



**Mary Scholtens QC** is an experienced Queen's Counsel who has acted predominantly in the commercial public law area since commencing practice 36 years ago in 1982. She spent ten years in the Crown Law Office before joining the independent bar in 1996. She was made a Queen's Counsel in 2002. Mary brings to her advice and representation an appreciation of how government works. Her practice is primarily in the broad field of administrative and constitutional law, particularly where commercial and governmental interests diverge. She has appeared in many judicial review proceedings, in public law claims in contract, tort and equity, in tax matters and in diverse appeals from regulatory bodies. She has carried out inquiries and investigations in a broad range of subject matters. She has acted as amicus curiae in cases before the High Court, Court of Appeal and Supreme Court. She has assisted and appeared before Commissions of Inquiry, Parliamentary Select Committees, and on an Electoral Petition into form of voting. She has advised and acted on matters before the Human Rights Review Tribunal and in the employment jurisdiction. She has been a member of the New Zealand Lawyers and Conveyancers Disciplinary Tribunal and its predecessor since 2007, having recently chaired a division on a long-running matter. She is an accredited mediator and a marriage/civil union celebrant.

Significant matters in which she has been involved include three successful appearances before the Privy Council early in her practice. First a judicial review of the grant of a mining license by the Minister of Energy to the Crown over the Ngaere/Waihapa oil field discovery; second a judicial review over the allocation of assets as part of the Auckland port corporatisation; and third a contractual claim relating to whether a ratchet clause was included in leases sold as part of the State Insurance Office undertaking.

Mary was part of the team acting for the Commerce Commission in fourteen appeals against the Commission's initial determinations of 'input methodologies' for regulating the airports services, electricity and gas transmission and distribution sectors. The Commission was almost wholly successful in defending its determinations. The litigation was long and complex. Several judicial reviews of the Commission's processes were also sought.

Mary was instructed by the Financial Markets Authority in judicial review proceedings challenging the various actions and decisions that resulted in

the placing of Alan and Jean Hubbard into statutory management. She successfully defended the first challenges to the FMA's deregistration of advisors. She also advised the Technical Inquiry into Building Failure following the Christchurch earthquake.

In another large project, Mary acted as part of the team representing the IRD in significant tax avoidance cases against five of the major banks involving cross-border structured finance transactions. She appeared in the first of two successful hearings, being a 12 week trial against the Bank of New Zealand in 2009. The claims were the subject of a global settlement at the end of 2009 for over \$NZ 2.2 billion.

She has acted as Counsel for the Commerce Commission in various appeals and judicial reviews brought by Vodafone and Telecom against the Commission's approach to the setting of the value of the Telecom Service Obligation under the Telecommunications Act, through all courts to the Supreme Court.

Mary was lead counsel of a team dealing with "leaky building" claims against the Crown/Building Industry Authority, liability being finally resolved by the Supreme Court in 2012. She was counsel for the 21 District Health Boards in proceedings relating to the funding of rest homes. She has acted for Marlborough Lines Ltd in a review of the Takeovers Panel; for a Minister in a challenge to a ruling of the Broadcasting Standards Authority; for the Director of Maritime New Zealand in a challenge to the Director's power to withdraw an approval from a safe ship management company; for a Minister in relation to a privacy complaint before the Human Rights Proceedings Commissioner; for the Medical Council in an application to the High Court for a declaration relating to abortion services; for the Hutt City Council on an electoral petition challenging the running of the FPP/STV poll and for the NZ Law Society as intervener in a number of appeals from decisions relating to the availability of legal aid under the Legal Services Act 2000.

In the regulatory sphere Mary has acted for and advised a wide range of bodies across areas including dairy, airports, electricity, telecommunications, safety, environment and fishing. She carried out a review of the Civil Aviation Rule-Making Process in 2002. From 2004 to 2007 Mary acted as Counsel Assisting the Commission of Inquiry into Police Conduct. Mary was appointed to the NZ Law Practitioner's Disciplinary Tribunal, now the New Zealand Lawyers and Conveyancers Disciplinary Tribunal, in 2007.

Mary has been involved in many continuing education activities, particularly in the public law and litigation skills area. She has served as a faculty member on numerous NZLS Litigation Skills, Advanced Litigation Skills and Expert Witness Litigation Skills courses. She has written and spoken widely on good decision-making processes and administrative law litigation, and provided in-house training on proper decision making to many public agencies. She believes lawful and efficient decision-making is an important mark of good government, and that the standards imposed on decision-makers by the law must be realistic and able to be adhered to without

unreasonable barriers and costs. The role of the Courts in determining the appropriateness and reasonableness of such standards in today's society is often a complex task, and Mary enjoys the challenge of assisting this process.

In the last five years Mary has taken steps towards fulfilling a long-held desire to work with young women lawyers, helping them to identify the challenges of their practise of law and find tools and strategies to keep themselves well in their particular context. The 'Take A Deep Breath' programme is a small group programme run over 6 weeks, one lunchtime a week, by Mary and experienced coach Ava Gibson.

- Primary areas of practice

Specialist public, constitutional and administrative law litigation and advice involving central and local government and quasi-government/regulatory agencies, particularly in the commercial field, including-

- Judicial review proceedings
- Constitutional law including Bill of Rights litigation, Parliamentary practice and electoral law
- Regulatory processes including environmental risk management, occupational health and safety, civil aviation, maritime and transport safety, telecommunications, electricity, airports dairy and trade practices including Fair Trading/Commerce Act/Dairy Industry Restructuring
- Public Finance, Governance of Crown Entities
- Public civil litigation including tort, contract, employment and equity
- Inquiries and reviews
- Accredited mediator

#### Admission to Bar

- February 1983
- Appointed Queen's Counsel in 2002

#### Legal education

- 1982 - LL.B (Victoria University of Wellington)
- 1998 - Laws 518 (Administrative law)
- 1999 - Laws 581 (Advanced legal study)

#### Professional Career

- 2002 - Queen's Counsel
- 1996 - Barrister sole
- 1986 - 1996 Assistant Crown Counsel, Crown Counsel and (from 1991) Team Leader, Public/Commercial Team, Crown Law Office. Member of Crown Law Office Management Board.
- Early legal practice was within legal sections of core central government organisations (Education, Customs) and a

year in a criminal/human rights private practice in central London.

#### Appointments, Directorships etc

- New Zealand Council of Law Reporting (2016 - )
- New Zealand Women's Law Journal (Trustee) (2016 - )
- New Zealand University Law Review (Trustee) (2018 - )
- Member of the Legislation Advisory Committee (2004-2011)
- Member of appointments and recommendatory panels for a number of senior legal public service positions
- Member NZ Law Practitioners Disciplinary Tribunal, now NZ Lawyers and Conveyancers Tribunal (2007 - )
- Chair of the Radiation Technologists Appeal Board (2001)
- Member, Wellington Prosecution Panel (1997-2001)
- Director of two private companies (2002-2013), now joined as one: Impac Services Ltd - offering strategic advice and various services in health, safety and wellbeing, and supported software solutions. A Deloitte's "Fast 50" company in 2006 and 2007.
- Member of the Institute of Directors (1997 - ), Certificate in Company Direction (1998).
- Chair, Wellington District Law Society Public Law Committee (2003)
- Council member of the NZ Bar Association (2002-2006)
- Member of a range of professional organisations.
- Represented New Zealand at the Annual Australasian Government Solicitors' Conference (1992-94)

#### Publications

- Co-author, "Crown Proceedings and Practice" for Butterworths Laws of New Zealand
- Co-author, "The Judge Over Your Shoulder" (Crown Law Office, 1990) - a guide to the principles of decision-making for officials and Ministers.

- Editorial Committee, VUW Law Review (1978-81)
- Numerous seminar papers

#### Other

- Board member (1989-1998) and honorary legal adviser to Challenge 2000 (social agency centred in Johnsonville which, among other things, runs a number of programmes to which offenders who receive community based sentences are channelled by the Courts);
- Regular guest speaker in Police DARE (Drug Abuse Resistance Education) Programme in schools (1988 - about 2003)
- Involved in Law in Schools programme (1987 - about 2003)
- Recipient Women's Suffrage Year Medal (1993)