



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Chance Intervention Seeds Esteemed Career in Law

An introduction to the legal sector arranged through a family sports connection proved to be a life-defining experience which has heralded a distinguished career in law for Paul Heath KC.

Now an arbitrator and mediator with Auckland's Bankside Chambers, the former High Court Judge fondly recalls the event.

"Nobody in my family had ever been to university, let alone done law," he says.

"My father was a member of a local chess club, of which Professor Richard Sutton from the Auckland University Law School was also a member. I spoke to Richard who encouraged me to come to an orientation day at the Law School.

"I was interested in law but never thought I would be able to enter the profession. However, as a result of Richard's intervention, I went to Law School and never regretted it."

Mr Heath humbly describes himself as having been "lucky" in a career with many highlights.

"My specialist area is insolvency law, particular cross-border insolvency law, and while a member of the New Zealand Law Commission (an independent statutory law reform agency) I led a project which led to the enactment, in New Zealand, of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency.



Paul Heath KC

“I appeared on three occasions in the Privy Council and attended a number of meetings of the UNCITRAL Working Groups on both Electronic Commerce and Insolvency, chairing the insolvency group on two occasions.

“I was appointed to the High Court Bench in 2002 and sat regularly as an ad hoc member of the Court of Appeal. Since leaving the Bench, I have enjoyed immersing myself in arbitration and mediation work, with three appointments from the Singapore International Arbitration Centre and one from the Hong Kong International Arbitration Centre.”

Involvement in three cases in particular stand out in his memory.

“The first, which took place only about six months or so after I was appointed to the Bench, involved a young woman who wanted to be the first woman to give birth in a pornographic movie. I was asked by the Child Youth & Family Service to prevent her from doing so. A problem arose because of the difficulties in dealing with an issue that involved an unborn child and not interfering with any criminal laws relating to abortion.

“Ultimately, I found a way around that by appointing the woman as the Court’s agent to ensure the child was not filmed coming out of the birth canal and indicating that if the order were breached it was almost inevitable that she would be committed for contempt. Thankfully, she did not go ahead with her intended action.

“The second was a high-profile serious fraud case in which I presided as a Judge sitting alone. One of the charges involved an alleged deceit of the Minister of Finance in obtaining a Government Guarantee for investments into the company around the time of the Global Financial Crisis. The case took some five months to hear and resulted in a lengthy judgment, about two months later, acquitting the defendants on most of the charges but convicting on a few.

“The third involved a case in which it was alleged that prohibitions on inmate voting were contrary to the New Zealand Bill of Rights Act. I ruled that they were and, for the first time ever, made a declaration of inconsistency with the Bill of Rights – New Zealand law does not permit a court to set aside legislation. My decision, while novel, was upheld in both the Court of Appeal and the Supreme Court.”

He also recounts facing some “difficult moments”.

“They tended to arise in criminal cases where difficulties arose with juries, particularly during their deliberations. One of the first major problems involved an incompetent counsel who had been the subject of severe criticism in a case held the previous week when I was about to hear a trial involving about ten accused on serious drug charges.

Brief Bio

A former Judge of the High Court of New Zealand (2002-2018) and independent arbitrator/mediator since April 2018, Paul Heath KC has also served as a Commercial List Judge and Commercial Panel Member and ad hoc Judge of the Court of Appeal of New Zealand (Divisional Courts) from 2003-2017.

Mr Heath’s career has included case managing litigation relating to the grounding of MV Rena in New Zealand in 2011, and serving as a member of the Panels of Arbitrators which was established by (among others) the Singapore International Arbitration Centre, Hong Kong International Arbitration Centre, Australian Centre for International Commercial Arbitration and Dubai International Arbitration Centre.

He has had seven appointments in international arbitrations since 2018, with areas of speciality including charter party, bill of lading, import/export, ship building contracts, salvage and collision, marine insurance, ship operating contracts and mediation.

Mr Heath’s full bio can be read [here](#).

“I was able to navigate my way through that by encouraging the lawyer to take advice from senior counsel and, ultimately, having him withdraw and severing his client from the indictment. After that experience, I was confident that I could deal with any problem that arose in court, however unusual it might be.”

Evolving into arbitration when retiring from the Bench in 2018 – and recently appointed to the MLAANZ Panel of Arbitrators – Mr Heath believes his experience as a Judge is highly-beneficial to the role.

“Because of time constraints when sitting in court I have learnt to write decisions efficiently and to have them to the parties within a reasonable time – usually no more than two months after the hearing concludes or the last written submissions are made. It has also provided a great experience in people-management, given that lay litigants were often in court and required a much more careful approach than when lawyers appeared.

“However, my most important trait (based on my experience as a Judge in a court of general jurisdiction) is my ability to turn my hand to any type of dispute, and deal with it fairly and efficiently. I enjoy the challenge of ensuring that both parties go away from a hearing feeling that they have had a fair trial and in drafting a decision which will explain fully (particularly to the losing party) why it has not succeeded.”

A relatively-new member of MLAANZ, Mr Heath considers the association as providing important opportunity to broaden professional knowledge.

“While I have always had an interest in maritime law, I practised in an inland city, Hamilton, in which very few opportunities arose for me to get involved. I was fortunate to have the opportunity, while on the Bench, of being involved in the case management of the MV Rena litigation. When my interest was rekindled in maritime law during two mediations I undertook last year, someone recommended to me that I join MLAANZ.

“I see membership of the organisation as providing an excellent opportunity for me to mix with those experienced in the area and to improve my knowledge of the types of issues likely to arise in cases. Another lesson learnt from being a Judge is that in the different areas of law in which you work the decision-maker is very reliant on being educated properly as to the law by the specialist lawyers and as to fact by the expert witnesses. It is possible to deal with any type of case if that level of assistance is received.”

Outside of the office, Mr Heath says he and his wife particularly enjoy travel – “and I enjoy sport”.

“Any sport played at a high level will interest me; but, particularly, cricket. Until recently, I was chair of the Board of Northern Districts Cricket Association, one of the major associations playing First Class cricket in New Zealand.”

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