

Karen Clark QC



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Main Areas of Practice

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

Qualifications

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

Legal Experience

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 was previously employed 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 had a varied litigation practice based on many demanding and significant cases. She has 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 was 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 helping to make law workable. She was a member of the New Zealand Law Society Legislation Committee from 2002-2006 during which time she prepared submissions on behalf of the Society on a number of bills and appeared before the relevant Select Committee on behalf of the Society when that was required.

From 2005-2007 Karen was the Solicitor-General's delegate on the Rules Committee, a statutory board with responsibility for making rules regulating the practice and procedure of the High Court, Court of Appeal and Supreme Court.

She has given many presentations to public sector lawyers to assist their understanding of how to help decision-makers reach decisions that achieve their legitimate policy objectives in a way that is legally defensible.

Representative reported cases (as at May 2008)

AstraZeneca Limited v Commerce Commission & Pharmaceutical Management Agency
(High Court, Wellington, CIV 2007-485-002580, 16 April 2008, Panckhurst J)
Judicial review of decision by Commerce Commission to issue a notice under s98 Commerce Act 1986 to produce documents and furnish information (under appeal)

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 CA 48/06, 13 December 2006, 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 and [2007] 1 NZLR 750 CA
Administrative law - 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 1990 - Right to natural justice

Berryman v Solicitor-General [2005] NZAR 512, HC
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
Practice and procedure - Vexatious litigant - civil proceedings as collateral challenges to criminal convictions - Whether vexatious proceedings brought persistently without any reasonable grounds

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 1900 - High Court Rules – 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 (2nd counsel)
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 - Judicature Act 1908

McInnes v Minister of Transport [2001] 3 NZLR 11, CA
Administrative Law - Requirement to consult such persons and entities as Minister considers appropriate - Content of obligation to consult - Whether consultation prior to passage of Act satisfied requirements of Act - Land Transport Act 1998

Attorney-General v Brogden [2001] NZAR 809, CA
Courts and administration - Vexatious litigant - Relevant criteria when deciding if litigant is vexatious - Whether instituting three proceedings amounted to "persistently" bringing proceedings - New Zealand Bill of Rights Act s 27

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

Contact – 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

Equiticorp Industries Group Ltd (in statutory management) v Hawkins 5 (1991) PRNZ 484, HC

Pleadings - Cross-claims - Setting aside - Claim for contribution or indemnity

R v Yogasakaran [1990] 1 NZLR 399, CA

Manslaughter by negligence - anaesthetist – duty of persons doing dangerous acts – degree of negligence to be proved

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

Parliamentary, Ministerial and other Inquiries

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)

Papers (publicly available)

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 Aug 1999:306-312