

Overview

"Seen as 'the right person for the job' in the tax avoidance and tax evasion cases he typically handles" - Chambers' Asia-Pacific Law Directory, 2013

"[Has] carved out a formidable niche for himself in those aspects of tax law involving the Inland Revenue's powers of search and seizure" - Chambers' Asia-Pacific Law Directory, 2015

"Mike Lennard of Stout Street Chambers is acclaimed for his strength acting in proceedings arising from allegations of tax evasion as well as tax avoidance cases. Peers say: 'He is a good operator. He knows the law, he knows his way around the courtroom very well, and has the background and understanding of how Inland Revenue works after being inside it for a number of years.'" - Chambers' Asia-Pacific Law Directory, 2016

I am a New Zealand litigation lawyer, specialising in tax disputes and litigation. My career to date has involved eight years' practice as a Crown prosecutor and civil litigation lawyer, eight years as head of litigation for Inland Revenue, and practice at the independent bar since June 2004.

I have been recognised as a leading tax disputes lawyer in both of the leading international reviews that cover this area of practice: in the 2011 onwards edition of the International Tax Review's publication "[Tax Controversy Leaders](#)" and from 2012 onwards in Chambers and Partners' [Asia-Pacific review](#) (moved up from band 3 to band 2 in 2015).

As a barrister, my practice covers tax disputes at all stages, from initial Revenue investigations through the pre-assessment disputes process to litigation in court. I have a substantial amount of experience in defending taxpayers charged with evasion and non-payment of PAYE in the criminal courts. I have participated on one side or the other on many of the most significant tax disputes in the past 20 years. Non-tax aspects of my practice include intellectual property, competition law and relationship property litigation.

I have been a faculty member of the New Zealand Law Society's Litigation Skills Programme since 2000. I have been an adjunct teaching fellow at the University of Auckland since 2004, where I lecture in the Master of Taxation Studies programme on Conduct and Procedures of Tax Disputes (I also lectured for a few years on Timing of Income and Expenses). I have spoken at numerous conferences and seminars over the past 20 years on subjects relating to tax disputes and administrative law issues. I am a member of the New Zealand Law Society's Taxation Committee.

I am a regular contributor to, and a member of the Advisory Board of, "Taxation Today", a monthly magazine published by Thompson Brookers, and have also published in other journals.

I represented New Zealand at the International Fiscal Association in 2015, reporting with Mark Keating on "practical protection of taxpayer's fundamental rights".

I have contributed (together with EY Law Limited) the New Zealand chapter in the Thompson Reuters Tax Litigation Global Guide, to be published in mid 2016.

Qualifications

- Bachelor of Science (Mathematics major), University of Canterbury, 1982 to 1984
- Bachelor of Laws, University of Canterbury, 1985 to 1987
- Admitted as Barrister and Solicitor of the High Court of New Zealand, 1988
- Residential Programme for Executive Development, University of British Columbia, 1997

Experience - 2004 to Present

Barrister, Stout Street Chambers, Wellington, New Zealand

Private practice specialising in tax litigation, tax law, and general litigation.

Notable engagements in the past year or so have included:

- Achieving the only award of indemnity costs against the Inland Revenue Department for (at least) 20 years, in an action to set aside a freezing order against my clients (*CIR v Dymock*)
- Two 10-week long High Court trials defending taxpayers charged with tax evasion - including the largest ever tax evasion prosecution (*R v Skinner*)
- Trademark litigation - *Daimler AG v Sany Company Limited*

Engagements while at the Bar have included:

- Advice for taxpayers on a broad range of core tax and tax administration issues, including:
 - The tax and GST implications of various business structures
 - Tax avoidance compliance;
 - The likelihood of penalties;
 - Consequences of breach of the Unclaimed Moneys Act;
 - Capital/revenue issues;
 - The FIF/CFC regimes;
- Evasion issues
- Advice and representation for taxpayers involved in disputes with Inland Revenue on penalties, core tax and conduct of investigations;
- Negotiation of settlements for taxpayers of their disputes with Inland Revenue;
- Acting for taxpayers in pre-assessment (Part IVA) disputes relating to a broad range of issues, including:
 - Tax avoidance (Income Tax - section BG1 - and GST - section 76)
 - Evasion
 - Capital/revenue issues
 - Interest deductibility
 - Deductibility of business expenses
 - Liability for related taxpayers' assessments under section HK11/HD 15/section 76 GST Act
 - Whether receipts from liquidated companies are drawings or income
 - Penalties
- Litigation for taxpayers against Inland Revenue in relation to a broad range of issues, including:
 - Capital/revenue issues
 - Interest deductibility
 - Tax avoidance assessments (Income Tax - section BG1 - and GST - section 76). Of approximately 25 cases involving tax avoidance in the past 10 years, only three have been won by taxpayers. I was counsel in one of those three. I have also been part of the Commissioner's team in three of the more significant cases the Commissioner won. And, regrettably, I have acted for two further taxpayers who have been unsuccessful in tax avoidance challenges.
 - Tax evasion assessments
 - Challenging Inland Revenue freezing orders over taxpayer assets
 - Lawfulness of search powers
 - Reopening statute-barred years
 - Withholding tax issues
 - Mutuality issues with incorporated societies
 - Residency issues
 - Penalties

- Criminal defence in the High Court and District Court of taxpayers charged with tax evasion, Crimes Act fraud and obstruction of justice, and failure to account for PAYE deductions
- Criminal appeals in the Court of Appeal on tax evasion matters
- Advice for taxpayers in relation to potential action against accountant for negligent tax advice
- Preparation of submissions for industry group in relation to proposed reform of the "Associated Persons" rule
- Appearing in Privy Council (with English QC) for the Commissioner of Inland Revenue
- Part of the Inland Revenue legal team in the "Trinity scheme" litigation – New Zealand's then largest tax avoidance case, involving over \$1bn of disputed tax and penalties, leading to a win in all Courts including the Supreme Court
- Part of the Inland Revenue legal team in the "structured finance" litigation over tax avoidance assessments involving the Bank of New Zealand and Westpac Banking Corporation - New Zealand's largest tax avoidance case, leading to two High Court wins and a subsequent industry settlement leading to recovery of \$2.2bn of disputed tax and penalties
- Advice and formal opinions for Inland Revenue and the Crown Law Office on litigation and tax-related matters
- High Court appeal against Charities Commission determination
- Litigation for Inland Revenue on:
 - Capital/revenue issues;
 - GST liability, timing and apportionment issues;
 - FIF regime gains/losses
 - Admissibility of evidence in tax disputes
- Training for Inland Revenue on investigation and prosecution of tax evasion
- Conduct of inquiries for Inland Revenue
- Expert evidence on core tax and tax administration issues in the High Court
- Advice to the Fiji Islands Revenue and Customs Agency on a variety of issues in disputes with taxpayers under the Fijian Income Tax Act, Value Added Tax Decree and Tax Administration Decree
- Advice for the Commerce Commission
- Legal adviser to NZ Institute of Chartered Accountants' disciplinary tribunal
- Representation of Chartered Accountant in relation to charges before the NZ Institute of Chartered Accountants' disciplinary tribunal
- Assistance to a Commission of Inquiry on tax-related aspects of the inquiry
- Intellectual Property litigation in the Intellectual Property Office of New Zealand, and to the High Court and Court of Appeal on appeals from IPONZ
- Advice to government departments on
 - Restructuring aspects of their legal services
 - Cost-recovery issues
 - Compliance of proposed legislative amendment with the GST system
- Advice and litigation at Family and High Courts of relationship property issues
- Junior counsel for Commerce Commission in judicial review proceedings concerning the development of "Input Methodologies"
- Junior counsel for Commerce Commission in judicial review proceedings concerning a proposed determination under the Telecommunications Act

Lecturing at the Auckland University Faculty of Commercial Law. Subjects taught include conduct of tax disputes, and timing of income and deductions, at Masters level

1996 – 2004 - Director, Litigation, Inland Revenue Department**In May 1996 I was appointed as Inland Revenue's first Director, Litigation**

I was responsible for setting up the new Litigation Management Unit, which runs Inland Revenue's tax litigation. This involved closing down its predecessor, finalising the new unit's design, negotiating service level agreements with other parts of the organisation to define inter-relationships, all staff recruitment, supervising new premises' design and fit out, and establishing the unit's systems, procedures and ethos.

For the next eight years I ran that unit:

- Supervising the conduct of all Inland Revenue tax and judicial review litigation
- Carrying a file load of my own
- Advising the department on a wide range of litigation and other legal issues (especially concerning the conduct of investigations in difficult or sensitive areas)
- Carrying out day-to-day administration of the unit and its staff of approximately 12 lawyers and support personnel
- Undertaking liaison with the Serious Fraud Office
- Maintaining an overview of the Inland Revenue Department's entire litigation effort.

In this period the amount of tax involved in tax litigation ranged from about \$500 - \$600 million in the earlier years to over \$1 billion in later years.

At the same time the Department's win ratio in tax cases steadily increased from 40% in 1996 to a consistent 80% by the time I left.

1990 - 1996: Associate/Staff Solicitor, Luke Cunningham & Clere

1988 - 1990: Law Clerk/Staff Solicitor, Raymond, Donnelly & Co

For more information on my teaching/presentation experience, professional memberships and positions held; and reported decisions on cases in which I have appeared as counsel, please visit www.mikelennard.com