

Karen Clark QC



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Main Areas of Practice

- Civil and commercial litigation
- Judicial review
- Public and constitutional law
- Human Rights/Bill of Rights Act

Qualifications

- LLB Victoria University of Wellington (1986)
- Admission to New Zealand Bar 1986
- Appointed Queen's Counsel 2007

Professional Background

Karen joined the Crown Law Office as an Assistant Crown Counsel on admission to the Bar in 1986 and was appointed Crown Counsel in 1988. She had previously worked as a Judge's Clerk.

For six years, until her appointment as Deputy Solicitor-General (Public Law) in 2002, Karen led the Commercial Team (later known as the Public Commercial Team). In addition to the leadership and managerial responsibilities of the Team Leader and Deputy Solicitor-General positions she represented the Crown's interests in first instance and appellate jurisdictions, including the Privy Council and the Supreme Court, in commercial, constitutional, public law, company law, regulatory, tax and resource management cases. She has advised and represented Crown and governmental interests in a range of ministerial and parliamentary inquiries.

Karen is experienced in managing large scale litigation. She was the solicitor for the Crown and a member of the Crown's legal team during the land-mark 198 day trial of proceedings brought by the Statutory Managers of the Equiticorp Group in the 1990s.

Karen has a particular interest in the workability of statute law. She was a member of the New Zealand Law Society Legislation Committee from 2002-2006 drafting submissions and making representations to relevant Select Committees on the Society's behalf.

From 2005-2007 Karen was the Solicitor-General's delegate on the Rules Committee, a statutory body with responsibility for procedural rules in the Supreme Court, the Court of Appeal, the High Court and district courts.

She has given many presentations to in-house legal advisers on how decision-makers can achieve their policy objectives in a way that is legally defensible.

Since becoming a barrister and Queen's Counsel in 2007 Karen has continued to specialise in public law, constitutional law, and civil and commercial litigation and contributes to the New Zealand Law Society's continuing legal education programme.

Representative Reported Cases

Tannadyce Investments Limited v Commissioner of Inland Revenue [2011] NZSC 158, SC
Challenge to assessments of income tax liability – whether Tax Administration Act prevented judicial review – abuse of process - strike out

Winther v Housing Corporation of New Zealand [2011] 1 NZLR 825, CA
Human Rights – Discrimination – Tenancy Law

Property Ventures Investments Ltd v Commissioner of Inland Revenue (2010) 10 NZCLC 264,669; (2010) 24 NZTC 24,046, HC
Company Law – Takeovers and mergers – Amalgamation - Insolvency

Housing Corporation of New Zealand v District Court at Auckland [2009] NZAR 313, CA
Tenancy Law – Tenancy Agreements - Rent

AstraZeneca Limited v Commerce Commission & Pharmaceutical Management Agency (2008) 12 TCLR 116, HC; (2008) 12 TCLR 302, CA; [2010] 1 NZLR 297, SC
Trade practices – Anti-competitive purpose/behaviour – Exercise of power by Commerce Commission under Commerce Act 1986, s 98 - Statutory exemptions

McCully v Whangamata Marina Society [2007] 1 NZLR 185, CA
Constitutional law – Relationship of Parliament and Courts – Whether Court to prevent access of Member of Parliament to Court file to prevent improper parliamentary discussion of litigation on foot

Tap (NZ Pty) Limited v Attorney-General [2007] BCL 204; [2007] NZLJ 30, CA
Administrative law – Judicial review – Environment and natural resources – Minerals Resource Management – Mining - Exploration

Zaoui v Attorney-General (No. 2) [2006] 1 NZLR 289, SC
Human rights – Immigration – Refugee status – Threat to national security

Unitec Institute of Technology v Attorney-General [2006] 1 NZLR 65, HC: [2007] 1 NZLR 750, CA

Judicial review – Constitutional law – Whether ministerial decision to suspend processing of application to become university a suspension of laws – Legitimate expectation – New Zealand Bill of Rights Act 1990

Glenharrow Holdings Ltd v Attorney General [2005] 2 NZLR 289, PC

Resource Management - Mining - Mining licence - Right of existing holder to renewal of licence - Whether term for which licence granted a condition subject to modification

Zaoui v Attorney-General (No 2) [2005] 1 NZLR 690, CA

Judicial review - Review of security risk certificate by Inspector-General of Intelligence and Security Privative clause - Whether Inspector-General of Intelligence and Security required to take human rights into account – New Zealand Bill of Rights Act 1990 - Right to natural justice

Berryman v Solicitor-General [2005] NZAR 512, HC

Judicial review – Excess or defective use of powers - Crown proceedings - Solicitor-General - Decision not to call second inquest – Whether Solicitor-General acting as the Crown

Attorney-General v Palmer [2005] NZAR 46, HC

Vexatious litigant - civil proceedings as collateral challenges to criminal convictions

Zaoui v Attorney-General [2004] 2 NZLR 339, HC

Judicial review – Immigration – Refugee status – Constitutional law – New Zealand Bill of Rights Act 1990 – Whether refugee entitled to summary of classified information

Attorney-General v Palmer [2004] NZAR 374, HC

Vexatious Litigant - Whether counterclaim possible in vexatious litigation application Judicature Act 1908 - New Zealand Bill of Rights Act 1990 – Crown Proceedings Act 1950

Crawford v Securities Commission, Minister of Justice and Governor-General [2003] 3 NZLR 160, HC

Judicial review - Statutory Management - Corporations (Investigation and Management Act 1989 - Validity of Order in Council – Whether Minister of Justice and Governor-General required to reconsider recommendation of Securities Commission to place companies in statutory management

Kena Kena Properties Ltd v Attorney-General [2002] 2 NZLR 597, PC

Revenue - Goods and Services tax - Whether payment eligible for automatic statutory increase when rate of GST raised - Whether grant or subsidy

Attorney-General v Collier [2002] NZAR 257, CA

Courts and administration - Vexatious litigant - Challenge to composition of Court – New Zealand Bill of Rights Act

McInnes v Minister of Transport [2001] 3 NZLR 11, CA

Administrative Law – Ministerial requirement to consult - Content of obligation to consult

Attorney-General v Brogden [2001] NZAR 809, CA

Courts and administration - Vexatious litigant - Relevant criteria when deciding if litigant is vexatious - New Zealand Bill of Rights Act s 27

Lumber Specialties Ltd v Hodgson [2000] 2 NZLR 347, HC

Judicial review - State-owned enterprise – Lawfulness of directive by Ministers of Crown to state-owned enterprise - Contract - Breach - Force majeure clause - Whether directive entitled invoking of force majeure clause - Constitutional law - Natural justice - Whether individual plaintiffs were owed duty of consultation - New Zealand Bill of Rights Act 1990, s 27

Newspaper Publishers Association of NZ (Inc) v Family Court [1999] 2 NZLR 344, HC

Judicial review - Suppression order by Family Court restraining publication of information about child who was ward of the Court - Relationship between paramountcy of child's welfare and media's freedom of expression - s 23, New Zealand Bill of Rights Act 1990

Equiticorp Industries Group Ltd (In Statutory Management) v Attorney-General (Judgment no. 47) [1996] 3 NZLR 586, HC (198 day trial)

Trusts - Equity - Contract - Company law - Statutory management

Commerce Commission v Hewlett Packard (NZ) Ltd [1993] 3 NZLR 252, HC

Commercial law - Commerce Act 1986 - Retail price maintenance

Auckland City Council v Auckland Electric Power Board (1993) 7 PRNZ 74, HC

Evidence - Affidavit - Refusal to make - Whether order for examination appropriate – High Court Rules 509

Mirelle Pty Ltd v Attorney-General (1993) 7 PRNZ 107, HC

Contract – tender – judicial review of decision of Minister of Commerce to decline to accept tender bid for management rights to radio frequencies - Costs - Discretion - Successful body ordered to pay costs to unsuccessful parties

Attorney-General v Paxus Information Services Ltd (1989) 2 PRNZ 679, HC

Application for interpretation hearing - First occasion on which s 24C(4) (available only in Commercial List) utilised

Housing Corporation of New Zealand v Maori Trustee [1988] 2 NZLR 662, HC

Property Law - Indefeasibility of title - "Wrongful" registration - Mortgage over Maori freehold land

Royal Commissions, Parliamentary, Ministerial and other Inquiries

Currently engaged in Royal Commission on the Pike River Coal Mine Tragedy.

Appointed under Ministerial Terms of Reference to report on aspects of a Parliamentary Petition raising issues of jurisdiction of Commerce Commission under the Commerce Act (2011).

Assisting in the *Inquiry into the Explosion and Fire Icepak Coolstores, Tamahere* (2008).

Undertaking inquiry into allegations of conflicts of interest for Crown entity (2007).

Securities Commission *Inquiry into Effects of the Securities Markets of certain statements made in May 2006 concerning Telecommunications*.

Finance and Expenditure Committee Inquiry into the Powers and Operations of the Inland Revenue Department.

Ministerial Inquiry into Department of Work and Income (the "Hunn Inquiry").

Auditor-General's Inquiry into Department of Work and Income (Charter of Aircraft).

Ministerial Inquiry into Civil Aviation Authority (advice on Terms of Reference, natural justice obligations and procedural issues).

Administrative Law/Judicial Review Seminar Papers

Ministerial Decision-Making: Recent Developments (paper presented at New Zealand Law Society Administrative Law Intensive, Wellington, August 2008)

Section 27(1) New Zealand Bill of Rights Act 1990: modifying or recognising natural justice as we know it, a paper for New Zealand Law Society Judicial review Intensive, September 2007

Defending the Defensible, Paper for AIC Conference on Key Concepts and Paradigms in Administrative Law, New Zealand Law Journal, August 1999:306-312