

TIM CLARKE

BARRISTER

Curriculum Vitae



Biography

Tim Clarke is an experienced litigator with a specialist focus on employment and workplace safety law. His practice spans advocacy in the courts of general jurisdiction (including appellate courts), the Employment Court and Employment Relations Authority, Human Rights Review Tribunal, mediation and workplace investigations.

Tim graduated BSc / LLB (Hons) from the Auckland Law School in 1994. He received senior prizes in law and psychology. Tim was a partner at Bell Gully for 12 years from 2012 – 2023 and in 2024 commenced practice as a barrister sole.

From 1997 – 2004, Tim was based in Hong Kong and the British Virgin Islands, where he practised general commercial litigation. He was previously employed as a solicitor at Russell McVeagh and Chapman Tripp. He has been admitted to practise in New Zealand, Hong Kong, England and Wales, British Virgin Islands and Anguilla.

The *Legal 500 Asia Pacific 2023* names Tim as a leading lawyer in labour and employment law. In previous editions, Tim is praised for applying "a litigator's perspective to health and safety matters". Tim is also listed as one of the leading New Zealand labour and employment specialists by *Who's Who Legal*. *Chambers Asia Pacific 2023* also ranks Tim as a leading employment lawyer. In previous editions, he has been praised for providing "thorough commercial advice that is reflective of - and ahead of - an ever-evolving HR marketplace, in a very personal and digestible form." *Doyles Guide 2023* ranks Tim as a leading workplace safety lawyer and a recommended employment lawyer.

Tim accepts instructions to act as counsel, mediator in relation to employment disputes, or to conduct independent workplace investigations. Tim is authorised by the New Zealand Law Society to accept direct instructions from clients.

Tim is an Associate member of the Arbitrators and Mediators Institute of New Zealand (AMINZ) and the Resolution Institute. He is also a member of the Association of Workplace Investigators (AWI). He has been a member of the Health and Safety Committee of The Law Association (formerly ADLS) from 2016 – present.

Experience

Employment

FMV v TZB [2021] NZSC 102 (SC)

Acting for TZB (employer) in successfully striking-out High Court proceedings brought by a former employee in the High Court for want of jurisdiction. The Supreme Court decision dealt with the jurisdictional boundary between the courts of general jurisdiction and the exclusive jurisdiction of the employment institutions.

WILLS v GOODMAN FIELDER NEW ZEALAND LTD [2014] NZEMPC 233 (EC)

Acting for the defendant in a claim for constructive dismissal arising out of the closure of the company's bakery building and plant as a result of the 2011 Canterbury Earthquake.

LYTTLETON PORT COMPANY v RMTU [2014] NZ NZEMPC 236 (EC)

Acting for Lyttleton Port Company in an application for an urgent interim injunction to restrain members of RMTU from participating in strike action at the Port on the grounds of health and safety.

LAURA GEORGE v AUCKLAND REGIONAL COUNCIL [2013] NZEMPC 179 (EC)

Acting for the Council in successfully defending claims by a former employee for unjustified dismissal and disadvantage.

HUTTON & 111 ORS v PROVENCOCADMUS LTD (IN REC) [2012] NZEMPC 207 (EC)

Acting for the receivers of ProvencoCadmus in successfully defending claims by representatives of 112 former employees as to the identity of their former employer prior to receivership.

SALVATION ARMY v STEWART [2012] NZEMPC 114 (EC)

Acting for the Salvation Army in defending an employee's claim for an increased entitlement to annual leave following changes to the Holidays Act 2003.

High Court

GOODMAN FIELDER NEW ZEALAND LTD & ORS v RICKARD-SIMMS [2019] NZHC 599 (HC)

Judicial review application challenging the decision of the District Court to accept documents for filing initiating a private prosecution of the applicants under the Health and Safety at Work Act 2015.

SIEMER v HERON & ANOR [2011] NZSC 133 (SC), [2013] NZSC 111 (SC)

Acting for the first and second defendants in defending a multitude of proceedings brought by the plaintiff. The Supreme Court decision concerned whether a right of appeal to the Court of Appeal existed for an interlocutory decision, and upheld the defendants' argument that any underlying appeal right was deemed abandoned and ceased to exist.

ORLOV v ANZA DISTRIBUTING (NZ) LTD & ANOR [2011] NZSC 28 (SC)

Acting for liquidators of ANZA in ongoing litigation successfully challenging the standing of USG to bring proceedings purportedly for and on behalf of the company in liquidation.

LSG SKY CHEFS NEW ZEALAND LTD v PACIFIC FLIGHT CATERING LIMITED (2011) (HC)

Acting for PFC in successfully opposing an interim injunction application by LSG in the High Court seeking compliance with Part 6A of the Employment Relations Act 2000 (protected workers).

HOUGHTON v SAUNDERS & ORS (2009) 19 PRNZ 476 (HC)

Acting for the defendants in the Feltex IPO proceedings in successfully obtaining the production of the expert accounting opinion relied upon by the plaintiffs, and a stay of the proceedings pending an appeal of an earlier decision to the Court of Appeal.

TRANS PACIFIC FISHING LTD (IN LIQ) v HAEMIN CORPORATION (2009) (HC)

Acting for the plaintiff liquidators in successfully applying for orders requiring the dispute between the plaintiff and defendant be referred to two nominated arbitrators.

Health and Safety prosecutions

WORKSAFE NZ v VISY GLASS NEW ZEALAND LTD [2023] NZDC 18533

WORKSAFE NZ v AFFCO NEW ZEALAND LTD [2023] NZDC 12484

WORKSAFE NZ v ASUREQUALITY LTD [2020] NZDC 23107

WORKSAFE NZ v ALLIANCE GROUP LTD [2019] NZDC 10924

WORKSAFE NZ v FIRST GAS LTD & ORS [2019] NZDC 2822

WORKSAFE NZ v ALLIANCE GROUP LTD [2018] NZDC 20916

WORKSAFE NZ v RENTOKIL INITIAL LTD [2016] NZDC 21294

WORKSAFE NZ v FLETCHER STEEL LTD [2015] NZDC 15704

WORKSAFE NZ v FLETCHER STEEL LTD [2015] NZDC 8262

WORKSAFE NZ v GENERAL DISTRIBUTORS LTD [2015] NZDC 18672

MBIE v GOODMAN FIELDER NEW ZEALAND LTD (2013) CRI-2013-054-001534

Enforceable undertakings: St Kentigern Trust Board (2017); The Supplychain Limited (2018)

Seminars / Papers

NZLS Employment Law Conference (2022), "*In a tight spot: individuals convicted as officers under HSWA*"

ADLS Employment Law (2022), "*Blowing a new whistle: Unpacking the new Protected Disclosures regime*"

ADLS Employment Law (2021), Burning Issues: "*The Supreme Court decision in FMV v TZB*"

ADLS Health and Safety (2021), "*When an inspector comes knocking*"

ADLS Property Law (2018), "*Asbestos in the workplace*"

ADLS Health and Safety (2017), "*Engaging with WorkSafe: Handling incidents and investigations*"

NZLS Property Law Conference (2014), "*Earthquake prone buildings: There is no such thing as a 'get out of jail free' card*"

NZLS Tax Conference (2012), "*Managing documents in a dispute*"

NZLS Employment Law Conference (2012), "*Personal grievances: Getting the remedies right*"