

# NICK MALARAO

BARRISTER

## Curriculum Vitae



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## OVERVIEW

Nick has 24 years of litigation experience, with extensive expertise across civil, commercial, tax, and regulatory disputes. His expertise is particularly sought after in company and insolvency law, especially in the dynamic area of directors' duties. He has appeared in or supervised over 100 directors' duties proceedings in the High Court and has overseen hundreds of liquidation and bankruptcy cases. In 2019, he argued New Zealand's first substantive and precedent-setting directors' duties case before the Supreme Court. Nick has devised innovative solutions both within and outside the Companies Act 1993 and Property Law Act 2007 to effectively pursue and secure outstanding debts.

Nick's tax expertise is built on years of representing Inland Revenue in complex civil disputes and prosecutions. His tax acumen led to his appointment in 2018 to the government's Tax Working Group, chaired by Sir Michael Cullen, to consider improvements to New Zealand's tax system.

In addition to his legal qualifications, Nick holds an undergraduate degree in accounting, enhancing his expertise in financially focused legal matters.

Nick joined the independent bar in July 2024. Prior to this, he was a senior litigation partner at Meredith Connell, having joined the firm in 2000 and becoming a partner in 2010. He is authorised by the New Zealand Law Society to accept direct instructions from clients.

Nick has consistently achieved successful outcomes for all his clients, whether they are individuals, insolvency practitioners, public or private companies, or government agencies. He remains committed to continuing this track record of success.

Nick thrives in the courtroom and a selected record of his recent litigation experience is set out below. However, most disputes that Nick has acted on are satisfactorily and confidentially resolved, often against the backdrop of Court proceedings.

## EXPERIENCE

**Richmond Chambers, Auckland** | Jul 2024 onwards

**Meredith Connell, Auckland** | Sep 2000 to Dec 2001 and May 2003 to Jun 2024

- Senior litigation partner in the firm's Commercial Litigation Division.
- Highly experienced civil and commercial advocate in trial and appellate courts. Has also conducted multiple criminal judge-alone and jury trials.
- Headed the Regulatory and Insolvency Practice Group, consisting of 11 partners and principals that serviced the litigation and advisory needs of major clients, including top tier accounting firms, Commerce Commission, Financial Markets Authority, Inland Revenue, Ministry of Business, Innovation and Employment, ACC and local authorities.
- Served as member of the Management Board with overall responsibility for leading the firm's strategic direction.

- Most recently, led the firm's International Dispute Resolution Team – heading up a team of multicultural and multilingual lawyers.

#### **NZ Government Tax Working Group, Wellington | 2018**

- Appointed to the Tax Working Group by the Ministers of Finance & Revenue, comprising a group of experts chaired by Sir Michael Cullen

#### **Lloyd's of London, UK | Feb 2002 – Apr 2003**

- Worked within the litigation department, co-ordinating legal action against members (Lloyd's Names) in jurisdictions in which they resided.

#### **Chapman Tripp, Auckland | Jan 1999 – Aug 2000**

- Member of the firm's leading banking and tax practices, assisting commercial clients with complex issues – transaction financing and structuring, binding rulings and tax disputes.

### **SELECTED RECORD OF SIGNIFICANT (AND PUBLICLY DISCLOSABLE) LITIGATION**

- *Attorney-General v Papa Robs Contractors Limited* [2024] NZHC 1275: obligation on ineligible claimant to return wage subsidies provided by the New Zealand government.
- *Madsen-Ries v Salus Safety Equipment Limited (in liquidation)* [2022] NZCA 101: breach of natural justice and liquidators' remuneration.
- *Harding v R* [2021] NZCA 288: appeal against pre-trial rulings in a tax evasion prosecution.
- *Commissioner of Inland Revenue v Parore* [2021] NZHC 420: appeal against s147 discharge.
- *Madsen-Ries (as liquidators of Debut Homes Ltd (in liq)) v Cooper* [2020] NZSC 100, [2021] 1 NZLR 43, (2020) 29 NZTC 24-08: first substantive directors' duties argued before the Supreme Court.
- *Chen v Wu* [2020] NZHC 3302: Intestacy and overseas adoption.
- *Walls v Ulsterman Holdings Limited (in liquidation)* [2019] NZCA 365, (2019) 24 PRNZ 623: case involving an argument that certain rules in the High Court Rules breach the New Zealand Bill of Rights Act.
- *Commissioner of Inland Revenue v Robertson* [2018] NZHC 696, (2018) 12 NZCLC 98-060, (2018) 28 NZTC 23-055: breach of duties by liquidator.
- *McKay Builders Ltd (in liq) v McKay* [2017] NZHC 1202: directors' duties and other claims.
- *Madsen-Ries v Greenhill* [2016] NZHC 3188, [2017] NZCCLR 6: Companies Act and Property Law Act claims.
- *Wilkins v Official Assignee* [2016] NZHC 1742: representing Housing New Zealand in an appeal by a bankrupt against a decision of the Official Assignee.
- *Pardington v Melita Properties Ltd* [2016] NZHC 1046: statutory management of a retirement village.

- *Jeffreys v Morgenstern* [2014] NZHC 308; [2014] NZHC 671; [2014] NZCA 449, (2014) NZCLC 98-024; [2014] NZHC 2847, [2014] NZSC 176: closely fought breach of directors' duties case.
- *Paugra Holdings Ltd (in liq) v Harvestfield Holdings Ltd* [2013] NZHC 1297; [2014] NZCA 164, (2014) 26 NZTC 21-070, (2014) 15 NZCPR 227: case involving fraudulent transfers of land and an application to sustain a caveat.
- *Levin v West City Construction Ltd* [2013] NZHC 929, [2013] NZCCLR 18; [2014] NZCA 98, [2014] 3 NZLR 1: voidable preference claim.
- *Commissioner of Inland Revenue v Hayes* [2013] NZHC 2120, (2013) 26 NZTC 21-040 – summary judgment against a liquidator for wrongful payment.
- *Thompson v Madsen-Ries* [2012] NZHC 1260; [2015] NZHC 3270; [2016] NZCA 516: closely fought PLA claim.
- *Norris v Registrar of Companies* [2012] NZHC 2193 – enforcement of liquidator's duties.
- *Public Trust v Conway Madison Group Ltd (in liq)* [2012] NZHC 2071, (2012) 3 NZTC 22-024: application by Public Trust for appointment of receivers.
- *Bushpark Property Developments Ltd (in Liq) v Yang* [2012] NZHC 973, [2012] ANZ ConvR 12- 012, (2012) 13 NZCPR 381: sale and purchase of property
- *Re Wang* (2011) 25 NZTC 20-015: high profile opposition to approval of proposal under Insolvency Act.
- *Burns v Commissioner of Inland Revenue (later referred to as Strategic Finance Ltd (in rec & in liq) v Bridgman)* (2011) 10 NZCLC 264,885 (2011) 25 NZTC 20-070, (2011) 9 NZBLC 103,284; [2013] NZCA 357; [2013] 3 NZLR 650: meaning of "account receivable" in a contest between a preferential and a secured creditor.
- *Commissioner of Inland Revenue v Grant* [2010] NZHC 755: an administrator's ability to use a casting vote the (then) recently enacted voluntary administration regime.
- *Re Krukziener* (2010) 24 NZTC 24,174: high profile opposition to approval of proposal under Insolvency Act.
- *R v Ganesh & Anor* (CRI-2009-092-020438): long cause (17 weeks) tax evasion trial.
- *HAV v EAW* (2009) 27 FRNZ 729: effect of bankruptcy of a litigant already involved in relationship property proceedings in the Family Court.
- *Wood v Commissioner of Inland Revenue* [2008] NZFLR 856, (2008) 23 NZTC 21,958: child support appeal.
- *Abraham v Auckland District Court* (2007) 23 NZTC 21,386; [2007] NZCA 598, [2008] 2 NZLR 352, (2008) 23 NZTC 21,801: case involving jury trial election.
- *Holdgate v Blocassa Ltd* [2007] NZCA 132: appeal against Official Assignee's decision.

- *Commerce Commission v O'Neil* (2006) 3 NZCCLR 898; [2007] NZCA 466, (2008) 8 NZBLC 102,086, (2007) 12 TCLR 1: refund orders obtained by Commerce Commissioner for consumers.
- *Mason v Commissioner of Inland Revenue (Re Next Generation Investments Ltd)* (2006) 22 NZTC 19,775: Inland Revenue's powers to request information about creditors.
- *R v Patel* (CRI-2004-004-1409): attempting to procure murder trial.
- *R v Cai & Anor* (CRI-2004-404-8211): class A drug importation trial.