CHAIR



Grant Illingworth KC, Barrister, Auckland

Grant has conducted his own practice as a barrister since 1975 and was admitted to the inner bar in 2003. His principal areas of professional practice include constitutional law, administrative law, judicial review, disciplinary proceedings, trusts and civil litigation.

SPEAKERS



Paul Beverley, Buddle Findlay, Wellington

Paul leads the resource management and Māori law team in the Wellington Office. He has been a core Crown negotiation team member on numerous significant Treaty settlements including the novel legal personality models (Te Urewera, Te Awa Tupua (Whanganui River) and currently Taranaki Maunga). Paul advises widely on Te Tiriti o Waitangi and Māori legal issues, with a particular focus on co-governance and partnership arrangements. He appears regularly in the courts on the interpretation of statutory provisions relating to Te Tiriti and Te Ao Māori, and is currently involved in law reform from a Te Tiriti/Māori perspective.



Hon Karen Clark KC, Thorndon Chambers, Wellington

Prior to her appointment to the High Court bench Karen specialised in public law litigation, first as Crown Counsel in the Crown Law Office, then as Deputy Solicitor-General (Public Law). Karen took silk in 2007. She is a past member of the New Zealand Council of Legal Education, the New Zealand Council of Law Reporting and the NZLS Legislation Committee. Karen retired from her role as a High Court Judge in 2021 and has returned to the bar.



Dr Rodney Harrison KC, Barrister, Auckland

Rodney was called to the inner bar in 1994, and admitted to fellowship of the International Academy of Trial Lawyers in 1995. Now one of New Zealand's most senior practising King's Counsel, he has appeared in many leading public law and human rights cases, both in New Zealand and in other Pacific jurisdictions. These include litigation over Treaty of Waitangi claims and settlements; marriage rights for same-sex couples; Bill of Rights remedies for police wrongdoing including unreasonable search and seizure; accessible public transport for the disabled; age discrimination; free speech guarantees; the powers of the security intelligence services; wholesale detention of refugee status claimants post 9/11; *the Ahmed Zaoui case*; criminal legal aid fixed fee policy setting; and numerous immigration and refugee law leading cases.

SPEAKERS



Amanda Hyde, Keegan Alexander, Auckland

Amanda is a civil and commercial litigation partner at Keegan Alexander, with experience acting on wide-ranging civil disputes. She has a public law background, having started her career in the public sector and specialised in administrative law thereafter.



Dr Dean Knight, Faculty of Law, Victoria University, Wellington

Dean specialises in public and government law, with scholarly interests across a wide range of topics in constitutional and administrative law. Areas of particular emphasis in his work include judicial review of administrative action, local government and democracy, constitutional reform and, recently, legal dimensions of the COVID-19 pandemic. Dean co-authored, together with Justice Matthew Palmer, the recently published book – *The Constitution of New Zealand: A Contextual Analysis* – in Hart Publishing's series on constitutional systems of the world.



Matthew Smith, Thorndon Chambers, Wellington

Matthew has a broad public and commercial law practice, encompassing regulatory, Māori, human rights and environmental law, with special expertise in judicial review and the use of public law tools to achieve meaningful outcomes for clients. He works across the entire range of public law and has acted for public sector bodies, individuals, entities of many kinds, industry groups and NGOs. Matthew has appeared in all of the higher courts, and in a number of specialist courts and tribunals including the Waitangi Tribunal and the Māori Land Court. He is also the sole author of the *New Zealand Judicial Review Handbook*, a comprehensive text on judicial review in New Zealand that is now in its second edition.



Hanna Wilberg, Faculty of Law, University of Auckland, Auckland

Hanna writes and teaches on administrative law, social security law and the tort liability of public authorities. She has provided the updates on administrative law in the New Zealand Law Review since 2010, and is currently writing a book on the principles of administrative law in Aotearoa New Zealand for Hart Publishing. Hanna's other publications include numerous articles in UK, Australian and NZ journals, and Wilberg and Elliott (eds) The Scope and Intensity of Substantive Review: Traversing Taggart's Rainbow (Hart, 2015). She is a graduate of Otago and Oxford. Before joining academia, Hanna worked as a Court of Appeal Judges' Clerk and at the Crown Law Office.

CONTENTS

THE BILL OF RIGHTS IN ADMINISTRATIVE LAW – WITH A FOCUS ON S 5	1
Introduction	3
The role of s 5 vis-à-vis s 6	
THE APPROACH TO S 5	10
BARRIERS TO JUDICIAL REVIEW: PRIVATIVE CLAUSES AND SELF-DENYING	
ORDINANCES	19
THE MEANING AND EFFECT OF S 27(2) OF THE BILL OF RIGHTS	22
STATUTORY PRIVATIVE CLAUSES AND QUASI-PRIVATIVE CLAUSES	23
Standing	
Justiciability	
JUDICIAL REVIEW IN RELATION TO PARLIAMENTARY PROCESSES	
JUDICIAL REVIEW IN THE FACE OF A RIGHT OF APPEAL	
JUDICIAL REVIEW OF DISTRICT COURT RULINGS IN CRIMINAL CASES	
CONCLUSION	
TREATY OF WAITANGI PROVISIONS IN LEGISLATION	
INTRODUCTION	39
THE SIGNIFICANCE OF TREATY PROVISIONS IN LEGISLATION	
APPROACHES TO TREATY CLAUSES IN LEGISLATION	
TWO SUPREME COURT DECISIONS ON TREATY PROVISIONS	
CONCLUDING COMMENTS	
ADMINISTRATIVE LAW – THE INTERNATIONAL DIMENSION	
INTRODUCTION	
A RECAP OF SOME BASIC (AND WELL-KNOWN) PRINCIPLES	
SOME CONTEMPORARY EXAMPLES – ENSURING CONSISTENCY WITH INTERNATIONAL OBLIGATIONS LOOKING BEYOND OUR BORDERS	
CONCLUSION	
HOW TIKANGA AND TE TIRITI ARE SHAPING OUR ADMINISTRATIVE LAW	
INTRODUCTION AND CONTEXT	
TIKANGA: AN OVERVIEW	
TE TIRITI: AN OVERVIEW	
THE FABRIC OF ADMINISTRATIVE LAW AS WE NOW FIND IT	
THE JOURNEY THAT LIES AHEAD	
THE LYRICS AND RHYTHM OF JUDICIAL REVIEW'S SUPERVISORY JURISDICTION	
INTRODUCTION	
THE LYRICS OF BUTTALITY	
THE LYRICS OF INTENSITY	
THE LYRICS OF CONTEXT THE (FORBIDDEN) LYRICS OF DEFERENCE AND ALL THAT	
CONCLUSION	
JUDICIAL PERSPECTIVE	