

ANTONY HOLMES

BARRISTER

Curriculum Vitae



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PROFILE

Overview: A commercial litigator, qualified as a barrister and solicitor in New Zealand and as a solicitor in England and Wales.

Experienced in a wide range of commercial disputes and contentious regulatory matters. Holds a broad perspective regarding the effective and efficient resolution of disputes, having commenced practiced as a specialist commercial litigation solicitor in Auckland, at Bell Gully, and Wilson Harle, and in London, as an Associate at Slaughter and May.

Provides strategic, as well as procedural and substantive, advice. Strong technical and analytical abilities. Effective communication skills and oral and written advocacy. Recognises the importance of maintaining focus on economic, commercial and political objectives.

Practice areas:

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| Commercial litigation | Commercial arbitration |
| Administrative and public law | Regulatory investigation |
| Land law and property disputes | Civil litigation |
| Commercial and contract disputes | Construction litigation |

Qualifications:

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| Barrister and Solicitor, High Court of New Zealand | Admitted January 2002 |
| Solicitor, High Court of England and Wales | Admitted June 2012 |
| Bachelor of Laws (Honours) | University of Auckland |
| Bachelor of Arts | University of Auckland |
| Diploma in Legal Professionals | University of Auckland |

RECENT EXPERIENCE

Acted as lead counsel for the plaintiff in a five week trial which successfully proved that the plaintiff had borrowed funds from the defendant at an interest rate of 5% per week including funds ostensibly borrowed while the defendant was gambling on behalf of the plaintiff, under an illegal gambling contract. The High Court granted injunctive relief on an interim basis, and following trial found the arrangement was illegal, and had it not been illegal, would have been oppressive and in breach of consumer credit legislation (*Xiao v Sun* [2016] NZHC 454; *Xiao v Sun* [2018] NZHC 536).

Acting as lead counsel for three defendants in a proceeding set down for a three week trial where the plaintiff alleges that he has an equitable interest in a golf-course due to the use of particular funds in the purchase, in circumstances where the plaintiff and certain defendants both claim to be the legal and equitable owners of those funds.

Acting for an audio production studio joined as a third party to a claim brought against the National Party for use of a music track in the National Party's 2014 election campaign, where the High Court has now determined infringed copyright in the musical work *Lose Yourself*. The audio production studio is alleged to have licenced the use and to have made representations regarding its use to another third party (*Eight Mile Style, LLC, v New Zealand National Party* [2017] NZHC 2603).

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Advising and acting for partners, and/or shareholders in closely held companies, to assist them through the process of dissolving their partnership and/or separating their business interests, and in circumstances where the separation is highly confidential and commercial sensitive.

Advising parties in respect of insolvency issues, including acting for liquidators in respect of the recovery of voidable transactions or removal of voidable securities, or in respect of seeking directions regarding the distribution of company assets, and shareholders or creditors seeking to challenge the decisions of liquidators, including in *Adaptable Solutions v Toon* [2017] NZHC 753.

Advising parties in respect of issues that arise under leases, and rights attaching to land, including acting for landlords seeking to recover damages from a former tenant, which fail to comply with its obligations to repair and redecorate at the end of the lease (see for example *Cazna Avenue Nominees Ltd v The University of Auckland* [2014] NZHC 303).

Acting for parties involved in disputes regarding construction works, including acting for property owners, architects, builders, and product suppliers, including in *The Minister of Education v Econicorp Holdings Ltd* (21 Dec 2009, HC Auckland, Keane J, CIV 08-404-7268).

Acting in relationship property issues that require the separation of interwoven business interests and family trusts, including:

- acting for independent trustees in circumstances where claims were brought under family law legislation, or in equity, seeking to break the trusts and coupled with allegations that the independent trustees were not acting independently; and
- being appointed by the Court as counsel for unrepresented beneficiaries in an application by independent trustees for approval of the resettlement of trust assets following the settlement of disputes regarding a relationship property agreement (see for example *Irvine & Taylor v Penny & Simunovich* [2015] NZHC 485).

Advising and acting for parties involved in contractual disputes, including arising from the repudiation or cancellation of contracts, pre-contractual misrepresentation regarding turnover of a business, an agent's entitlement for commission, and negligent advice.

Acting for a new entrant motor racing company in a private competition law claim brought against its sporting regulator for misuse of market power and anti-competitive conduct in respect of the regulator's support of the incumbent competition, funding provided by the regulator to the incumbent, and alleged attempts to try to use regulatory power to inhibit or exclude the new entrant from the market (*V8 Supertourers Limited v Motorsport New Zealand Incorporated & Ors*).

Acting for an individual seeking a restraining order against one of her former clients, who then commenced a suite of proceedings against her, including a civil claim for, inter alia, breach of contract and defamation, an action for contempt of court, judicial reviews of the District Court proceedings and costs awards, seeking to debar her counsel from acting, and appeals of almost all decisions, leading to a myriad of District Court, High Court, Court of Appeal and Supreme Court judgments (*N v M* ([2015] NZSC 15; [2015] NZSC 185; [2014] NZSC 189; [2014] NZCA 623; [2014] NZCA 526; [2016] NZCA 429).

Acted for a director of a company which had been removed from the register in respect of claims brought by former creditors of the company against the director for alleged reckless trading (*Hampson v Registrar of Companies* [2013] NZHC 1202).

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See also: *Ecowize Ltd v Affco New Zealand Ltd* (14 Dec 2009, HC Hamilton, Dobson J, CIV 06-419-1119); *Marsh v Commonwealth Bank of Australia* (16 Mar 2010, HC Auckland, Sargisson AJ, CIV 09-404-3336); *Piper v Natural Fibres Ltd* (11 Aug 2009, DC Auckland, Bouchier J, CIV 08-404-1857); *Piper v Hobbs* (4 Mar 2010, DC Auckland, Mathers J, CIV 08-004-2200); *Mayes v Southern Cross Finance Limited* [2014] NZHC 1164.

PREVIOUS EXPERIENCE

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| Associate, Slaughter and May, London | 2010 – 2012 |
| Barrister, Auckland | 2008 – 2010 |
| Senior Solicitor, Wilson Harle, Auckland | 2005 – 2008 |
| Solicitor, Bell Gully, Auckland | 2001 – 2004 |

Slaughter and May

London

Associate
2010 to 2012

Slaughter and May is a leading international law firm with a reputation for excellence. Its dispute resolution team is recognised as a top law firm by *The Legal 500*, elite by the *Chambers Global Guide*, and is highly recommended by *PLC Which Lawyer?*.

Advised a significant German industrial company against an Indian company in an ICC arbitration with its seat in Singapore, in a multi-million pound claim in respect of alleged defective equipment.

Advised a major Swedish bank in a multi-million Stockholm Chamber of Commerce arbitration arising out of the purchase of a life assurance company and the prior misselling of pensions by the Vendor.

Advised a major UK-listed financial institution in respect of an investigation into its business practice in other jurisdictions, and alleged involvement in breach of US sanctions.

Advised United Utilities plc, a FTSE 100 company, in respect of a claim brought against it in the High Court by Veolia Water UK plc, for alleged breaches of warranties and misrepresentations in respect of a share purchase agreement.

Advised a significant UK-listed construction company, in respect of ongoing liabilities assumed in respect of projects completed by a business it purchased.

Advised a major UK-listed financial institution in respect of its dealings with its regulator and the UK Listing Authority.

Advised a listed company in respect of various warranty claims and alleged breaches of contract levied against it as a form of post-contractual negotiation following the purchase of various of our client's subsidiaries by another listed company.

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Wilson Harle

Auckland

Senior Solicitor
2005 to 2008

Wilson Harle is a boutique specialist litigation firm. It is recognised by *Asia Pacific Legal 500* and *Chambers Global Guide* as a leading New Zealand law firm in the area of dispute resolution.

Advised employees of a company subject to investigation by the Commerce Commission, and the use of the Commission's mandatory investigative powers, regarding:

- alleged price fixing through cartel behaviour.
- the extent of the Commission's powers, duties and jurisdiction over foreign defendants.
- alleged misleading and deceptive conduct in trade.

Advised and acted as junior in the High Court and Court of Appeal in the judicial review of a decision by three public bodies to enter into a \$560,000,000 contract for the provision of public services with a new provider: *Diagnostic Medlab Ltd v Auckland District Health Board* [2007] 2 NZLR 832 (HC); [2008] NZCA 385 (CA).

Advised a multi-national communications company on various matters relating to its business and the legal framework in which it operates, including on new media products, and the provision of regulated services.

Advised and acted as junior in an appeal of a regulator's decision as to the costs of providing a regulated telecommunications service: *Vodafone New Zealand Ltd v Telecom New Zealand Ltd* (18 Dec 07, HC Wellington, McGechan J, CIV-07-485-826).

Advised and acted as junior in an application as to whether collected funds were subject to the security interest of a bank: *Stiassny v North Shore City Council* [2008] 1 NZLR 825.

Advised Mortgagors and Lessors seeking to exercise powers, including:

- appearing as junior in opposing an interim injunction to restrain a mortgagee from exercising its power of sale.
- appearing as junior in opposition to a tenant's application for relief against forfeiture: *Timberco (1999) Ltd v Sarvee Acquisitions Ltd* (26 Oct 05, HC Auckland, Harrison J, CIV-05-419-878).

Advised clients regarding:

- alleged fiduciary and/or good faith obligations within joint ventures, distributorships and franchises.
- alleged misleading and deceptive conduct in trade, and alleged breach of copyright in advertising campaigns.
- current and former electoral advertising rules, and the conduct of parties during the election process.

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Bell Gully

Auckland

Solicitor
2001 to 2004

Bell Gully is New Zealand's largest law firm. The firm holds top tier rankings with a number of international guides, including *Chambers Global Guide*, *PLC Which Lawyer 2009?*, *Who's Who Legal*, *Asia Pacific Legal 500*.

Advised clients, appeared in court and acted in mediations and negotiations to resolve claims in matters involving contractual, fair trading, construction, lease and mortgage issues, insolvency and debt recovery and claims including partnership, fiduciary and equitable obligations and alleged undue influence.