

CURRICULUM VITAE

THE HONOURABLE PAUL HEATH KC

LL.B., FCI Arb (UK), FAMINZ, Chartered Arbitrator

Date of Birth

9 December 1955

Nationality

New Zealander

Contact Details

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Areas of expertise (since retirement as a High Court Judge in 2018)

- Arbitration (both international and domestic)
- Mediation (both international and domestic)
- Insolvency
- Commercial, finance and company law
- Equity and trusts

Admissions

- Barrister and Solicitor of the High Court of New Zealand: 1978
- Barrister and Solicitor of Supreme Court of Australian Capital Territory: 1990
- Barrister of the High Court of Australia: 1990
- Appointed Queen's Counsel (now King's Counsel) in New Zealand: 1998
- Registered Foreign Lawyer at the Singapore International Commercial Court (SICC): 2023

Current professional positions and affiliations

- Arbitrator and Mediator at Bankside Chambers in New Zealand and Singapore
- Associate Member at South Square in London
- Associate Member at Riverbank Chambers, New Zealand
- Co-Chair of the INSOL International ADR Special Interest Group
- Current judicial appointments:
 - Chief Justice of the Pitcairn Islands [January 2022 – now]
 - Judge of the Court of Appeal of Tonga [August 2022 – now]
 - Judge at the Court of Appeal of Fiji [August 2023 – now]
 - Member of the New Zealand Lawyers' and Conveyancers' Disciplinary Tribunal [July 2020 – now]
- Fellow of the Chartered Institute of Arbitrators UK (FCI Arb UK) [1996]; Chartered Arbitrator
- Fellow of the Arbitrators' and Mediators' Institute of New Zealand (AMINZ)
- Fellow of the Australian Centre for International Commercial Arbitration (ACICA)
- Member of P.R.I.M.E. Finance's Panel of Experts for Dispute Resolution
- Fellow of the American College of Bankruptcy (inducted in 2000)
- Member of the International Insolvency Institute
- Life Member of the Restructuring Insolvency and Turnaround Association of New Zealand (RITANZ)
- Honorary Fellow of the New Zealand Legal Research Foundation
- Honorary Lecturer of the Faculty of Law, University of Waikato, New Zealand
- Member of Editorial Advisory Board of Waikato Law Review

- Member of Editorial Advisory Board of Nottingham Business and Insolvency Law e-Journal
- Member of the teaching faculty for the New Zealand Law Society's Litigation Skills Programme

Practice as arbitrator

Appointed as arbitrator in 6 international commercial arbitrations and over 40 domestic commercial arbitrations, and as an umpire in 2 arbitrations, in the period between May 2018 and September 2023.

Empanelment or affiliations:

- Member of Arbitration Panel of New Zealand International Arbitration Centre (NZIAC)
- Member of Arbitration Panel of Singapore International Arbitration Centre (SIAC)
- Member of Arbitration Panel of Hong Kong International Arbitration Centre (HKIAC)
- Member of Arbitration Panel of Australian Centre for International Commercial Arbitration (ACICA)
- Member of Arbitration Panel of Asian International Arbitration Centre (AIAC)
- Fellow and Member of Arbitration Panel of the Arbitrators' and Mediators' Institute of New Zealand Inc (AMINZ)
- Member of Arbitration Appeals Panel (AMINZ)

Selected list of arbitrations:

- Appointed as sole arbitrator in a SIAC arbitration involving a damages claim arising out of an agreement and purchase of shares in a maritime company between parties from Country A and Country B.
- Appointed as a member of a tribunal by HKIAC in relation to a multi-million-dollar dispute involving investments by entities in Countries A and B.
- Appointed as sole arbitrator in related arbitrations involving the construction of a large project in Country A, in which the parties were both in that country, but a guarantor was overseas. Neither respondent participated.
- Appointed as sole arbitrator in an infrastructure dispute involving Pacific Islands' countries in which declarations were required about the way in which a long-term contract would operate.

Practice as mediator

Appointed as sole or co-mediator in over 30 mediations, in the period between May 2018 and September 2023.

Selected list of mediations:

- Appointed as co-mediator by the District Court of Bexar County in Texas with former Judge Renée Yanta of that Court to undertake a virtual mediation, including issues arising out of the use of various forms of trusts, one of which was an international trust based in the Cook Islands. The mediation was held over three days in August 2021 and resulted in a successful outcome.
- Appointed as co-mediator by the parties with another retired judge of the High Court of New Zealand in a multi-million-dollar dispute involving commercial and investment activities in three different jurisdictions.
- Appointed as sole mediator under the Farm Debt Mediation Act 2019 (NZ) in respect of a large agri-business involving debt in excess of \$100 million.

Practice as counsel

Appeared as counsel in all senior courts in New Zealand that existed prior to my appointment to the High Court Bench in 2002, as well as the Employment Court, Māori Land Court and Waitangi Tribunal.

Appeared as sole or leading counsel in three cases (one a leave application) heard by the Privy Council in London. See, in particular, *Elders Pastoral Ltd v Bank of New Zealand* [1990] 3 NZLR 129 (PC); [1990] 1 WLR 1090 and *Elders Pastoral Ltd v Bank of New Zealand* [1991] 1 NZLR 385.

A list of significant cases in which I appeared as Counsel is attached as “**Schedule A**”.

A list of significant cases that I decided as a Judge is attached as “**Schedule B**”.

Previous judicial appointments

- Judge of the High Court of New Zealand [March 2002 – April 2018]
- Judge of the Court of Appeal of Vanuatu [July 2011]
- Judge of the Court of Appeal of Kiribati [August 2019 – 23 August 2022]

According to the LexisNexis database LINXPLUS, I gave (or was party to) 1596 decisions of the High Court and 424 decisions of the Court of Appeal.

During my tenure at the High Court of New Zealand, I held, at various times, the positions of:

- Ad hoc member of the Court of Appeal on both the Civil Appeal Division and Criminal Appeal Division
- Senior Puisne Judge; acting as Chief High Court Judge on two occasions, in 2016 and 2017 respectively
- Commercial List Judge
- Commercial Panel Judge
- Civil List Judge, Auckland Registry
- Liaison Judge for Hamilton, Rotorua, Tauranga, Whangarei, New Plymouth and Gisborne Registries
- Member of Higher Courts Management Committee
- Chair of Higher Courts’ Education Committee.
- Member of the Board of the Institute of Judicial Studies

Law reform work

- Served as Consultant for the New Zealand Law Commission (an independent statutory authority dealing with law reform issues) on commercial law issues. [1997 – 1999]
- Served as a Commissioner of the New Zealand Law Commission [1999 – 2002]

Reports, preliminary papers, miscellaneous papers and study papers to which I was a party while at the Law Commission can be found at www.lawcom.govt.nz. Those reports for which I had responsibility were:

Insolvency issues

- Cross border insolvency: Should New Zealand Adopt the UNCITRAL Model Law on Cross border Insolvency? (NZLC R 52 1999)
- Priority Debts in the Distribution of Insolvent Estates: An Advisory Report to the Minister of Commerce (NZLC SP 2 1999)
- Insolvency Law Reform: Promoting Trust and Confidence: An Advisory Report to the Ministry of Economic Development (NZLC SP 11 2001)

Electronic commerce and computer misuse

- Electronic Commerce Part 1: A Guide for the Legal and Business Community (NZLC R 50 1998)
- Computer Misuse (NZLC R 54 1999)
- Electronic Commerce Part 2: A Basic Legal Framework (NZLC R 59 1999)
- Electronic Commerce Part 3: Remaining Issues (NZLC R 68 2000)

Arbitration

- Improving the Arbitration Act 1996 (NZLC R 83 2003)

Māori Issues

- Determining Representation Rights under Te Ture Whenua Māori Act 1993: An Advisory Report for Te Puni Kōkiri (NZLC SP 8 2001)
- Treaty of Waitangi Claims: Addressing the Post-settlement Phase (An Advisory Report for Te Puni Kōkiri, the Office of Treaty Settlements and the Chief Judge of the Māori Land Court) (NZLC SP 13 2002)

UNCITRAL-related work

- Sole New Zealand delegate at meetings of the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Electronic Commerce, held in Vienna and New York respectively [1999 – 2000]
- Head of Delegation for meetings of the UNCITRAL Working Group on Insolvency, held in Vienna and New York respectively. I was elected as Vice Chairman of the Working Group at sessions held in 1999 and 2001, and chaired parts of each of those meetings in the absence of the elected chairman [1999 – 2001, 2010]
- Preparation of the first draft of the UNCITRAL Model Law on “Cross Border Insolvency: The Judicial Perspective” during a period as Visiting Scholar at UNCITRAL in Vienna. An acknowledgement of the work undertaken in preparing the first draft is contained in the Preface to the publication [2010]
- Faculty member of Judges’ Colloquia on Insolvency Law. This colloquium of international Judges is held every two years, under the auspices of INSOL International, UNCITRAL and the World Bank [2005 – 2020]

Other professional experience

- Engaged by World Bank as part of a panel of international experts to present at a conference for Judges, officials and insolvency practitioners in Beijing, China [June 2023]
- Member of the International Steering Committee at the Arun Jaitley Mediation Centre in India [February 2023]
- Engaged by World Bank to provide a peer review on proposed changes to insolvency law in Mauritius. [August 2020]
- Engaged by World Bank to undertake a review of insolvency laws in Fiji. [August 2020]

- Giving evidence to the Epidemic Response Committee of Parliament under the purview of the New Zealand Ministry of Business, Innovation and Employment on proposed changes to the Companies Act 1993 (business debt hibernation and safe harbour provisions for directors) as a result of the COVID-19 pandemic. [8 May 2020]
- Engaged by Asian Development Bank as an International Consultant to lead a project, over 18 months, in Sri Lanka called Strengthening the Efficiency of the Justice Sector with Focus on Commercial Law, Investment, and Contract Enforcement. [March 2020]
- Member of Faculty for World Bank and INSOL International’s Judicial Education Programme, for Judges of the Supreme Court of Mauritius. [January 2020]
- Giving expert evidence on New Zealand law for US Bankruptcy Court for the Southern District of New York in relation to a crypto-currency liquidation in New Zealand: Cryptopia Ltd (in liq). [May 2019]
- Engaged by the Asian Development Bank as a Member of a Faculty of former Judges, for a Judicial Colloquium in Myanmar designed to build capacity among Judges in Myanmar to deal with new commercial laws (Companies Law, Arbitration Law and Insolvency Bill) in anticipation of the opening of local markets to foreign investment. [July 2018]
- Independent adviser to the New Zealand Justice Select Committee on the Arbitration Amendment Bill 2018. [2018]
- Member of Editorial Advisory Board of Te Wharenga – The New Zealand Criminal Law Review. [2016 – 2018]
- Chairperson of the New Zealand Law Foundation’s *Regulatory Reform Project Advisory Review Committee*. [2010 – 2014]

Other appointments outside of the legal industry

- Appointed as a member of the Board of Directors of Northern Districts Cricket Association Inc (a major association for cricket in New Zealand) from December 2018 to 2022. Chair from June 2020 to December 2021.
- Member of Council of Neurological Foundation of New Zealand [1994 – 2004]

Selected publications & speaking engagements

Arbitration

- Presenter at an Award Writing Workshop for the Arbitrators’ and Mediators’ Institute of New Zealand Inc’s “Arbitration Day”. Paper provided called “Have I Made Myself Clear?” [16 March 2023]
- Invited by the Asian Development Bank: Law and Policy Reform Program to speak at “ASEAN Judges’ E-Course: International Commercial Arbitration” on (a) the role of courts in international commercial arbitration proceedings; and (b) interplay between Insolvency, Arbitration and Mediation Proceedings [January 2023]
- Co-contributing authors, with Dr Anna Kirk, Lauren Lindsay and Ben Prewett, of the New Zealand chapter in *International Comparative Legal Guide’s (ICLG) International Arbitration* (2022 edition) [August 2022]
- Improving the Arbitration Act 1996 (NZLC R 83 2003)
- Arbitration and Insolvency Disputes: A Question of Arbitrability (published as a Special Report by INSOL International in July 2020) (with Dr Anna Kirk)
- Co-contributing authors, with Dr Anna Kirk, Lauren Lindsay and Ben Prewett, of the New Zealand chapter in *International Comparative Legal Guide’s (ICLG) International Arbitration* (2022 edition)

Insolvency Issues

- Co-Consulting Editor, Heath & Whale on Insolvency (LexisNexis Wellington 2008 loose-leaf edition) and three later paperback editions. [2008]
- Co-Presenter at World Bank Insolvency Workshop for judiciary, officials and insolvency practitioners in Beijing, China. [May-June 2023]
- Co-presenter for SIAC Academy Specialist Arbitration Series: Part 3: Insolvency, Banking and Finance Arbitrations (Virtual Edition) [19 April 2023]
- Speaker at Inaugural Conference and 1st Meeting of Insolvency Scholars' Forum held in New Delhi by the (Indian) Insolvency Law Academy [4 – 5 February 2023]
- Engaged by the Project Director of Lao PDR Competitive and Trade Project in association with the World Bank to co-present judicial training for insolvency judges in Lao PDR [September 2022]
- Presented as Member of Faculty for World Bank and INSOL International at a Judicial Colloquium held in Delhi, India, for members of the National Company Law Tribunal and National Company Law Appellate Tribunal, in relation to India's Insolvency and Bankruptcy Code 2016. [March 2020]
- The Waxing and Waning of the Tides: from the Isle of Man to Bermuda (2015) 3 NIBLeJ 9
- Insolvency Law Reform: Promoting Trust and Confidence: An Advisory Report to the Ministry of Economic Development (NZLC SP 11 2001)
- Consumer Bankruptcies: A New Zealand Perspective Osgoode Hall Law Journal 37.1/2 (1999) 427-447
- Insolvency Reform: The Role of the State [1999] NZ L Rev 569
- International Insolvencies: a New Zealand Perspective (1998) 6 Insolvency Law Journal 90
- Preferential payments on Bankruptcy and Liquidation in New Zealand: are they Justifiable Exceptions to the Pari Passu rule? (1996) 4 Wai L Rev 24
- Laws of New Zealand, Insolvency 1994 (LexisNexis Wellington)
- Bankruptcy and the Bill of Rights [1993] NZLJ 347
- Proposals under Part XV Insolvency Act: Is the Public Interest Relevant? [1991] NZLJ 52
- Superannuation Schemes and Insolvency (with Professor Julie K Maxton) (1997) 3 NZBLQ 43

Equity and Trusts

- Bringing Trading Trusts into the Company Line (2010) 16 Trusts & Trustees 690 and [2010] NZ L Rev 519

Other Issues

- Hard Cases and Bad Law [Harkness Henry Lecture] (2008) 16 Wai L Rev 1
- Electronic Commerce: The New Zealand Approach [1999-2000] CIL 369 (with Ms Megan Leaf)
- A Legal Infrastructure for Electronic Commerce? (1998) 7 Canta LR 157
- Resolving Disputes within Companies and Partnerships (New Zealand Law Society seminar, August 1997) (with Mr P W Jones)
- The Proper Purposes Doctrine – The Law and Its Implications (1978) 3 AULR 207

Schedule A – List of Cases As Counsel

Notable cases, reported in the New Zealand Law Reports, in which I appeared as Counsel include:

- *Rigg v University of Waikato* [1984] 1 NZLR 149 (Visitor of the University of Waikato)
- *Manion v Marac Finance Ltd* [1986] 2 NZLR 586 (HC) (First application to reopen a credit contract under the Credit Contracts Act 1981)
- *Elders Pastoral Ltd v Bank of New Zealand* [1989] 2 NZLR 180 (CA) and [1990] 3 NZLR 129 (PC) and [1991] 1 NZLR 385 (PC). (Whether provision in a stock security instrument created a constructive trust or amounted to an equitable assignment by way of charge of a future chose in action. The first of the Privy Council cases dealt with the question whether, having regard to a settlement, the appeal ought to be regarded as moot).
- *Grayburn v Laing* [1991] 1 NZLR 482 (HC) (Directors' duties)
- *R v Hende* [1996] 1 NZLR 153 (CA) (Elements of offence of charge of wilfully ill-treating a child)
- *Hight v Hight* [1997] 3 NZLR 396 (CA) (Valuation of shares for the purposes of the Matrimonial Property Act 1976)
- *Commissioner of Inland Revenue v Vela Fishing Ltd* [2002] 2 NZLR 635 (CA) (Application for leave to appeal to the Privy Council in tax case)

Schedule B – List of Cases as Judge

Notable decisions reported in the New Zealand Law Reports include:

- *Pathak v Tourism Transport Ltd* [2002] 3 NZLR 681 (HC) (Arbitration)
- *Re an Unborn Child* [2003] 1 NZLR 115 (HC) (Whether Court could assume guardianship over an unborn child)
- *Carter Holt Harvey Ltd v Te Rununga o Tuwharetoa ki Kawerau* [2003] 2 NZLR 349 (HC) (Application of principles of Treaty of Waitangi to Resource Management Act decisions)
- *Hansen v Young* [2004] 1 NZLR 37 (CA) (Solicitors' negligence)
- *Re DML Resources Ltd (in liq)* [2004] 3 NZLR 490 (HC) (Distributions to shareholders' contrary to solvency test)
- *Jenkins v Supscraf Ltd* [2006] 3 NZLR 264 (HC) (Just and equitable ground for liquidation order)
- *Jones v Skelton* [2007] 2 NZLR 192 (HC) (Whether writ of habeas corpus should issue in relation to a child abduction)
- *Body Corporate 188529 v North Shore City Council* [2008] 3 NZLR 479 (HC) (Obligations of territorial Council in relation to consent inspection and certification provisions of Building Act 1991 and scheme of Unit Titles Act 1972)
- *Levin v Ikiua* [2010] 1 NZLR 400 (HC) (Insolvency and trading trusts)
- *Re JSB (A child)* [2010] 2 NZLR 236 (HC) (Whether orders could be made in relation to a child under the guardianship of the High Court in respect of acts that would necessarily occur after his death)
- *Re Roslea Path Ltd (in liq)* [2013] 1 NZLR 207 (HC) (Full Court decision dealing with factors to be taken into account when assessing fees payable to liquidators)
- *Williams v Simpson* [2011] 2 NZLR 380 (HC) (Cross-border insolvency)
- *R v Mason* [2012] 2 NZLR 695 (HC) (Relevance of tikanga Māori to criminal justice processes)
- *ANZ National Bank Ltd v Sheahan and Locke* [2013] 1 NZLR 674 (HC) (Liquidators' examination provisions – conflicts between Australian and New Zealand law – whether liquidators appointed by shareholders held a position akin to an officer of the Court). [This decision has also been reported in England as: *Re Ex Ced Foods (Formerly Cedenco Foods) (in liq)*; *ANZ National v Sheahan* [2013] BCC 321]
- *Earthquake Commission v Insurance Council of New Zealand Inc* [2015] 2 NZLR 381 (HC) (Full Court judgment dealing with availability of insurance under the Earthquake Commission Act 1993, following the Canterbury earthquakes of 2010 and 2011)
- *Taylor v Attorney-General* [2015] 3 NZLR 791 (HC) (First declaration that a statute passed by the New Zealand Parliament was inconsistent with the New Zealand Bill of Rights Act 1990)
- *E-Trans International Finance Ltd v Kiwibank Ltd* [2016] 3 NZLR 241 (HC) (Interrelationship between the Commerce Act 1996 and the Anti-Money Laundering and Countering the Financing of Terrorism Act 2009)
- *Re Lee* [2018] 2 NZLR 731 (HC) (Use of inherent jurisdiction of the Court to direct extraction and storage of semen from a deceased male for use by spouse for assisted reproduction procedures)

Notable unreported decisions:

- *Williams v Simpson* [2011] BPIR 938 (judgment delivered 17 September 2010; reported in England but not in New Zealand; whether interim relief should be given, by way of issue

of a search warrant, on an application for recognition under the Insolvency Cross-border Act 2006).

- *R v Moses (Reasons for Verdict)* HC Auckland CRI-2009-004-1388, 11 May 2011. Reasons for verdict in a complex Judge-alone criminal trial involving charges concerning false statements in prospectuses. These charges related to Nathans Finance Ltd.
- *R v Sullivan* [2014] NZHC 2501. Reasons for verdicts in relation to a complex Judge-alone criminal trial involving (among other things) a claim that directors and the Chief Executive Officer of South Canterbury Finance Ltd had provided material false information to the Minister of Finance in order to procure a Guarantee of investor funds in a sum of approximately \$NZ1.6 billion in relation to the 2008 Global Financial Crisis.
- *BSC Construction Ltd v Withers* [2015] NZHC 1988. Whether terms of agreed expedited arbitration rules were such as to lead to a breach of the principles of natural justice that would support an application to set aside an award.