

B.R. LATIMOUR



BRIAN LATIMOUR B.A., LL.B.
BARRISTER

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Brian Latimour practises as a barrister from chambers in Auckland.

Over a span of 40 years of legal practice as a barrister and solicitor specialising in litigation, Brian has conducted cases in all areas of civil and commercial litigation and has extensive experience acting for both plaintiffs and defendants in major and complex matters.

Independent endorsements

Prior to going to the independent Bar in 2013, Brian was the senior litigation partner in Bell Gully, having been a specialist litigation partner there (or in its predecessor firm in Auckland) for 38 years.

Brian was listed as a leading individual in litigation in ***Chambers Global 2008, 2009 and 2010*** with the 2010 edition noting that Brian is ***“widely regarded as a leader in the field”***.¹ Chambers Asia/Pacific 2011 Guide noted that Brian is ***“sought out as lead counsel in complex cases”***. The 2012 edition noted his ***“close to 40 years’ experience as a litigation specialist ... renowned for his depth of knowledge.”***

The 2013 edition of Chambers Global described Brian as follows:

“Senior partner Brian Latimour earns praise for the *“strength of his practice in the New Zealand market, and for the depth and breadth of his litigation experience.* A recent highlight was his successful representation of Cavalier Wool Holdings with regard to a High Court appeal lodged by competitors Godfrey Hirst.”

In *Asia Pacific Legal 500 2009/2010* featured Brian as a leading individual. Brian was also recognised by *PLC Which Lawyer*² as one of just two ***“leading individuals”*** in dispute resolution in New Zealand firms. He is also listed as an expert in the *Legal Media Group’s Litigation Lawyers Expert Guide*.

1. Chambers Global *The World’s Leading Lawyers for Business — The Client’s Guide* The publication is produced by London-based Chambers and Partners, which prides itself on a tradition of producing a range of guides to the legal profession based on in-depth research including thousands of interviews with clients and leading practitioners. According to *Chambers Global*, no lawyers will be mentioned in it unless they come strongly recommended from the market. “No one can ‘buy their way in’”. Chambers has been publishing guides since 1990.
2. PLC Which Lawyer? 13th edition 2008, published by Practical Law Company, headquartered in London. Formerly known as PLC Global Counsel, the publication bases its law firm and lawyer recommendations on confidential feedback from in-house counsel and extensive interviews conducted by its editorial research team with private practice lawyers active in the markets on which it reports. (The book aims to provide practical information and market intelligence for those doing business outside their own jurisdiction.)

Extensive experience as lead counsel in major commercial litigation

As a barrister Brian's practice to date has involved him in numerous appearances as counsel in leading cases or important decisions before the Courts, more than 50 of which have been reported in the law reports. **Refer Appendix 1 attached.**

Brian has been lead counsel in a number of major cases before the Court of Appeal two of which involved appearing before a Full Court of the Court of Appeal. Brian has appeared as a junior counsel to leading English counsel (as they then were) Peter Goldsmith QC and Jonathan Sumption QC before the Privy Council.

Brian has also appeared as counsel before many specialist tribunals, authorities, and commissions on a wide range of major civil and commercial matters.³

Recent experience

Brian has significant experience conducting major civil hearings and trials.

- In *Carter Holt v Genesis* case **Brian was instructed to act as senior counsel** for the plaintiff, to replace Queen's Counsel (as had also occurred in *Maruha v Amaltal*). The *Carter Holt* case was major multi-million dollar civil litigation against two defendants represented by New Zealand Queen's Counsel and senior English counsel respectively. It involved many **complex factual and legal issues of contract, tort and construction law**, multiple briefs from 24 fact and 35 expert witnesses and a Court bundle of some 177,000 pages. The case ran for **155 sitting days** in the High Court at Auckland and was **the second longest running trial ever before a New Zealand Court** before it finally was resolved with a confidential settlement in favour of the plaintiff. In addition, Brian argued a number of significant interlocutory matters (refer decisions 69 to 74 in Appendix 1 attached).

Other recent cases include:

- In 2010-2011 Brian acted as lead counsel for Air New Zealand in **judicial review proceedings** to challenge the validity of decisions by Queenstown Lakes District Council and its airport company to sell a substantial share of the ownership and control of Queenstown airport to Auckland Airport. A settlement was reached shortly before trial.
- In 2011 Brian acted as lead counsel for Cavalier Wool Holdings Limited to successfully oppose an appeal against a decision of the Commerce Commission under the **Commerce Act** to authorise the acquisition by Cavalier of the last remaining business competitor (in the wool scouring industry in New Zealand). This was the first authorisation of its kind and the first consideration by the High Court of the correct application of the relevant statutory, legal and economic principles.
- In 2011 Brian appeared for the New South Wales Mines Rescue Service before the Royal Commission on the **Pike River** Coal Mine tragedy. Brian has also appeared as counsel before the "**Winebox**" Commission of Inquiry, which ran for several years.
- Since 2012 Brian has been acting as lead counsel for NZX Ltd in litigation between NZX and Ralec Commodities Pty Ltd in relation to significant claims based on misrepresentation and breach of contract.

3. Including the Securities Commission, the Surveillance Panel of the NZSE, the Market Surveillance Committee of the NZEM (Sir Duncan McMullin Chairperson) the Appeal Board of NZEM (Sir David Tompkins, chair), the Broadcasting Tribunal, the Winebox" Commission of Inquiry, the Pike River Commission of Inquiry, and Parliamentary Select Committees.

Qualifications

Bachelor of Laws, University of Auckland, 1972

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Admitted as a barrister and solicitor of the High Court of New Zealand 19 December 1972

Areas Of Expertise

Brian specialises in providing advocacy at all levels of the Court system and before specialist tribunals and commissions and in providing advice generally in the areas of:

- commercial and corporate law
- administrative law and judicial review
- contract law
- tort law
- banking and finance law
- insolvency and complex company liquidations
- defamation
- insurance
- trade and competition law
- resource management (High Court level)
- local government law

**Appendix: Selected important decisions/reported cases
in which B R Latimour has appeared as counsel**

1. Junction Motors Ltd v New Lynn Borough [1975] 2 NZLR 131 (Supreme Court)
2. New Zealand Insurance Co Ltd v New Zealand Insurance Brokers Ltd [1976] 2 NZLR 40 (Supreme Court)
3. Begley Industries Ltd v Cramp [1977] 2 NZLR 207 (CA)
4. Re Mortgage Management Ltd [1978] 1 NZLR 494 (Supreme Court)
5. Begley Industries Ltd v Cramp [1978] 1 NZLR 527 (CA)
6. Re Securitibank Ltd (in liquidation) [1978] 1 NZLR 97 (Supreme Court)
Brian appeared either as counsel for the bank-appointed Receivers or as Court-appointed Counsel in the extensive and complex litigation⁴ arising out of the collapse of the Securitibank Group of Companies. Many of these cases remain leading New Zealand decisions in the area of banking law, bills of exchange and creditors' rights in relation to complex liquidations. Re Securitibank, involved 24 days sitting of intensive legal argument in relation to a multiplicity of issues.
7. Carter Holt Holdings Ltd v Fletcher Holdings Ltd [1980] 2 NZLR 80 (HC)
8. Molyneux v Cramp [1980] 1 NZLR 713 (CA)
9. Lamont v Bank of New Zealand [1981] 2 NZLR 142 (HC)
10. Tasman Pulp & Paper Co Ltd v Newspaper Publishers Association of New Zealand Inc [1983] NZLR 600 (CA)
11. Foreman v Hazard [1984] 1 NZLR 586 (CA)
Brian appeared as Court-appointed counsel in both the High Court and Court of Appeal to represent separately creditor groups following the collapse of the JBL group of companies.
12. Fletcher Trust and Investment Co Ltd v Guthrie's Pharmacy Ltd [1984] 2 NZLR 418 (CA)
13. Broadcasting Corporation of New Zealand v Broadcasting Tribunal [1986] 2 NZLR 620 (CA)
14. Jagwar Holdings Ltd v Fullers Corporation Ltd (No 1) HC, Barker J, 3 February 1989 (CL85/87)
15. Kerry (New Zealand) Ltd v Taylor HC, Gault J, 29 May 1989 (CP1614/88)
16. Effem Foods Pty Ltd v Best Friend Pet Foods Ltd HC, Barker J, 23 November 1989 (CP139/89)
17. Titchener v Attorney-General (High Court, Tompkins J, 28 March 1990 (CP2488/89).

4. Refer Appendix 1 — cases 3, 4, 5, 6 and 8.

18. Auckland Regional Authority v Local Government Commission (CP528/89, Grieg J, 31 October 1989)
Following the extensive proposals for the reform of local government made by the Local Government Commission, Brian acted successfully as lead counsel for the Auckland Regional Authority (as it then was) to challenge various proposals for the re-distribution of assets following the abolition of the Auckland Harbour Board and in further litigation directly against the Harbour Board (which eventually settled) resulting in the transfer to the Auckland Regional Authority of in excess of \$20 million of assets which otherwise would have been diverted from it.
19. Commissioner of Inland Revenue v Lloyds Bank Export Finance Ltd [1990] 2 NZLR 154 (CA)
Successfully appeared as lead counsel for Lloyd's Bank in the High Court and also appeared as lead counsel in the Court of Appeal. This was a case testing the interpretation of "assessment" in the income tax legislation. The Privy Council (English counsel instructed) reversed the Court of Appeal decision and restored the High Court ruling on the issue.
20. McDonald v Australian Guarantee Corporation (NZ) Ltd [1990] 1 NZLR (HC)
21. Commissioner of Inland Revenue v McDonald [1991] 1 NZLR 419 (CA)
Successfully appeared as lead counsel for a consortium of banks in both the High Court – case 20 above - and Court of Appeal to determine the correct application of the Corporations (Investigation and Management) Act 1989 to costs issues and entitlements.
22. Dodds v Smith (High Court, Master Towle, 26 July 1991 (CP31/90))
23. Security Pacific Asia Ltd v SBSA (NZ) Ltd (High Court, Thomas J, 5 December 1994
Security Pacific Asia Ltd v SBSA (NZ) Ltd [1995] 3 NZLR 379 (HC)
24. Deloitte Haskins and Sells v National Mutual Life Nominees Ltd [1993] 3 NZLR 1 (Judicial Committee)
Auditors liability, duty of care alleged to arise from statutory obligations. Brian appeared as a junior counsel in the Privy Council. Peter Goldsmith QC of the English Bar instructed as lead counsel.
25. Colonial Mutual Life Assurance Society Ltd v Wilson Neill Ltd [1993] 2 NZLR 617 (HC)
26. Colonial Mutual Life Assurance Society Ltd v Wilson Neill Ltd (No 2) [1993] 2 NZLR 657 (HC)
Successfully appeared as lead counsel in the High Court – see case 25 above - and before a Full Court on the Court of Appeal on what was the first major case and a leading decision on insider trading laws.
27. Colonial Mutual Life Assurance Society Ltd v Wilson Neill Ltd [1994] 2 NZLR 152 (CA)
28. Auckland Casino Ltd v Casino Control Authority [1995] 1 NZLR 142 (CA)
29. Worldwide Leisure Ltd v Symphony Group Ltd [1995] NZAR 177 (HC)
Appeared (successfully - Court of Appeal not reported) as lead counsel in the High Court and Court of Appeal for the owners of Huka Lodge in one of the first major cases challenging a Council's decision to proceed on a non-notified basis under the Resource Management Act 1991.

30. Fay, Richwhite & Co Ltd v Davison [1995] 1 NZLR 517 (CA)
31. Security Pacific Asia Ltd v SBSA (NZ) Ltd [1995] 3 NZLR 379 (HC)
32. Spicers Paper (NZ) Ltd v Whitcoulls Group Ltd (CA186/94, 27 February 1995)
33. WEL Energy Trust v Waikato Electricity Authority (CA247/94, 13 December 1995)
34. New Zealand Magazines Ltd v Karen — Lady Hadlee (CA74/96, 24 October 1996)
35. Fay Richwhite v Davison [1997] NZAR 563 (HC)
36. Mackay Refined Sugars (NZ) Ltd v New Zealand Sugar Co Ltd [1997] 3 NZLR 476 (HC)
37. Millark Properties Ltd v Auckland City Council [1998] NZRMA 573 (HC)
38. Commerce Commission v Taylor Preston (1998) 6 NZBLC 102, 598 (HC)
Acted as lead counsel for AFFCO (the largest operator in the market) in relation to significant contraventions by 8 meat companies of the Commerce Act 1986. All defendants eventually entered into Court- approved settlements.
39. Avon Cosmetics v Collector of Customs [1999] NZAR 345 (HC)
40. Collector of Customs v Avon Cosmetics Ltd (CA101/99, 9 November 1999)
41. B v Auckland District Law Society (2000) 14 PRNZ 423 (HC)
42. Auckland District Law Society v Russell McVeagh McKenzie Bartleet & Co (2000) 15 PRNZ 417 (HC)
43. Auckland District Law Society v B [Leave to Appeal] (2001) 15 PRNZ 730 (CA)
44. Auckland District Law Society v B [2002] 1 NZLR 721 (CA)
45. Russell McVeagh v Auckland District Law Society (2002) 16 PRNZ 508 (HC)
46. B v Auckland District Law Society [2004] 1 NZLR 326 (PC)
Brian was involved in appearances as second counsel with Mr Craddock QC before disciplinary committees of both the Auckland and Wellington District Law Societies, before the High Court, before a Full Court of the Court of Appeal, and before the Privy Council (where Mr Jonathan Sumption QC was briefed as lead counsel). The decision of the Privy Council is now a leading decision in New Zealand affirming various principles relating to legal professional privilege. (Cases 41 - 46).
47. Riverside Casino Ltd v Moxon [2001] 2 NZLR 78 (CA)
48. Ord v Calan Healthcare Properties Ltd [2004] 2 NZLR 122 (HC)
49. Maruha Corp v Amaltal Corp [Exclusion of Witnesses] (2004) 17 PRNZ 67
50. Maruha Corp v Amaltal Corp [Discovery of Translation] (2004) 19 PRNZ 71 (HC)
51. Maruha Corp v Amaltal Corp [Undiscovered Document] (2004) 17 PRNZ 77 (HC)
52. Maruha Corp v Amaltal Corp [Exclusion of Expert] (2004) 17 PRNZ 83 (HC)

53. Maruha Corp v Amaltal (High Court, Auckland, CIV-2003-404-001773, 19 October 2004, Priestley J)
The Maruha v Amaltal litigation (2004 — 2006): This involved 2 separate claims within one proceeding. Each claim plus interest was in the order of \$14 million. Brian was instructed by the defendant to act as lead counsel and conducted the 4 to 6 week trial. Brian also appeared as second counsel in various appeals and cross-appeals to the Court of Appeal and Supreme Court. Numerous reported and unreported decisions arose from this complex litigation (refer cases 49 to 52, 54 to 56).
54. Amaltal Corporation Ltd v Maruha Corporation [2007] 1 NZLR 608 (CA)
55. Maruha Corp v Amaltal Corp Ltd (High Court, Auckland, CIV 2002-404-1773, 8 May 2006, Priestley J) [Pre-judgment interest]
56. Amaltal Corporation Ltd v Maruha Corporation [2007] 3 NZLR 192 (SC)
57. Ord & Fenton v Calan Healthcare Properties Ltd [2005] 2 NZLR 96 (CA)
58. Latimer Holdings Ltd v SEA Holdings New Zealand Ltd [2005] 2 NZLR 328 (CA).
Appeared as lead counsel in the High Court and Court of Appeal. This is a leading decision of the Court of Appeal reviewing the law on minority shareholder claims under s174 of the Companies Act 1993, including in relation to public listed companies.
59. Carter Holt Harvey Ltd v North Shore City Council [2006] 2 NZLR 787 (HC)
Acted as lead counsel for CHH to obtain orders quashing bylaws which imposed levies on "waste" on the grounds that local authorities have no power to tax absent express power conferred by Parliament, and (case 60) successfully acted as lead counsel in the Court of Appeal also quashing related licensing bylaws as also invalid.
60. Carter Holt Harvey Ltd v North Shore City Council [2008] 1 NZLR 744 (CA)
61. Carter Holt Harvey Ltd v Genesis Power Ltd (High Court, Auckland, CIV 2001-404-1974, Randerson J, 24 October 2006)
62. The Proprietors of Maraeroa C Block and Ors v NZ Forest Products Ltd & Ors (Maori Land Court, A20060028157, 22 March 2007)
63. Bank of New Zealand v Deloitte Touche Tohmatsu [2007] 1 NZLR 663 (HC)
64. Osmose New Zealand v Wakeling [2007] 1 NZLR 841 (HC)
65. Carter Holt Harvey Ltd v Rolls Royce New Zealand Ltd (Court of Appeal, CA256/06, Glazebrook, Hammond and Wilson JJ, 13 November 2007)
66. Bank Of New Zealand v New Zealand Exchange Ltd [2009] 1 NZLR 53 (CA)
67. Carter Holt Harvey Ltd v Genesis Power Ltd (No 8) HC Auckland CIV-2001-404-1974, 29 August 2008.
68. Stayinfront Inc v Tobin [2008] NZCA 367.
69. Carter Holt Harvey Ltd v Genesis Power Ltd HC Auckland CIV-2001-404-1974, 21 April 2009.

70. Carter Holt Harvey Ltd v Genesis Power Ltd HC Auckland CIV-2001-404-1974, 28 May 2009.
71. Carter Holt Harvey Ltd v Genesis Power Ltd HC Auckland CIV-2001-404-1974, 28 May 2009.
72. Carter Holt Harvey Ltd v Genesis Power Ltd (No. 1) HC Auckland CIV-2001-404-1974, 23 June 2009.
73. Carter Holt Harvey Ltd v Genesis Power Ltd (2009) 20 PRNZ 87.
74. Carter Holt Harvey Ltd v Genesis Power Ltd HC Auckland CIV-2001-404-1974, 10 September 2009.
75. Re Godfrey Hirst NZ Ltd HC Wellington CIV-2011-485-1257, 8 July 2011.
76. NZX Ltd v Ralec Commodities Pty Ltd HC wellington CIV-2011-485-1299, 22 November 2011.
77. NZX Ltd v Ralec Commodities Pty Ltd [2012] NZHC 1585.
78. NZX Ltd v Ralec Commodities Pty Ltd [2012] NZHC 1641.