-IN
OF
HIS HONOUR**

JUDGE ME PERKINS

SPEECHES

**EMPLOYMENT COURT AUCKLAND
COURTROOM 2.01
3 PM WEDNESDAY 27 MARCH 2013**

CHIEF JUDGE GRAEME COLGAN
on behalf of the Employment Court

It is my great pleasure to welcome you all to this special sitting of the Employment Court to swear into office, as a Judge of the Employment Court, Mark Eversfield Perkins. Especially welcome today are the new Judge's family and friends, some of whom I will speak about shortly.

First I want to introduce, because not everyone here will be familiar with them, the Judges who are on the Bench with me today. They are, from your left, Employment Court Judge Christina Inglis, Employment Court Judge Tony Couch, and Employment Court Judge Tony Ford. Judge Barrie Travis is unable to be with us today but sends his very best wishes to the new Judge. Also tendering their apologies, because they cannot be with us, are Chief District Court Judge Jan-Marie Doogue, and Acting Principal Environment Court Judge Laurie Newhook.

Among the friends and family of the new Judge I acknowledge especially the following: Mrs Margaret Perkins. We regret that your daughter Katherine Perkins cannot be with us today, having very recently gifted you another grandchild I understand. Also present is Sir Bruce Slane who was formerly in partnership with Judge Perkins in the firm Cairns Slane. I also acknowledge the presence of Mrs Margaret Johnson: the late Chief Judge of the District Court, Russell Johnson, was a good friend and colleague to us all. I also acknowledge the presence of Judge John and Mrs Diana Cadenhead, Mr Marsden and Mrs Mary Bell, Mrs Patricia Mangham, Mr Ron and Mrs Anne Melville, Mr Rod and Mrs Stephanie Perkins, and Mr Sam Yap Choong.

Finally, in what the civil servants would call this 'meet and greet phase', I acknowledge the presence of other Judges of the District and Environment Courts.

Today's ceremonial sitting will be in two parts. The first is formal but mercifully brief. This will be the formality of swearing in the new Judge. The more informal part that follows will consist of a number of addresses from the Bar, from the Bench, and finally in reply by the new Judge. After the Court adjourns, you are all very cordially invited to join us for refreshments in the Court foyer.

OATHS TAKEN AND SIGNED BY JUDGE PERKINS

May I be the first to congratulate you, Judge Perkins, on your permanent appointment as a Judge of the Employment Court.

With those formalities over, we now move to the more informal part of today's proceedings and I call on Mr Downs.

MR MATTHEW DOWNS
on behalf of the Attorney-General

May it please your Honours, I am delighted to appear for the Attorney-General to convey the Government's congratulations on your Honour's appointment as an Employment Court Judge. The Attorney-General offers an apology that he cannot be here today and the Attorney has also asked me to convey his very best wishes to your Honour and to your Honour's family.

The appointment of an Employment Court Judge affords a fitting opportunity to reaffirm the important role played by the Employment Court in our system of justice. The Court's work affects many many New Zealanders, both employers and employees. Its caseload is often concerned with circumstances that may be politely described as 'charged' and, in some such circumstances, attract a great deal of media attention. Notwithstanding these pressures, the Court conducts its work fairly, conscientiously and in accordance with law. This appointment will permit your Honour to further the Court's work in a jurisdiction of significance.

Your appointment also presents an opportunity to reflect on your illustrious career, a career that has all the hallmarks of someone, if I may say so, destined for judicial office.

Within four years of admission to the Bar, you were made a partner of Macalister Mazengarb. In 1988 you accepted a partnership in Cairns Slane and in 1993 a partnership in Hesketh Henry. Throughout, you had a broad and successful practice in civil litigation, maritime law, insurance law, administrative law, matrimonial law, insolvency and bankruptcy law, and of course in employment law or industrial law as it was then called. You were an active member of a number of legal associations and committees. You were the founding member of the New Zealand branch of the Maritime Law Association of Australia and New Zealand. You were a member of the New Zealand Insurance Law Association and of the Auckland and Wellington District Legal Aid Committees. From its inception, you were an Associate of the Institute of Employment Arbitrators and Mediators and, thereafter, an Associate and Panel Member of the Arbitrators and Mediators Institute of New Zealand. As if you weren't busy enough with those things, you published articles across a broad range of legal topics from admiralty to matrimonial property and, I must say, much else in between.

In 1999 the inevitable happened. You were made a Judge, then of the District Court. In that capacity may I say you made a significant contribution to both the community and the District Court bench. While a Judge of that Court, you also served as a temporary Judge of this Court on two separate occasions: first, in 2006 and 2007, and then a period spanning from 2009 to 2011. During these periods of service you sat on and decided many significant cases: *New Zealand Fire Service Commission v New Zealand professional Firefighters Union* and *Maritime Union of New Zealand v Ports of Auckland* are of course but two.

This experience will undoubtedly serve you well and I'm sure your colleagues on this Court welcome your return, even as your colleagues in the District Court lament your Honour's departure. As many here know, judicial office is a form of public service that demands much of its holders. On behalf of the Attorney, I reaffirm the Government's confidence that your Honour is more than equal to these demands and that your service will continue to enrich both the community and this bench.

May it please your Honour, may it please this Court.

MR ANTHONY BOUCHIER
on behalf of the Criminal Bar Association

May it please the Court, I feel it is my role, on behalf of the Criminal Bar, to farewell you from the District Court rather than welcome you to the Employment Court. If I can indicate to you, sir, that your departure from the District Court is not a popular one at all.

I have had the privilege of coming to know you very well since your appointment to the District Court in 1999, both in my capacity as a defence barrister and also as a judicial spouse. I have been fortunate to have appeared in front of you often over the years and also enjoyed yours and Margaret's company in the common room and at judicial functions. I feel privileged to describe you as a friend.

You are a very kind and considerate man. You exhibit a quiet demeanour to the world but those who know you, and those who have appeared in front of you, know that you have a keen intellect and huge courage in protecting the rights and freedoms of those who have appeared in front of you by ensuring defendants and accused have had a fair hearing in your court and no greater accolade could be made.

You have always treated our clients with respect and have engaged with them in a manner whereby, rather than talking at them, you have engaged with them. A lot can be said for that style of judging. For you, sir, reasonable doubt is not something you backed at the Ellerslie Race Course. You have an inquiring mind which has let no one off the hook, whether prosecution or defence. You have always set high standards of yourself and those appearing in front of you. For the Criminal Bar, it has always been appreciated that the standards that you have demanded from the defence have been no different to the demands that you've made of the prosecution. You have always engaged with the Bar in a polite and respectful manner.

In these difficult times of change with Legal Aid and changes happening in the Criminal and Family Courts, you have engaged with the Criminal Bar and shown your support and expressed your concerns for the Criminal Bar. You have always been interested in, and a supporter of, a robust independent Criminal Bar and judicial support such as yours has always been appreciated and it is important to us.

In the current very worrying environment where attacks are being made on the independent judiciary, you have been absolutely steadfast in maintaining your

independence and promoting the independence of the judiciary. The Criminal Bar has always looked to leadership, such as shown by you over the years, to satisfy themselves that the traditions established over many years in our courts are maintained. Judicial independence is one of the biggest challenges our democracy is facing in this age of change and you've always been a stalwart of that independence.

You, sir, will be missed in the District Court. I know that you and Margaret will be missed in the common room. There is little else to say except to observe that you have served the District Court well and the District Court's loss is the Employment Court's gain. We wish you and Margaret the very best in your new endeavour.

MS KATHRYN BECK
on behalf of the New Zealand Law Society

May it please your Honour, I bring the best wishes from the President of the New Zealand Law Society Jonathan Temm, Chris Moore, our soon-to-be President, the Auckland Branch President Tim Jones, and also Michael Quigg, Convenor of the New Zealand Law Society Employment Law Committee, so there are many wishing you well today sir.

As has already been noted by Mr Downs, you have served as a temporary Judge in this Court on two previous occasions and so, sir, rather than farewelling you, it really does feel like we are welcoming you home at the Employment Bar. You will take up this new position as an Employment Court Judge on 8 April and we are all looking forward to that sir.

In preparing for this honour of addressing you today, and given that this is the Employment Court, I thought I would speak to a former employee and gain insight as to how you were as an employer. Of course I am unable to name names but he did tell me that actually you were just awful to work for, but not in a bad way. While this might sound like a confused thought process coming from someone who is now a relatively senior member of the Bar, he was able to explain it to me. You were an excellent teacher, incredibly patient and always courteous, but you were daunting. Everything was in order. You were always on top of your files to the extent that those files had to be in meticulous physical order as well as legal order. Things were done on time and generally early, which will make most of us in this room feel relatively uncomfortable, and, more importantly, they were done right. Your immediate grasp of the issues and ability to draw out key points in complex and difficult situations was impressive. He describes you as being unflappable when others were rushing around making lots of noise, and that you always appeared to have plenty of time to properly deal with whatever was put in front of you, and still take the time to mentor and teach those who were working for you.

This is no surprise to those of us who have had the pleasure of appearing in front of you in either the District or Employment Courts, and we have heard that today. That description of your Honour as a practitioner was a portent of the Judge you have

become. This is a role for which you are clearly well suited and we are fortunate in this jurisdiction to now have you as a permanent member of this Court.

There are those cases every few years that, for various reasons, will generate more than their share of interest and discussion and this interest is unfortunately rarely because of the legal intricacies of the proceedings or the compelling arguments of counsel but, rather, the factual scenario. The last time your Honour sat in this Court you had one of those cases. I am of course referring to the *Air Nelson* case which involved hotel rooms, sex, alcohol, tattoos and more. However, your Honour was unfazed. I suspect this was because it was the sort of factual scenario that your Honour would no doubt have been familiar with in your criminal jury trial jurisdiction. In this case, as a Judge must, you did not shy away from making a difficult decision and dealt with the proceedings in a down to earth manner and importantly didn't offer any moral judgments.

You have been described as a firm, fair and very human Judge and those are exactly the qualities required for a Judge in this jurisdiction where we deal with that charged human factor every day. Sir, you've already made a significant contribution to the development of the law in this jurisdiction and I'm not simply referring to that *Air Nelson* case: there have been many other cases. You will now have an opportunity to continue that contribution on a permanent basis and the District Court's loss is certainly our gain. We know that you will take those daunting file management and legal skills and bring them to your work here. Although having said that from a counsel perspective, perhaps you could be a bit less daunting on the file management.

By any measure sir, this is an excellent appointment. You have had a distinguished career as counsel and then as a Judge in the District Court. Your incisive grasp of the law and talent for legal analysis, together with your very practical approach to any problem, are priceless qualities for this next judicial endeavour. Please now accept the profession's very best wishes. We are sure you will serve the judiciary and the community with distinction.

MR FRANK GODINET
on behalf of the Auckland District Law Society

Kia ora tatou, haere mai, e tiati e hoa ma.

May it please your Honours, I speak today on behalf of the Auckland District Law Society Te Reo Motuhake O Te Ture. It is a privilege today to speak, but not in cricketing terms, of a loss/win/win scenario for the judicial system and the New Zealand public of your departure from the District Court and your arrival here permanently at the Employment Court. This scenario, this loss/win/win scenario, illustrates your Honour's talents which my previous speakers have mentioned and taken a lot of the notes out of my speech.

As Mr Downs has said, your legal areas were wide and varied and really quite an unusual combination. I just can't see the connection between maritime admiralty law

and relationship property - unless you've got a yacht. All those disciplines and skills were honed in Wellington and it's taken you to come to Auckland for the scenario to pan out even further today.

So, to preside as a District Court Judge for some 14 years, during which you had brief revival turns back in this Court, says one thing, but then, after that, to be invited back on a permanent basis shows a respect for your knowledge, your judicial talents, temperament and dexterity. There is some resemblance and reminiscence with her Honour Judge Coral Shaw who is now at the United Nations Disputes Tribunal.

On Monday evening at dinner, in your presence but out of earshot - judicial earshot - David Jones QC spoke of your move to this Court and his testimony that you are an excellent Judge, both in summary and trial jurisdictions and, as has been said before today, you will be a loss to the District Court. Yesterday in that literary environment that is Whitcoulls, her Honour Judge Bouchier also vouched for you in these terms. You are applauded by the Bar and by your judicial colleagues and the company of your colleagues to my right reflects that.

There is a Samoan saying and it goes: O le ala i le pule tautua - that authority is received through service. You have so served the people of New Zealand and you have achieved that authority in dispensing justice and being a servant of the public of New Zealand.

As a measure of access to justice, what is a loss to the District Court and a win for the Employment Court remains a win for the people of New Zealand. We all are safe in the knowledge, your Honour, that you are just around the corner. May it please the Court.

MR PETER CRANNEY
on behalf of the New Zealand Council of Trade Unions

If your Honours please, I appear today on instructions from the New Zealand Council of Trade Unions which greatly welcomes the opportunity, sir, to address you and to address this Court through counsel on this important occasion. I'm also asked to say to Chief Judge Colgan that the New Zealand Council of Trade Unions and its officers greatly value the cordial relationship that exists between them and the Judges of this Court.

Your Honour Judge Perkins, the unions know of you not just because of your prior involvement in this Court but because of your activity in the District Court also, and not just because some of them have appeared in front of you in the wrong circumstances. I would like to echo the comments that have been made by others, although I do not operate in the District Court, that the word around this town is that the District Court has suffered a serious loss with your transfer here.

The New Zealand Council of Trade Unions is well aware of the work you have done in other places and greatly respects you for it. In terms, sir, of your appointment to

this Court, the New Zealand Council of Trade Unions very warmly welcomes it and extends you every good wish on behalf of all the union affiliates, all of the officers, and all of the rank and file members of the New Zealand Council of Trade Unions. They look forward – not all of them but the appropriate ones – to meeting with you from time to time to get to know you better.

Your Honour, I would also like to support the comments that have been made by other speakers that you are an outstanding human being and a good Judge. I have appeared in front of you, your Honour, on a number of occasions. You may not remember it all but I do remember one particular case called *Scott v IHC* which was a case about a person who had been wrongly accused of sexual assault on an intellectually disabled person. Sir, you are regarded as a very decent human being and a decent Judge for very good reason in this company.

Your Honour, as you will well know because you have the same vintage of others who are getting a bit older, I do remember a case dealing with partial lockouts in 1993 (which, thank the Lord, are now fading from memory), and I was greatly pleased that your Honour didn't succeed in the argument at the time. But this Court, your Honour, is a court whose history is deeply interwoven with New Zealand's own history and for that reason any appointment to this Court is a very significant event and the trade unions also extend good wishes again to other Judges who have been appointed recently.

The unions consider this Court to be a crucial institution for the protection of workers' rights and, therefore, consider it to be vital to democracy itself in this country and to civilised values. Over the last 40 years or so, your Honour, this Court has developed the fundamental underlying principle of New Zealand employment law which is fair and reasonable treatment of workers, and indeed that is the only rule of employment law. The rest of it is just you put it into practice. Your Honour, the rule of fair and reasonable treatment has had its detractors. The requirement of fairness has had its detractors over the years but this Court and the Judges on it have stood firm in the finest tradition of independence. It will be a sad day, your Honours, for workers in New Zealand and for this Court's status if the role of this Court is diminished or is abridged in any way.

Your Honour has already issued many judgments from this Court and will in the future face hard decisions and difficult decisions. The unions are very confident in your appointment and, indeed, some have referred to it as the perfect appointment, and they tend to keep a very close track of these things as unions. They anticipate that the hallmarks of this Court, which are accessibility and invariable courtesy and respect towards counsel and advocates and witnesses and litigants, will be well served by your Honour's appointment.

Your Honour, you are very well regarded by the unions and the CTU is very confident that you will continue the finest traditions of this Court. It wishes you very well in your appointment and also would like you to have a nice Easter as well.

MR DAVID LOWE
on behalf of the Employers and Manufacturers Association

May it please the Court, greetings from Business New Zealand, Phil O'Reilly and Paul Mackay who are unable to be here today, and from employers who generally welcome you to the Bench, your Honour.

The previous speakers have really covered off most of the issues so I thought I'd look ahead a little bit and think "Well what do the next 12 to 24 months bring for you?" and I think it's quite an interesting time to be joining the Court here because new legislation is coming one day, soon, maybe. We are just waiting for it. And some of the announcements that have been made, the concepts are quite challenging, and it remains to be seen just how the drafting really is going. Some of them, I'd like to say, appear relatively simple, but of course we wait and see, but others are interesting and I think there will be some very good debates and arguments that need to be put forward as we unravel whatever we're going to be seeing over the next little wee while.

For the employers that appear before you, by the time they get to the Employment Court, something seriously is happening for them. If I can be so bold as to say, in the Authority, a lot of the employers actually just want the matter sorted, but when it comes up to the Court it's really important for them. For most of the employers that are there, they are people, they are there because someone by and large is suggesting they've done something wrong and they are probably a little bit mystified because they probably thought they were doing the right thing at the time. But all the people, whether it be the employers, whether it be the workers or whatever parties are before you, it's extremely rare that you see a bad or dishonest or an evil person if I can say that. They're all there having done what they thought was right at the time. In hindsight it might not have quite been the case. But they're all there and their hearts are in the right place and the intentions were there. So, we agree there have got to be standards and from the previous speakers, you're going to be able to uphold those standards, you'll be able to see through the different arguments, the different situations, and come to a conclusion as to what would have been the best course of action had they had their time again.

I just want to say welcome to the Court and particularly once again Phil O'Reilly and Paul Mackay do send their best wishes and we look forward to working with you.

MR MARK NUTSFORD
on behalf of the Employment Law Institute

Good afternoon your Honour Chief Judge Colgan, Employment Court Judges, esteemed colleagues, ladies and gentlemen, and especially your Honour Judge

Perkins, I represent the Employment Law Institute of New Zealand and bring greetings from its Executive and membership on this special day.

Our members are experienced employment law practitioners, either employment advocates with appropriate qualifications, or practising barristers and solicitors who regularly represent clients before the Employment Court, the Employment Relations Authority, or the Ministry of Business, Innovation and Employment's Mediation Service. Some of the key objectives of our organisation are to advance and promote the cause of an appropriate process for resolving employment relationship disputes that is fair to all parties, to respect, uphold and promote the professional status and individual and collective rights and interests of the Institute's members relating to employment law and procedure, and to ensure a minimum standard of representation for our members' clients.

The Employment Law Institute of New Zealand wishes to convey special congratulations to Judge Perkins on his permanent appointment to the Employment Court. Judge Perkins' involvement with employment law has resulted in a long and distinguished career, most of which has already been remarked upon today.

Apart from his practice in employment law with several of New Zealand's most respected law firms, he has a long history in the advocacy of industrial matters. He was active during the demarcation disputes as an advocate in the 1970s. He was elevated to the District Court in 1999 with a dual warrant sitting on some of the earlier Employment Court matters. He has served two terms in the Employment Court in 2006 and 2009 and is well respected by all who come in contact with him. I personally had the privilege of providing representation before Judge Perkins in 2007 during what was for me a particularly difficult case over three days. Judge Perkins' extreme patience, impartiality, and wisdom assisted me greatly as a lay advocate in providing the best possible representation for my client, and this resulted in reaching the best possible outcome. I offer my personal thanks for that.

The Employment Court is one of the few legal forums where lay practitioners are not only allowed to practise, but are actively encouraged to do so. It is the patience and wisdom demonstrated by the Judges such as his Honour Judge Perkins which enables lay practitioners like myself to confidently attend a forum which might otherwise seem daunting and intimidating. We are here today though to recognise the beginning of a new state of your Honour's career as you take up the challenges of being a permanent Judge of the New Zealand Employment Court.

The Executive and membership of our organisation wish you well in your new, although well tested, position, and we are looking forward to working with you again.

As your Honours please.

CHIEF JUDGE GL COLGAN
on behalf of the Employment Court

Judge Perkins, on behalf of your colleagues on the Employment Court, it is my great pleasure to welcome you finally and permanently as the 34th Judge of this Court and its predecessors. I have, of course, already sworn you into office twice in the past eight years but each of those was a temporary appointment for a fixed period, after which you returned to sit in the District Court. I can't help but observe that you're moving from a 'Three strikes and you're out' jurisdiction to one where 'Strike three and you're in'.

Your experience in this jurisdiction goes back probably further than any other sitting Judge, except possibly for Judge Ford. You had a number of appearances before the Industrial Court in the mid-1970s presided over by Judge Jamieson. Many of those appearances were on behalf of players in the merchant marine sector, reflecting your abiding interest in maritime law. Another client from those and later times was a corporate entity that has morphed into a company that has fallen on sad times and is now known as Solid Energy, but your representation of it was in its heyday as State Coalmines and subsequently Coal Corp. Those were the days in which there was a mineworkers' union and coal was king, at least in the Waikato and Southland, not to mention the West Coast. You did, of course, represent other parties in the Court in those days.

Reported judgments show that you have good experience of dealing with some of the more colourful, not to mention challenging, characters who inhabit this jurisdiction. In 1994 you acted for Presbyterian Support Services in proceedings brought against it by Arthur George Harawira. Mr Harawira's advocate was the late Sydney Kepa Jackson, a well respected very experienced and capable trade union advocate. At the start of the judgment in Arthur Harawira's case, Judge Dan Finnigan wrote:

“The matter was concisely and expertly argued by Mr Jackson and Mr Perkins. During the hearing Mr Perkins had occasion to comment that Mr Jackson had shown his skill and experience by the quality and subtlety of his submissions before the Court. This generous acknowledgement by one adversary of another, in my view well founded, merits a response from the Court. Quite the same thing should be said of Mr Perkins.”

In that one passage is contained what must be the ultimate dual compliment delivered by the Bench to counsel. It acknowledged your professional respect for, and admiration of, your adversary, and complimented you highly on your own forensic skills.

In 1992 you represented the steering committee of Nuclear Free and Independent and Pacific Concerns Resource Centre, an unincorporated body of which one of the committee was Hilda Harawira. The perennial Mrs Titewhai Harawira was also involved in the case. The claim, although brought by the Northern Clerical Workers

Union, concerned the dismissal of yet another member of the Harawira whanau, Hinewhare Harawira. From reading the judgment it was clearly a difficult, even fraught, case in which a substantial sum of money was said to have gone missing and also in which Hinewhare Harawira wanted her good name and reputation restored by the Court.

Also in 1994, and as mentioned by one of the speakers earlier today, you represented Presbyterian Support Services in the landmark *Witehira* case which dealt with the contentious issue of so-called partial lockouts. After Judge Derek Castle, sitting in the Employment Court over the vacation, had refused an interlocutory injunction to restrain a so-called partial lockout, a full Court (which included Judge Castle) sat and determined that there was to be no gain without pain - that it was not a lawful lockout of employees for an employer to simply withhold part of their remuneration but to expect them at the same time to perform all of their duties.

On a light note, I'm relieved to note that, in 1993, you survived a case in the Employment Tribunal in which you appeared for Ms Shona Valentine against an employer called Death by Chocolate Ltd. Although the terms of the settlement reached after two days of hearing are disclosed in the judgment, there is no record of whether it included a deadly dose of the employer's product.

And finally, and no less intriguingly, to complete your experience in the law's interesting and challenging characters, in 1998 you represented (successfully) a long gone entity called New Zealand Forest Products Pulp and Paper Ltd when it was sued by a former employee, Mr Bracanov. Mr Bracanov, an ardent republican who was undeterred by his loss in the Labour Court, has gone on to legal fame by regularly throwing horse manure at royal visitors when they are in the country (including the Spanish royal family I have to say so he doesn't discriminate between royal families) and most recently was still closely watched when the heir-but-one to the throne was here.

I know from conversations with practitioners and your colleagues on the District Court Bench that you are very well regarded for your qualities of fairness, clarity of thought and reasoning, and humanity, important attributes for a Judge of any Court and no less the Employment Court.

Judge, you join this Bench at a time of challenge although I can't think of a time in the last 25 years at least when that has not been so. There are, and will be, two particular challenges that you (and we) will face in the immediate future.

The first is how to deal with increasing numbers of unrepresented litigants in a way that is fair to them and to their opponents but, at the same time, does not affect unduly the efficient disposal of the Court's business. Reductions in the availability of legal aid, combined with a requirement on parties to exhaust their rights and therefore their funds on mediation and in the Employment Relations Authority, means that we are now seeing increasing numbers of litigants who can no longer afford good or even any representation on difficult and complex cases. These litigants use a disproportionate amount of Registry and judicial time and energy and their cases tend to run on intermittently, sometimes for years I have to say, despite intensive efforts by Court staff and Judges to manage these cases. Our challenge as Judges is to continue, to use

the words of our oath that you have just taken, to do right to all manner of people after the laws and usages of New Zealand, without fear or favour, affection or ill will.

The second challenge faced by the Employment Court (and indeed by other courts) is Executive pressure to control court processes and, thereby, to erode both the independence and autonomy of this branch of government. This includes emphases on statistical inputs and outputs and on quantities rather than qualities. I have recently seen an apparently serious proposal by a Minister of the Crown that the Executive and/or the Legislature will direct how Judges' courtrooms are to be arranged. One might ask rhetorically, what is left for the Judicial branch to manage if it is not the way in which their courtrooms operate? It is not difficult to imagine the response from Members of Parliament if Judges presumed to tell them where to sit in the House of Representatives or how the seats around the Cabinet table should be arranged. It is difficult enough dealing with the daily judicial workload without having to be concerned about encroachments on the separation of powers on an increasingly constant basis. This will be a real and difficult issue for all Judges.

But that is enough of foreboding for today. It is a signal occasion in your life in the law and career on the Bench. You are warmly welcomed by your colleagues.

JUDGE MARK PERKINS

Thank you very much Chief Judge Colgan and thank you also to my fellow Employment Court Judges for sitting with me here today.

I'm still a District Court Judge and so I welcome my fellow Judges of the District Court who have come here today for this occasion – colleagues and friends, all of them.

I also welcome counsel and other friends who have come here including my good friends among retired Judges as well.

Last but not least I mention my dear family, my wife Margaret, my brother Rod and sister-in-law Steph, cousin Pat Mangham, and Anne and Ron Melville. Most of the previous generations of our families have unfortunately moved on.

On an occasion such as this, it's perhaps an opportunity to acknowledge one's forbears in the profession and, in particular, the law firm that had the greatest influence on my career. The name Mazengarb of course has a special significance in this Court's history and area of law and I wish to speak a little bit about that.

My firm Macalister Mazengarb Parkin & Rose, as it was called when I first joined it, began its origins with three lawyers, OC Mazengarb, EP Hay and Sir Robert Macalister. That Mazengarb was Dr OC Mazengarb, famous for the Mazengarb Report. He obtained his Doctorate with a thesis on highway negligence which subsequently became a published book. He was appointed a King's Counsel in 1947. He was the most fearsome advocate and jury lawyer and by the time I got to Wellington his name was legend.

The other partner, EP Hay, became a High Court Justice. He was regarded as one of the greatest gentlemen of the law, a thoroughly nice man, and he was much loved in the Wellington community. He once did a criminal jury trial, even though he wasn't a criminal jury lawyer, and it's reported in Wellington that the jury acquitted his client because they simply could not believe that such a nice man would represent a guilty person.

Sir Robert Macalister was a tough astute businessman and the Mayor of Wellington. His sons later joined the firm and one was my senior partner when I joined that firm as a partner in 1975.

When OC Mazengarb took Silk, the tradition was that the Silk's name had to go from the firm and so I now come to Alf Mazengarb. Alf was the author of the book *The Industrial Laws of New Zealand* that was the predecessor text to the book, one of two, which is now widely used in this particular area of the law, Mazengarb's *Employment Law*. The other partners wanted to keep the Mazengarb name. The trouble was that Alf was not like his elder brother. He drank a bit much. But he had an uncanny ability to pick winning racehorses. The compromise reached was that Alf would become a partner upon his firm agreement not to drink so much. To give you an idea of what Alf looked like, and I never met him but I saw many photographs, I don't know whether you remember the actor Warren Mitchell who played Alf Garnett in the TV programme *Til Death Us Do Part*. Alf was an absolute dead ringer of Alf Garnett. When made a partner he was also put in charge of the partners' own cash investments. Now that was a euphemism for putting Alf in charge of the partners' betting fund. What it meant for Alf though was that whereas, as a staff solicitor, he had to hide his copy of *Best Bets* under the desk, he could now bring it out and regularly refer to it and study it in his office. He was a very intelligent, thoughtful man according to those of my partners who knew him. When he wrote his book in 1940, he said that it had been his endeavour to cover the whole field of industrial legislation in an annotation of the relevant statutes. Of course in 1940 more was yet to come worldwide so far as the developments in employment and industrial law are concerned. Alf would be proud of what has become of his book today. I think he would be rather thrilled if he knew that a partner in his old firm had been appointed to this Bench. I know that he wouldn't hold a grudge against my partner Phil Bartlett being an editor on the competing text.

Macalister Mazengarb acted for a number of major industrial law clients, as has already been mentioned today: The Public Service Association probably the largest, the Airline Pilots Association, the Merchant Service Guild which included ships' officers, harbour pilots and harbour masters, and there were a number of other smaller industrial unions of workers who were clients of our firm. But you can see that it had connections with the maritime (hence the connection between industrial law and maritime law) and indeed the firm acted for marine underwriters and ship repairers. And I might say that that is what led to my great interest in admiralty law as well.

The firm acted for clients and participated in the major catastrophe inquiries. Les Rose acted in the large DIC building scaffolding collapse which resulted in a number of deaths in Lambton Quay. There was the Kaimai air disaster. There was the Wahine inquiry. The firm was involved in that when I arrived and probably was still involved in it when I left. There was the Pacific Charger inquiry. The Pacific Charger provided me probably with a gravy train for five years of my legal career

when it went up onto the reef in Wellington Harbour. And, of course, the firm acted for the Airline Pilots Association which was the union in the Erebus inquiry. Later we acted for the Marlborough Port Harbour Master, a member of the Merchant Service Guild, in the sinking of the Russian passenger ship Mikhail Lermontov in the Marlborough Sounds.

When I first joined the firm I was employed to appear in criminal law trials, act for family law clients, and do civil law claims. I was employed by my next door neighbour, who was the senior partner in the firm, to fill a vacancy soon to occur when the firm's junior common law solicitor left on his great OE. That was one Rhys Harrison, now a Justice of our Court of Appeal. Rhys and I had a period of overlap of several months as employees of the firm which we both greatly enjoyed.

So you can see why I soon naturally drifted towards a practice in maritime law and industrial law. When I think of my industrial law career, I think, looking back, that my first foray into the predecessor courts to this was in the Aratika demarcation dispute reported in the Book of Awards, 4 October 1974. Coverage in those days was everything. The unions fought each other for coverage and, following enactment of the Industrial Relations Act in 1973, personal grievances became possible so long as commenced by the union with coverage for the worker involved. It meant, for the first time also, that lawyers had the right to appear in such cases.

The Aratika dispute – and I'll just tell you about it briefly – was a claim for coverage of the chief steward on the new ferry. If it was held that the ferry was a cargo vessel then the Cooks and Stewards Union had coverage. If a passenger ferry, then my client the Chief Stewards Union, which was the applicant, had coverage. The General Manager of New Zealand Railways, the employer, was represented by Dr Don Mathieson from Crown Law. To say that, as a young green lawyer, I felt intimidated would be a gross understatement. The presiding Judge was Judge Jamieson, a crusty fierce looking man but, as I found during my many appearances before him later, a man with a heart of gold.

The case was heard in the beautiful old Arbitration courtroom annexed to the then Supreme Court building in Wellington which is now the new Supreme Court. The bench had green bankers' lamps for the Judge and the two Members. I can't remember who they were because they're not mentioned in the report but I'm sure that one of them was Mr Oldham for the employer's side who appeared many times as the employer's representative on the Court. The Court was panelled in wood throughout and I can tell you that in those days it was a romantic place with great atmosphere and history. In that case the Minister of Labour, Shand, had sent someone down with a message to try and interfere in the case by seeking an adjournment, possibly just to delay what might turn into a nasty industrial dispute inconvenient to the Government. Judge Jamieson - and I'll never forget it - gave him short shrift and made a firm announcement that there was not going to be any political interference of that kind in his court. I believe it was possibly the first time that the new Industrial Court had sat but I'm not dead sure about that. I do remember that when I wended my weary way back to the office at the end of the day along Lambton Quay, the Evening Post billboards were out on the street announcing the case and the fact that the Judge had told the Minister off. I'd made the front page! An exciting day for a young newly qualified lawyer.

There were many more adventures in my time in this Court and its predecessor courts. Later the firm acquired employer clients in the forestry and mining industries in New Zealand and I had the privilege and enjoyment of acting in their cases, as well as appearances in the State Services Tribunals - Aucklanders don't get much opportunity for that kind of appearance - and in those days there was the Airline Pilots Tribunal which was made up of one of the Industrial or Labour Court Judges and two airline pilots. There are many stories to tell but this is not a time for long speeches.

I want to say how I have some mixed feelings about now being here. I'll miss the District Court, a jurisdiction that I love. It's a great court to work in. I will miss my friends and colleagues in the judiciary there. I'm grateful for their support, their friendship and their collegiality over 14 years. I hope in my time there I have kept calm and acted fairly, as I also intend to do in this Court. It's now time though to move on. I want to acknowledge the many partners that I've been in partnership with in my three legal firms, Macalister Mazengarb, Cairns Slane, and Hesketh Henry - some of you are here today - a lot of friends that I've made.

As you know, I've been here as a temporary Judge before. The swearing-in on those occasions was a touch on the Bible followed by a cup of tea and a sandwich. I'm overwhelmed by the turnout here today and by what you've all said.

I'll end by saying that this is a court - and this is taking up Mr Cranney's point - where fairness prevails in both the statute and the legal principles. It's a principle which our late great missed friend John Haigh espoused whenever he came here. I had the privilege over the years of both appearing against him and his appearing before me. John never wavered from that ideal. It's the same sense of fairness which pervades the great and inspiring writings of Wilfred Jenks - I don't know whether any of you have read him - the former Director General of the International Labour Organisation, and the principles which underpinned his hand in drafting the Declaration of Philadelphia. It's also the basis for the great ILO Conventions of freedom of association and protection of the right to organise which emanated from the ILO after the ghastly atrocities of the late Second World War. They still provide the basis for labour law in the western world today.

Thank you all for your great kindness in coming here today.