



SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



Q&A with Judge Tom Broadmore

Retired New Zealand District Court Judge based in Wellington and former barrister

Do you recall what first attracted you to a career in law and was there any previous family history in the profession?

I recall reading, when I was 12 or 13, a classic comic version of a book by (I think) the American novelist Upton Sinclair, in which one of the characters was a crusading lawyer seeking justice for his client against amazing odds. Pursuing that sort of career sounded interesting and worthwhile.

Although there are no lawyers among my ancestors, my maternal grandmother – as a secretary in a legal firm – was invited to study to become a lawyer. This was in about 1908, only a few years after New Zealand's first woman lawyer, Ethel Benjamin, qualified. She turned the offer down, I suspect because she had met my grandfather and had other plans. My younger brother, Derek, became a lawyer, as have both his son David and daughter-in-law Anna.

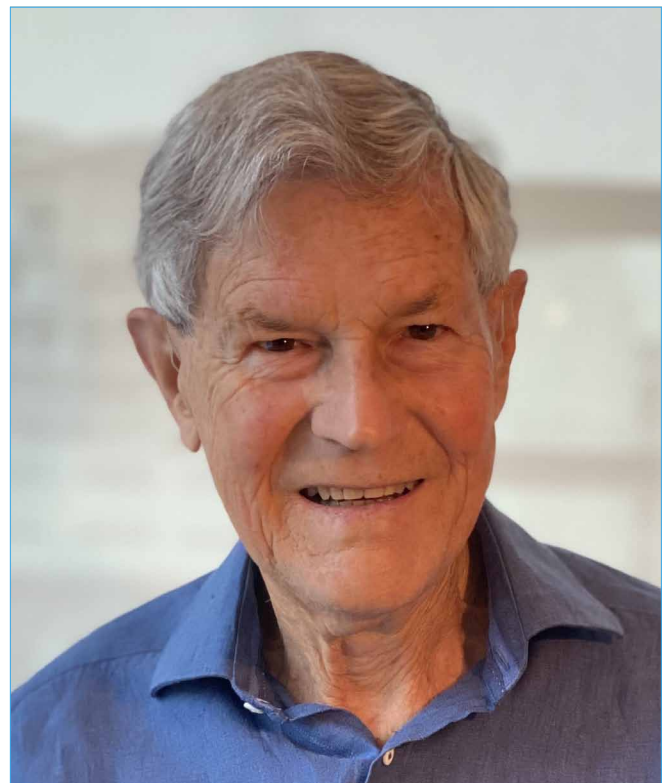
In the late 1960s I worked as a staff solicitor in the litigation department at Chapman Tripp. As the firm was then the Wellington correspondents for the P&I Clubs, a small part of my work involved maritime law.

I then headed off overseas, worked as a solicitor in Perth for about 18 months and then headed to Africa. I embarked on what turned out to be a six-month overland trip from Cape Town to Alexandria. I was heading ultimately for London and occasionally gave thought to what I might do there.

Those thoughts turned to maritime law. So, from the basic hostel accommodation (then called the "native lines") in Serengeti National Park in Tanzania, I wrote to Tom Eichelbaum, then the senior litigation partner in Chapman Tripp, and asked for references to the P&I Clubs in London. Sure enough, when I arrived in London some months later, there were the references. I soon found work with the West of England P&I Club, and some months later I had an opportunity to join the club's lawyers, Holman Fenwick and Willan. The rest is history.

Are there one or two particularly interesting cases over the years of your involvement you'd like to briefly reference – focusing on your personal outtakes from those?

Maritime lawyers have the most fun. I've had my share of it. Here are some weird examples.



I was defending the master of a Japanese squid boat charged with fishing within New Zealand's territorial sea. The facts could not be challenged, as was apparent from the array of naval officers who gave evidence of the vessel's position and of its catching squid. At the conclusion of the Department's case, I announced that the defence would be that squid were not fish. The prosecutor turned white and the judge could scarcely control his mirth. I called evidence from a marine biologist to establish that squid had no backbone and were therefore not fish. The story made the six o'clock TV news. Unfortunately, the Department was later able to persuade the judge that, of several definitions of fish in the Fisheries Act, the most extensive one (which included "crustaceans") applied in the circumstances; and the master was convicted.

In *Buckingham v Hughes Helicopter* [1982] 2 NZLR 738 my client advanced a salvage claim against the helicopter *in rem*, on the basis that it was onboard a German research vessel in Antarctic waters; the vessel was sinking, and he, as its pilot, was able to get it assembled and fly it off the ship to safety. The helicopter was later disassembled and was shipped as cargo on a commercial vessel under charter to the United States Navy. The vessel docked in Lyttelton, where it was bravely boarded by my agent, the future District Court Judge and MLAANZ member Murray Abbott, and put under arrest. The United States Navy applied to discharge the warrant on the grounds that the arrest infringed the sovereign immunity of the United States Government. Even though the vessel was not a warship but an ordinary cargo vessel and merely under charter to the United States Navy, this argument prevailed. The owners of the helicopter later made an *ex gratia* payment to Mr Buckingham.

A woman walked into a community law centre in Wellington and told my Chapman Tripp partner Ross Crotty that she had last seen her husband, a marine engineer, when she farewelled him as he boarded his ship in Mombasa, Kenya; and could Ross please do something about it. The ship had been bound for a port in Somalia and had just disappeared. Two or three years later, I handed her a cheque for her full entitlement (without interest) under the Kenyan equivalent of the Deaths by Accident Compensation Act, plus costs. We had commenced proceedings in the Kenyan courts, and the defendants agreed to settle after the case had been listed for trial (I omit the twists and turns leading to that result).

Less novel or dramatic but no less satisfying have been the favourable outcomes of some of the more traditional maritime cases that have come my way. I mention only two:

- in *The Irina Zharkikh* [2001] 2 NZLR 801, [2001] 2 Lloyd's Rep 319, I was able to persuade the judge that the House of Lords had got it wrong in *The Indian Grace* and that my clients were entitled to arrest the vessel in order to obtain security for their claim despite an arbitration clause in the governing charterparty. This case came to the attention of Justice Allsop and is mentioned in his judgment in *Comandate Marine Corp v Pan Australia Shipping Pty Ltd* (2006) 157 FCR 45; 238 ALR 457 and his extra-judicial writing on the topic
- then there is *Dairy Containers v Tasman Orient Line* [2005] 1 NZLR 433; [2004] 2 Lloyd's Rep 647 (PC), in which the Privy Council upheld the judgment of the New Zealand Court of Appeal that the owners of cargo damaged in transit were entitled to recover only the package limitation amount specified in the bill of lading and not £100 per package under the Hague Convention itself (I had appeared in the New Zealand courts, but Colin Carruthers QC led me in the Privy Council)

Finally, I mention the Preliminary Enquiry into the loss of the Mikhail Lermontov in January 1986. I was representing the Soviet owners. The basic facts were that the Marlborough Harbour Board pilot had directed the vessel through a narrow passage in the Marlborough Sounds, despite having agreed with the master a short time previously that he would take a course further out to sea. The vessel struck a rock in the passage and later sank, fortunately with the loss of only one life.

The incident is associated with a recurring legend in New Zealand that the interpreter provided by the Soviet Embassy for the purposes of the Enquiry was in fact Vladimir Putin, working under cover. When this tale re-emerges, it is generally illustrated by a photograph of myself and a ship's officer walking

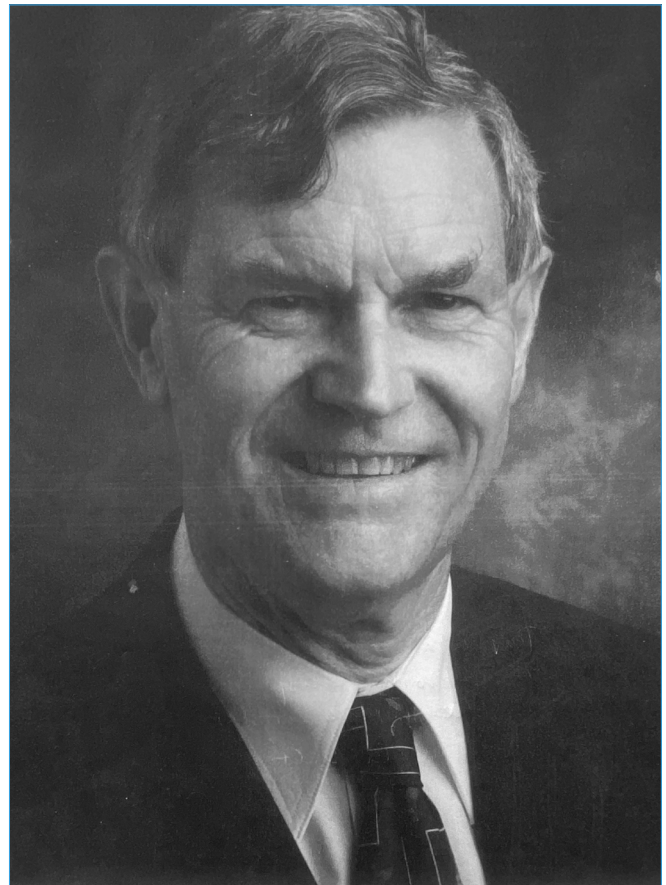
down the street to the Enquiry, in the company of the interpreter, who does look a trifle Putinesque. Comparison of a number of photographs of the interpreter and Putin using facial recognition software has established that they are different people – but the legend refuses to die.

If not covered above, what events/ highlights during your career are you most proud of and/or have provided the most satisfaction?

I am proud to have been a partner in Chapman Tripp for 21 years, to have served as a District Court judge for nine years and to have been president of MLAANZ for three years.

Have there been one or two colleagues in particular over the years who have held particular place in heart?

Colin Carruthers KC is a master advocate. I learnt a lot from working with him, both as a fellow-partner in Chapman Tripp and as a barrister after he left the firm (he would probably observe, rightly, that I was a slow learner).



Judge Broadmore around the time of his appointment in 2005

Ross Crotty was a great colleague and counsellor at Chapman Tripp and later in chambers when we both went to the Bar.

I also owe a great deal to Ian Mackay and Alastair Irving of P&I Services in Wellington. They were loyal clients with whom I worked harmoniously with for about 30 years.

Have there been any difficult moments in your career that you might care to also reference?

No.

Do you have any particular personal mantras or processes you swear by?

I think I have a built-in test for any action: is it fair to all concerned?

Any advice for up-and-coming maritime lawyers?

Not particularly. But to anyone aspiring to work in litigation I would recommend working hard to acquire the practical skills of the trade, listening to and working with the best you can find, and attending advocacy and general litigation skills courses. None of those things were easy or available when I started work as a lawyer; had they been I would have been far more proficient, confident and competent at an earlier stage of my career. Attending a litigation skills course in Washington DC in 1989 was like a light being turned on.

What have you personally most enjoyed/valued about membership to MLAANZ?

I have enjoyed the company of skilled, knowledgeable and congenial people working in the same field of practice as me, whether as colleagues or opponents, or just as friends. I have listened to

many illuminating conference papers. I have met, worked with and appeared before some exceptional people. Without wanting to exclude others, I mention Justices Allsop and Cooper, and Ron Salter, Stuart Hetherington and Ian Maitland in Australia; and Justice Brad Giles, Justice Alan MacKenzie, Judge Mark Perkins, John Gresson, and Paul David KC, among many others in New Zealand.

One of the special things about MLAANZ is that its membership is not confined to lawyers. Among the members of the New Zealand Branch were knowledgeable and acute marine surveyors, insurers and shipping agents. Their life at sea before swallowing the anchor informed their work, lent credibility to their opinions and provided scope for many a tale around the bar at conferences.

Would you also like to include a brief mention of your family and your non-work activities?

I have been married for 50 years to Juliet, who practised as a physician for many years. We have two sons in their 40s, neither of them a lawyer or doctor, and a couple of grandchildren.

I have sung in a choir for about 25 years and have played golf for more than 60 years. As a retired person, I have dreams – thus far unfulfilled – of getting better at both activities. I am also in a book group and attend pilates and Feldenkrais classes.

What are your plans now and for the future?

Having recently turned 80, and the world being in its present state, I hope to continue in my present good health and doing the same things until I don't.

Judge Tom Broadmore
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Brief Bio

Now retired, Judge Tom Broadmore was a judge of the New Zealand District Court, based in Wellington.

Before his appointment in 2005, he practised as a barrister in Wellington for seven years, having previously been a partner in Chapman Tripp, a leading New Zealand law firm, for many years.

Judge Broadmore has always had a special interest in maritime law. He has appeared in all New Zealand courts in maritime cases on many occasions and once in the Privy Council, with Colin Carruthers KC.

A foundation member of the New Zealand Branch of MLAANZ, Judge Broadmore was the federal association's president from 1997 to 2000.

