

# CURRICULUM VITAE

## THE HONOURABLE PAUL HEATH QC

### Date of birth

9 December 1955

### Nationality

New Zealander

### Education

Pakuranga College, Auckland

University of Auckland (LLB, 1978)

### Member Bankside Chambers, Auckland

Bankside Chambers

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### Associate, South Square, London

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### Legal experience

9 April 2018 to present

Barrister at Bankside Chambers, Auckland.

In May 2019, appointed as Inaugural Chair of Mediation Colloquium of INSOL International.

In April 2019, appointed as Member of Financial Services Council's Code Disciplinary Committee

In February 2019, appointed as President of the Court of Appeal of the Pitcairn Islands.

In November 2018, appointed as a member of a panel of retired High Court Judges for the Greater Christchurch Claims Resolution Service, to assist as a decision-maker in the resolution of outstanding claims arising out of the Canterbury earthquakes.

Engaged by World Bank and INSOL International as a member of a Faculty of former Judges to present at a Judicial Colloquium

to be held in Delhi, India during 2019, for members of the National Company Law Tribunal, in relation to India's Insolvency and Bankruptcy Code 2016.

Engaged by the Asian Development Bank, as a Member of a Faculty of former Judges, for a Judicial Colloquium in Myanmar, in July 2018, 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.

Appointments as arbitrator in commercial and trust cases.

Appointments as mediator in commercial and trust cases.

Appointment as independent adviser to the Justice Select Committee on the Arbitration Amendment Bill 2018.

Provision of strategic advice for major commercial, insolvency, corporate restructuring and trusts cases; and assisting with counsel's preparation for a hearing in the Privy Council on appeal from the Court of Appeal of the Pitcairn Islands.

Undertaking an investigation into performance of Tauranga City Council in building consent, inspection and code compliance functions for the Bella Vista subdivision.

29 March 2002 to  
6 April 2018

Judge of the High Court of New Zealand.

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

During my tenure I held, at various times, the positions of:

- (a) Senior Puisne Judge; acting as Chief High Court Judge on two occasions, in 2016 and 2017 respectively.
- (b) Member of Higher Courts Management Committee
- (c) Civil List Judge, Auckland Registry
- (d) Liaison Judge for Hamilton, Rotorua, Tauranga, Whangarei, New Plymouth and Gisborne Registries
- (e) Commercial List Judge
- (f) Commercial Panel Judge
- (g) Chair of Higher Courts' Education Committee.
- (h) Member of the Board of the Institute of Judicial Studies

2003-2016

One of the High Court Judges assigned to sit as a member of both the Civil Appeal Division and Criminal Appeal Division of the Court of Appeal of New Zealand. According to the LexisNexis database LINXPLUS, I gave (or was party to) 424 decisions of the Court of Appeal.

July 2011	Judge of the Court of Appeal of Vanuatu
1998-2002	Barrister sole <sup>1</sup>
2001-2002	Counsel assisting the Takeovers Panel
1 June 1998	Appointed Queen's Counsel in New Zealand <sup>2</sup>
1995-1998	Consultant, Stace Hammond Grace & Partners, Barristers and Solicitors, Hamilton, New Zealand
August 1990	Admitted as a Barrister and Solicitor of the Supreme Court of the Australian Capital Territory
August 1990	Admitted as a Barrister of the High Court of Australia; entitled to practise as a barrister in any Federal Court in Australia
1983-1995	Partner, Stace Hammond Grace & Partners, Barristers and Solicitors, Hamilton, New Zealand
1981-1983	Employee, Stace Hammond Grace & Partners, Barristers and Solicitors, Hamilton, New Zealand
1978-1981	Investigating Solicitor, Commercial Affairs Division of the Department of Justice, Auckland, New Zealand
1 September 1978	Admitted as a Barrister and Solicitor of the High Court of New Zealand
<b>Law reform work</b>	
1997-1999	Consultant to the New Zealand Law Commission (an independent statutory authority dealing with law reform issues) on commercial law issues. During this period I acted as a <i>de facto</i> Commissioner, participating in all decisions of the Commission involving its reports
1999-2002	Commissioner, New Zealand Law Commission
<b>Arbitration</b>	
1993	Associate of the Arbitrators' and Mediators' Institute of New Zealand Inc
1996	Fellow of the Chartered Institute of Arbitrators (UK)

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<sup>1</sup> During this period, I was also a consultant and, later a Commissioner of the New Zealand Law Commission: see under "Law Reform work".

<sup>2</sup> Appointment as a QC coincided with date of commencement of practice as a barrister sole.

1996	Fellow of the Arbitrators' and Mediators' Institute of New Zealand Inc
2000	Chartered Arbitrator
1998-2002 and 2018	Member of Council of the Arbitrators' and Mediators' Institute of New Zealand Inc (Elected to Council in August 2018)
2018	Member of Arbitration Panel of Arbitrators' and Mediators' Institute of New Zealand Inc
	Member of Presidential Panel of Chartered Institute of Arbitrators (UK)
	Member of Arbitration Panel of New Zealand International Arbitration Centre
2019	Member of Arbitration Panel of Singapore International Arbitration Centre
2019	Member of Arbitration List of Hong Kong International Arbitration Centre
2019	Member of Arbitration Appeals Panel of Arbitrators' and Mediators' Institute of New Zealand Inc
<b>UNCITRAL work</b> February 1999-2000	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.
1999-2001 and 2010	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.
2010	Preparation of first draft of the <i>UNCITRAL Model Law on Cross Border Insolvency: The Judicial Perspective</i> (available at <a href="http://www.uncitral.org">www.uncitral.org</a> ) 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.
2005-2017	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.

## Legal education

2012-2017	President, New Zealand Legal Research Foundation
2016-present	Honorary Lecturer, Faculty of Law, University of Waikato, New Zealand.
2015-present	Member of Editorial Advisory Board of Waikato Law Review
2013-present	Member of Editorial Advisory Board of Nottingham Business and Insolvency Law e-Journal
2016-2018	Member of Editorial Advisory Board of Te Wharenga – The New Zealand Criminal Law Review.
2010-2014	Chairperson of the New Zealand Law Foundation’s <i>Regulatory Reform Project Advisory Review Committee</i> . <ul style="list-style-type: none"><li>• This project produced three publications between 2011 and 2014:</li><li>• Susy Frankel (ed) <i>Learning from the Past, Adapting for the Future</i>, (LexisNexis Wellington, 2011)</li><li>• Susy Frankel and Deborah Rider (ed) <i>Recalibrating Behaviour: Smarter Regulation in a Global World</i> (LexisNexis Wellington 2013)</li><li>• Susy Frankel and John Yeabsley (ed) <i>Framing the Commons: Cross-Cutting Issues in Regulation</i>, (Victoria University Press 2014)</li></ul>
1996-2002	Member of the teaching faculty for the New Zealand Law Society’s <i>Litigation Skills</i> programme. (Judicial Faculty member in 2017)

## Insolvency

2015	Elected as a Life Member of the RITANZ (Restructuring Insolvency and Turnaround Association of New Zealand), the New Zealand affiliate of INSOL International
2008	Co-Consulting Editor, <i>Heath &amp; Whale on Insolvency</i> (LexisNexis Wellington 2008 loose-leaf edition) and two later paperback editions.
2000	Elected as a Fellow of the American College of Bankruptcy. At the time I was the 19 <sup>th</sup> non-American to be elected a Fellow. I remain the only New Zealander to have achieved that status.

## Insolvency Affiliations

INSOL International  
International Insolvency Institute  
RITANZ  
American College of Bankruptcy

### **Arbitration Affiliations**

Chartered Institute of Arbitrators (UK)  
Arbitrators' and Mediators' Institute of New Zealand (AMINZ)  
New Zealand International Arbitration Centre

### **Areas of expertise**

- (a) Arbitration
- (b) Dispute Resolution
- (c) Insolvency
- (d) Commercial and company law
- (e) Equity and trusts
- (f) Māori issues

### **Other appointments**

December 2018-present	Appointed as member of Board of Directors of Northern Districts Cricket Association Inc (a major association for cricket in New Zealand)
July 2018-present	Member of Board of RITANZ
September 2018-present	Member of Council of AMINZ
1994-2004	Member of Council of Neurological Foundation of New Zealand

### **Other Information**

I 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. During that time, I was sole or leading counsel in three cases (one a leave application) heard by the Privy Council in London.

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)

### **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 High Court 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 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.

## Publications

- 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](http://www.lawcom.govt.nz) Those reports for which I had responsibility were:
  - a. 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)
  - b. 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)
  - c. Arbitration**
    - *Improving the Arbitration Act 1996* (NZLC R 83 2003)<sup>3</sup>
  - d. Maori 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)

<sup>3</sup>

Although I was responsible for preparation of this Report, it was published after I had left the Commission to take up judicial appointment.

- **A selected list of published articles/papers follows:**
  - *The Proper Purposes Doctrine – The Law and Its Implications* (1978) 3 AULR 207
  - *Proposals under Part XV Insolvency Act: Is the Public Interest Relevant?* [1991] NZLJ 52
  - *Bankruptcy and the Bill of Rights* [1993] NZLJ 347
  - *Laws of New Zealand, Insolvency 1994* (LexisNexis Wellington)
  - *Preferential payments on Bankruptcy and Liquidation in New Zealand: are they Justifiable Exceptions to the Pari Passu rule?* (1996) 4 Wai L Rev 24
  - *Superannuation Schemes and Insolvency* (with Professor Julie K Maxton) (1997) 3 NZBLQ 43
  - *Resolving Disputes within Companies and Partnerships* (New Zealand Law Society seminar, August 1997) (with Mr P W Jones)
  - *International Insolvencies: a New Zealand Perspective* (1998) 6 Insolvency Law Journal 90
  - *A Legal Infrastructure for Electronic Commerce?* (1998) 7 Canta LR 157
  - *Electronic Commerce: The New Zealand Approach* [1999-2000] CIL 369 (with Ms Megan Leaf)
  - *Insolvency Reform: the Role of the State* [1999] NZ L Rev 569
  - *Consumer Bankruptcies: A New Zealand Perspective* Osgoode Hall Law Journal 37.1/2 (1999) 427-447
  - *Hard Cases and Bad Law [Harkness Henry Lecture]* (2008) 16 Wai L Rev 1
  - *Bringing Trading Trusts into the Company Line* (2010) 16 Trusts & Trustees 690 and [2010] NZ L Rev 519
  - *The Waxing and Waning of the Tides: from the Isle of Man to Bermuda* (2015) 3 NIBLeJ 9