

ROYDEN DOUGLAS CLIFFORD HINDLE

LLB (Hons) (Canterbury), LLM (Cambridge) FAMINZ (Arb)



Practice Statement (June 2019)

Royden Hindle is an experienced commercial arbitrator, mediator and construction adjudicator.

He was a litigation partner at Simpson Grierson before moving to the bar in 1996. In 1999/2000 he acted as Counsel Assisting in the Gisborne Cervical Screening Inquiry. He became a Fellow of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ) in 2001, and received the Sir Ronald Davison Award for Award Writing in the Fellowship Assessment Programme for that year.

From 2002 to 2011 Royden was Chair of the Human Rights Review Tribunal.

Since returning to practice in late 2011 Royden has been engaged as arbitrator, mediator and construction adjudicator in a wide variety of commercial matters. He is a member of both the Mediation and Arbitration Panels of AMINZ, and has been a Council member since 2011 (Royden is presently serving as the President of AMINZ).

Royden is also a Principal Arbitrator, Evaluator & Mediator with the New Zealand Disputes Resolution Centre, and a Resolution Institute-accredited mediator.

Royden teaches in dispute resolution at AUT University. He is a member of Bankside Chambers.

For more information visit www.roydenhindle.co.nz or www.bankside.co.nz

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Date of birth 21 October 1959

Health Excellent

Family status Married to Jane Bawden; two children: Hugh and Laura

Nationality New Zealand

Brief biographical notes

1959: Born Harare, Zimbabwe (family moved to Durban, South Africa in 1960).

1973: Family moved from South Africa to Hamilton, New Zealand. Attended Hillcrest High School.

1978: Enrolled University of Canterbury.

1982: Graduated LLB (Hons). Moved to Auckland to take up position as law clerk at Russell McVeagh McKenzie Bartleet & Co – predominantly property and commercial practice under Mr W M Brown.

1983: Admitted as a Barrister and Solicitor of the High Court of New Zealand.

1984: Joined Simpson Grierson as staff solicitor, commercial department under Mr C R St Clair Brown.

1984/1985: Cambridge University, Gonville & Caius College. Graduated LLM 1985. Returned to Simpson Grierson's litigation department, under Mr R H Hansen (as he was) and Mr M S Cole.

1989: Admitted to the partnership of Simpson Grierson. General litigation practice in civil and commercial matters (including arbitration).

1994: Accredited as LEADR mediator. Leader, Simpson Grierson Litigation Business Group.

- 1996: Commenced practice as a barrister, initially as one of the founding members of Park Chambers, Victoria Street, Auckland but after 2000 with Ms K G Davenport in a smaller set in High Street, Auckland.
- 1998: Admitted as Associate, Arbitrators' and Mediators' Institute of New Zealand.
- 1999/2000: Acted as Counsel Assisting the Gisborne Cervical Screening Inquiry.
- 2001: Admitted as Fellow, Arbitrators' and Mediators' Institute of New Zealand.
- 2002: Appointed Chairperson, Human Rights Review Tribunal (initially on a part-time basis).
- 2005: Role as Chairperson of the Human Rights Review Tribunal becomes a full-time position.
- 2010: Admitted to the AMINZ panel of Arbitrators.
- 2011: Returned to private practice at Bankside Chambers as an advocate, arbitrator and mediator. Requirements for accreditation as mediator by IAMA (Australia)/LEADR (New Zealand) completed March 2011.

General

The attached table of cases will indicate the scope of my practice as an advocate.

In the mid to late 1980's I was duty solicitor in the District Court from time to time, and I had a number of appointments as counsel for legally aided defendants in the District Court's summary jurisdiction. However, aside from that and a few years of practice in property and commercial matters, I have been engaged in civil litigation and alternative dispute resolution throughout my career.

During the period from 1988 to 1995 a significant part of my professional time was taken up with an arbitration in connection with the log supply agreement upon which the pulp and paper mill at Kawerau had been established. The substantive hearings ran throughout 1993. I was solicitor on the record, and counsel at the hearings with Mr A R Galbraith QC (we appeared for Tasman Pulp and Paper Ltd, Tasman Forestry Limited as well as other relevant companies in the Fletcher Challenge Group).

I maintained an interest in forestry-related matters, and in the period from 2003 to 2009 I was independent director of a joint venture forestry company Mangakahia Forests Limited, which had a significant forest estate in Northland (the joint venture parties being Hancock Natural Resources Group and Global Forest Partners LP at the date of the dissolution of the joint venture in 2009).

In 1999/2000 I acted as counsel assisting the Commission of Inquiry into the Cervical Screening Programme.

I was *amicus curiae* in the High Court in *re HIH Casualty and General Insurance (NZ) Ltd* (High Court, Auckland, CIV -2003-404-2838, 17 December 2003 per Paterson, J) I have also acted as *amicus curiae* in the Maori Land Court at Whangarei in two separate matters.

I was retained by the Complaints Assessment Committee of the Dentists' Disciplinary Tribunal to pursue claims in that forum: see as an example *Jenkins v Dentists Disciplinary Tribunal* [2002] NZAR 542. I also appeared in what was the Complaints Review Tribunal as counsel

for the Proceedings Commissioner under the Human Rights Act 1993 (i.e, before the amendments to the Human Rights Act in 2001, and my appointment to the Tribunal in 2002).

I attended the NZLS Litigation Skills course in 1987, and the Advanced Course in 1997. I have acted as faculty member at the NZLS Litigation Skills and the Advanced Litigation Skills courses many times over the years.

I was moderator for the College of Law Advocacy and Litigation Practice Examinations from 2004 to 2016.

Note that all of the decisions during my time as Chairperson of the Human Rights Review Tribunal can be accessed at <http://www.nzlii.org/nz/cases/NZHRRT/>. To illustrate my work with the Tribunal I note the following examples:

- *Child Poverty Action Group Inc v Attorney-General* (2005) 7 HRNZ 939 - Part 1A Human Rights Act 1993, affirmed by High Court in *Attorney-General v Human Rights Review Tribunal & Child Poverty Action Group Inc* (2006) 18 PRNZ 295. Note substantive decision is *Child Poverty Action Group Inc v Attorney-General* [2008] NZHRRT 31;
- *Howard v Attorney-General* [2007] NZHRRT 24 (Part 1A HRA; deference to Parliament and the idea of 'dialogue') and [2008] NZHRRT 10 (first declaration of inconsistency made under Part 1A HRA);
- *Trevethick v Ministry of Health* [2007] NZHRRT 7 and [2007] NZHRRT 21 (statutory interpretation; definition of disability; affirmed by High Court in *Trevethick v Ministry of Health* (Wellington, CIV-2007-485-2449, 1 April 2008 per Dobson J).;
- *Bullock v Dept of Corrections* [2008] NZHRRT 4 (Part 2 HRA – gender discrimination and cultural practices);
- *Director of Proceedings under Health & Disability Commissioner Act 1994 v Mogridge* [2007] NZHRRT 27 (Health and Disability – awards of damages incl. exemplary damages);
- *Director of Human Rights Proceedings v Commissioner of Police* [2007] NZHRRT 5 (Privacy, including issues of name suppression; see also the decision of the High Court on appeal in *Commissioner of Police v Director of Human Rights Proceedings* (Wellington, CIV-2007-485-000644, 2 October 2007 per Clifford J, S Ineson & J Grant).
- *Idea Services v Attorney-General* [2011] NZHRRT 11 (Part 1A HRA in context of cost cutting measures by Ministry of Health).

I have addressed a number of conferences over the years, but note in particular a paper '*Rights Against Legislated Discrimination: A Sleeping Giant? Part IA of the Human Rights Act 1993*' [2008] NZ Law Rev. 213.

Present

My present practice is almost entirely in the neutral roles of arbitrator, adjudicator, mediator or facilitator.

Since 2012 I have been engaged as arbitrator in over 40 matters that have given rise to contested interlocutory rulings (for example, as to jurisdiction), awards after hearing and/or

final awards (I omit appointments where no significant steps were ultimately taken). I have also delivered over 50 Construction Contracts Act determinations, as well as a number of other decisions in the context of private professional and sporting disciplinary processes.

I am regularly retained as a commercial mediator, and was named in the 2016 LawFuel list of the top 10 mediators in New Zealand.

Interests

I was a Trustee of the New Zealand International Yachting Trust since its establishment in 1986 to 2012. I also participated actively in on-shore and off-shore yachting events, including what was then the Pan Am Clipper Cup (Hawaii, 1984), Sydney/ Hobart events (1990 and 1992), Flying Fifteen National Regattas (1995, 1996 and 1997) and World Championship event (Hong Kong, 1995).

I rowed for Gonville & Caius College lower division boats 1984/85.

Between 2005 to 2009 I was a Trustee on the Board of Trustees of my son's school, the Wilson School in Takapuna (Wilson School is a school for children with high level special needs).

I am a keen and regular open water swimmer.

Appendix: Advocacy work

Cases that have been reported or noted (chronological order; all High Court unless otherwise shown):¹

Court/Proceeding	Notes
<i>T D Haulage v M K Hunt Foundation Ltd</i> (1986) 1 PRNZ 668	Practice and procedure – discovery – commercial sensitivity – whether inspection to be allowed and on what terms (lead by Mr M S Cole)
<i>Scott v Sullivan</i> (1986) 3 PRN 588	Practice and procedure – affidavit – requirement for witness to be produced for cross examination
<i>Allco Agencies Auckland Ltd v Naidoo</i> (1987) 2 NZELC 95,923	Employment law – confidential information – trade secret
<i>Alderton & Kingston Nominees Ltd v MacDonald</i> (1988) 1 PRNZ 550	Summary judgement – compliance with rules – Rule 5 – exercise of discretion – issues of quantum
<i>Tru Tone v Festival Records Retail Marketing Limited</i> [1988] 2 NZLR 352 (CA)	Commercial law – Commerce Act – maximum retail pricing – standard of proof – dominance in market – definition of market – whether substantial lessening of competition (lead by Mr R H Hansen, as he then was)
<i>Metropolitan Life Assurance Co of NZ v Triple M Ltd</i> (1989) 4 NZCLC 64,821	Commercial law – application for interim relief – Broadcasting Regulations 1977 (lead by Mr R H Hansen, as he then was)
<i>Kiwi Co-operative Dairies Ltd v Capital Dairy Products Ltd</i> (1989) 1 PRNZ 622	Intellectual property – injunction – distributing milk product with Kiwi bird design and name – breach of trade mark – Fair Trading Act
<i>Willems v Stars Corporation Ltd & Ors</i> (1989) 5 NZCLC 66,113	Companies – injunction – sales to directors at alleged undervalue – oppression on minority
<i>R J Hay v Laurent Construction Ltd & Ors</i> (extract) (1990) 1 NZ ConvC 190,387	Contract – whether obligations discharged – Frustrated Contracts Act
<i>Phillips v Foster</i> [1991] 3 NZLR 263 (CA)	Income tax – whether agreement illegal as amounting to tax evasion – Fair Trading Act
<i>Stephens v Stephens</i> [1991] 1 NZLR 633	Practice and procedure – costs against party and solicitor – whether Master had jurisdiction – Master’s decision per incuriam – Judicature Act – High Court Rules
<i>Paerata Hotels Ltd v Dominion Breweries Ltd; Portrose Investments Ltd v Dominion Breweries Ltd</i> (1992) 5 TCLR 74	Commercial law – arbitration – application for stay (the <i>Paerata</i> case) and re scope of arbitration clause (the <i>Portrose</i> case)
<i>Arklow Investments v Wingate & Ors</i> (1994) 8 PRNZ 188	Practice and procedure – security for costs
<i>Greenpeace NZ Inc v Minister of Fisheries & Ors</i> [1995] 2 NZLR 463	Contempt of Court – injunction to prevent publication of article – observations as to New Zealand Bill of Rights Act 1990

¹ This is not a complete list of all matters that I have been involved in; only those which have given rise to a decision that has either been reported or noted.

<i>Kang v Hyundai Electronic Industries Co Ltd</i> (1996) 8 PRNZ 628 (CA)	Summary judgment – foreign defendant in New Zealand – protest to jurisdiction struck out
<i>Commerce Commission v Noel Leeming Ltd</i> [1986] DCR 311 (DC)	Prosecution under Fair Trading Act – interest free promotions
<i>Man O'War Station Ltd v Auckland City Council</i> [1996] 3 NZLR 460	Public reserves and domains – land taken for defence purposes designated historic reserve – whether easement is 'land' for purposes of Reserves Act – surrender of easement (lead by Mr A R Galbraith QC)
<i>Plumley v Ellis & Ors</i> [1997] 2 NZLR 5790	Arbitration – witness – power of High Court to subpoena witness from Australia – taking evidence by video link
<i>Commerce Commission v Taylor Preston Ltd & Ors</i> [1998] 3 NZLR 498	Commercial law – Commerce Act – penalties – interpretation – ss 27, 30 and 80 Commerce Act
<i>Commerce Commission v Taylor Preston Ltd & Ors</i> (1998) 6 NZBLC	Commercial law – Commerce Act – 'sentencing' – agreed penalties for anti-competitive discussions endorsed
<i>Reid v Wilkins</i> (1999) 13 PRNZ 119 (CA)	Practice and procedure – whether appeal to be dismissed for want of prosecution
<i>Auckland City Council v Man O'War Station Ltd</i> [2000] 2 NZLR 267	Property law – indefeasibility of title – whether implied dedication defeated by subsequent transfer of registered title (lead by Mr A R Galbraith QC)
<i>Leaderbrand Produce Ltd v Primor Produce Ltd</i> [2001] DCR 536 (DC)	Breach of contract – estoppel – Fair Trading Act
<i>Man O'War Station Ltd v Auckland City Council</i> [2001] 1 NZLR 552 (CA)	Practice and procedure – bias – whether appearance of bias where appellate Judge and trial witness known to each other (lead by MR A R Galbraith QC)
<i>Farrelly v Gruar</i> [2001] NZFLR 212 (CA)	Family law – de facto relationships – constructive trust – direct and indirect contributions to relationship
<i>Man O'War Station Ltd v Auckland City Council</i> Judicial Committee of the Privy Council Judgment No 1 [2002] 3 NZLRT 577 Judgment No 2 [2002] 3 NZLR 584	Judgment No 1: Judiciary – apparent bias Judgment No 2: Highways and roads – implied dedication – whether owner of land had intention that road should be used by public as of right – Waiheke Island eastern end roads (lead by Mr A R Galbraith QCV)
<i>Newman & Ors v Stone & Ors</i> (2002) NZCLC 103,514	Contract – place where contract entered into – issues as for <i>forum non conveniens</i>
<i>Jenkins v Dentists' Disciplinary Tribunal</i> [2002] NZAR 542	Dentist Disciplinary – name suppression

Cases which have been noted but – as far as I am aware – are not reported (I do not include matters that were not noted at all, or which were only listed in the Capital Letter):

- *Alexander v Markham & Partners* [1986] BCL 811, 809; [1987] NZLJ 55
- *Nominated Securities Ltd & Anor v Chase Group Ltd & Ors* [1986] BCL 756

- *Ashby v Lifestyle Homes (NZ) Ltd* [1986] BCL 1530; (1991) 6 Auckland University Law Review 581; (1987) 4 BCB 175
- *Dowell v NZ Underwater Association* [1988] BCL 227
- *Wilson v Baron of Beef Ltd* [1989] BCL 900
- *Telecom v Sanda Communications (NZ) Ltd* [1989] BCL 1826
- *Vincent v Thompson* [1989] BCL 472.434
- *Sail City Motors North Shore v Reddish & NZ Guardian Trust & anor* [1990] BCL 221, 180
- *Foster & Hansen v Phillips* (in the High Court) [1990] BCL 1994; [1990] NZ Recent Law Review 332
- *NZ Timberlands v Tasman Pulp & Paper Co Ltd* [1990] BCL 1987; [1990] NZ Recent Law Review 285
- *Prolog Industries Ltd v Tasman Pulp & Paper Co Ltd* [1992] BCL 147
- *Dominion Breweries v Countrywide Banking Corporation* [1992] BCL 1851, 178 (Court of Appeal)
- *Whitehead & McBeath v Nelson* [1992] BCL 2160; NZCLD (second series) J-113
- *Tasman Pulp & Paper Ltd & Ors v NZ Forestry Corporation & Attorney-General* [1993] BCL 151,149
- *Peat Mine Ltd v Rural Research Ltd* [1994] BCL 1533 (per Smellie, J) and [1994] BCL 1684 (per Hammond J)
- *Commerce Commission v Noel Leeming* [1996] BCL 1125
- *Greenpeace NZ Inc v Minister of Fisheries & Ors* [1996] BCL 2; 1997 NZ Law Review 202; [1999] NZLJ 194
- *South Taranaki Energy Users' Group v South Taranaki District Council* [1997] BCL 967; [1998] NZ Law Review 416; [1997] NZ Law Review 506; 1999] NZLJ 196
- *Tasman Pulp & Paper Co Ltd v Greenpeace NZ Inc.* [1998] BCL 621
- *Greenpeace NZ Inc & Ors v Minister of Health* [1999] BCL 655, 637