

# JOSH McBRIDE

BARRISTER

## Curriculum Vitae



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Josh was admitted to the bar in 1998 and has worked at leading litigation practices in Auckland, Sydney and London. He specialises in complex commercial litigation, at both trial and appellate level, and has been admitted to practice in New Zealand, New South Wales and Tonga.

Josh has particular expertise in disputes concerning technology, media, construction and land law. He acts for a range of clients in the public and private sector concerning these issues, including iwi, prominent New Zealand and Australian corporates, and media entities. Many of these disputes are resolved confidentially, either by way of agreement following mediation, or at arbitration.

As well as technology, media, and construction disputes, Josh's practice areas include contract interpretation, company law, shareholder/partner disputes, trade mark infringement, consumer law, joint ventures and partnerships, insolvency law, fraud and professional negligence. He has also acted in a number of judicial review claims.

Josh is recognised in international legal guides, including Chambers and Partners Asia Pacific and Global, which describe him as having particular expertise in construction, IP, administrative and land law. He is recommended in Doyle's Guide to "Leading Construction and Infrastructure Law Barristers".

Josh sits on the New Zealand Bar Association's Technology Committee and its Practice and Bar Care Committee. Josh is also a member of the Pacific Lawyers Association and the Society of Construction Law NZ.

## *Recent Experience*

INTELLIHUB LTD V GENESIS ENERGY LTD [2020] NZCA 344 Application for interim injunction concerning displacement of smart electricity metering fleet, whether serious question to be tried, test of causing loss by unlawful means in New Zealand, competing approaches in England and Canada.

NAPIER CITY COUNCIL V STUFF LTD [2020] NZHC 763 Application for injunction restraining Stuff from publishing confidential and privileged information obtained by inadvertent publication on Council website.

LONG CAPITAL HOLDINGS NZ LTD V JACKS POINT VILLAGE HOLDINGS NO 2 LTD [2020] NZCA 102, (2020) 20 NZCPR 939 Appeal against summary judgment, forfeiture of deposits paid under agreements to purchase blocks of development land in Queenstown.

TARGET PAINTERS & DECORATORS LTD V FEHL [2019] NZHC 3237 Application for judicial review of decision of an adjudicator on construction dispute, whether procedural or substantive unfairness.

DHC ASSETS LTD V ARNERICH [2019] NZHC 1695 Claim against director for breach of s 131 of Companies Act 1993, arising under a construction contract.

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CAMERON V EVEREST CENTRAL INVESTMENTS LTD [2019] NZHC 2398  
Application for interim injunction to stop construction of wall on property boundary adjacent to large retail development, whether consent agreement in relation to earlier resource consent was binding, meaning of “successor”, whether serious issue to be tried.

X V Y (2018) Rent review arbitration concerning value of freehold property in Parnell and the appropriate rental return. Whether arbitrator bound by earlier valuation methodologies. Whether freehold value could include assessment of market appetite for leasehold apartments.

FULLERS BAY OF ISLANDS V OTEHEI BAY HOLDINGS LTD AND MINISTER OF CONSERVATION (2018) Judicial review. Whether Minister of Conservation’s decision to grant concession for lease on Urupukapuka Island was lawful. Minister conceding decision was unlawful and agreeing to lease being declared unlawful and void.

WARD EQUIPMENT LTD V PRESTON [2018] NZCCLR 15 (CA) Contract/intellectual property dispute concerning patented high-rise construction equipment. New Zealand licensee sought to prevent Australian licensor entering New Zealand market. Whether license agreement subject to implied term of termination by either party on reasonable notice to the other, and whether implication of term was exercise in contractual interpretation.

GRANDE MEADOW DEVELOPMENTS LTD V CLARK ROAD DEVELOPMENTS LTD (NO 2) [2018] NZHC 1394 Application for interim measures under the Arbitration Act 1996. Dispute over the construction of common infrastructure in a property development at Hobsonville.

ARNERICH V VACO INVESTMENTS (LINCOLN ROAD) LTD (IN LIQ) [2018] NZHC 560 Application for leave to seek orders under s284(1)(a) Companies Act 1993 directing liquidator to raise specified matters in an arbitration concerning a construction contract. Consideration of scope of the arbitrator’s powers under NZS 3910:2003.

PACIFIC INTERNATIONAL COMMERCIAL BANK LTD V NATIONAL RESERVE BANK OF TONGA [2017] TOSC 20 Claims in negligence and judicial review against the National Reserve Bank of Tonga. Whether the Reserve Bank owed a duty of care to licensed banks. Whether there was a special relationship between the Reserve Bank and the banks it supervised.

GANGNAM PROPERTY INVESTMENTS LTD V AFFIN INTERIORS LTD (IN REC AND LIQ) [2017] NZHC 3197 Summary judgment in relation to lease arrears. Whether arguable defence in relation to estoppel or set-off.

CLARK ROAD DEVELOPMENTS LTD V GRANDE MEADOW DEVELOPMENTS LTD [2017] NZHC 2589 Application for interim injunction to compel payments said to arise under construction contract. Whether claim to interim relief precluded by arbitration clause in contract and whether interim relief available compelling payment of damages.

ANDREWS PROPERTY SERVICES LTD V BODY CORPORATE 160361 [2017] 2 NZLR 772 (CA) Construction dispute concerning appropriateness of “overclad” cladding system for apartment complex in central Auckland. Whether builder obligated to ensure inspection

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by third party and warn owners of failure to inspect, and whether under a duty to undertake work outside of contract to ensure the building was code compliant.

ECOSTORE CO LTD V WORTH (2017) 15 NZELR 93 (HC) Claim alleging confidence, conversion and breach of copyright. Whether this was an employment relationship problem subject to the exclusive jurisdiction of the Employment Relations Authority.

CJ PARKER CONSTRUCTION LTD (IN LIQ) V KETAN [2017] NZCA 3 Construction dispute concerning validity of a builder's payment claim under the Construction Contracts Act 2002. Builder's payment claim rejected on basis that invoice did not properly explain the value of the construction work.

HAURAKI GULF ENHANCEMENT SOCIETY INC V AUCKLAND COUNCIL [2017] NZHC 1322 Judicial review proceeding alleging procedural impropriety, illegality and unreasonableness. Environmental group sought declaration that Auckland Council lease to golf club on Waiheke Island was unlawful and void. Society ordered to provide security for costs and subsequently liquidated. Minister of Conservation intervening and revoking Council's delegated authority to approve lease.

WHAI RAWA V X (2016) Senior counsel for Whai Rawa (the commercial arm of Ngāti Whātua Ōrākei). Rent review arbitration under "Glasgow" lease. Whether rent review notice had been properly served. Whether time was of the essence to challenge it.

WHANGAPARAOA COMMUNITY CENTRE PROJECT INC V THE WHANGAPARAOA COMMUNITY TRUST [2016] NZHC 951 Judicial review proceeding. Whether ratepayers' association had authority to transfer community hall to charitable trust, and whether that decision was reviewable. Whether association and its members excluded from affairs of Trust and whether decision to reject membership applications was for improper purpose.

BERGMAN V BERGMAN [2015] NZCCLR 16 (CA) Joint venture dispute concerning dissolution of forestry venture and application for declaratory relief concerning alleged debt. Declaratory judgment sought - issue concerning onus of proof.

R V LYTTTELTON [2015] NZHC 763 Historic online articles identified accused's prior conviction. Whether this could prejudice a fair trial, as articles could be discovered using Google searches.

BODY CORPORATE 160361 (FLEETWOOD APARTMENTS) V BC 2004 LTD [2014] 3 NZLR 758 (HC) Causes of action assigned to defendant council under settlement agreement. Whether there was a genuine commercial interest and whether assignments of tort actions more restricted than assignment of contractual rights. Whether assignment frustrated or avoided apportionment considerations under the Law Reform Act 1936.

INTERCITY GROUP (NZ) LTD V NAKEDBUS NZ LTD [2014] 3 NZLR 177, (2014) 108 IPR 112 (HC) Complaints about a Google AdWords campaign using a trade marked name to trigger advertisements. Whether words likely to be taken as "use as a trade mark". Claims of trade mark infringement, passing off, and misleading and deceptive conduct. Consideration of meaning of trade mark "use" in AdWords context, and "identity" between the trade mark and the allegedly infringing sign.

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P V P [2014] NZHC 2410 Constructive trust dispute. Overseas owner of Auckland shopping centre alleged to have concealed the true ownership of the property to assist the husband in a relationship property dispute. Whether sufficient evidence to support allegations, whether property held on express, resulting or constructive trust.

URSEM V CHUNG [2014] NZAR 1123 (HC ) Arbitration provision in unsigned agreement. Whether clause binding on parties. Whether court to apply prima facie test for existence of valid arbitration agreement, or full merits review.

HERON'S FLIGHT LTD V NZ PROPERTIES INTERNATIONAL LTD [2012] 1 NZLR 424 (HC) Insolvency dispute concerning s310 of the Companies Act 1993 and its application to contested set-off claims.

CRAMPTON-SMITH V CRAMPTON-SMITH [2012] 1 NZLR 5 (CA ) Consideration of circumstances in which a resulting trust can arise. Brother paid full price of land, sister registered land in own name and built houses on land. Whether a resulting trust and whether there was evidence to rebut presumption. Whether an account of profits was appropriate.

EXPLORE NZ (2004) LTD V FULLERS BAY OF ISLANDS LTD & MINISTER OF CONSERVATION [2011] 3 NZLR 449 (CA) Status of perpetually renewable lease on Urupukapuka Island in the Bay of Islands. Lease required a concession under the Reserves Act 1977 and Minister of Conservation had unlawfully renewed the lease.

## *Contact*

DDI + 64 9 309 8765 MOBILE + 64 21 770 572 [EMAIL josh@richmondchambers.co.nz](mailto:josh@richmondchambers.co.nz)