

# **Andrew Skelton Barrister**

## **Curriculum Vitae**



### **Contact Details**

Email: [andrew.skelton@capitalchambers.co.nz](mailto:andrew.skelton@capitalchambers.co.nz)

DDI: +64 4 499 8924

Mobile: +64 21 244 5042

Website: [www.capitalchambers.co.nz](http://www.capitalchambers.co.nz)

### **Qualifications**

MSt (Law)(Oxon) 1996

LLM with Merit (University College, London) 1992

LLB (Canterbury University, Christchurch) 1989

Barrister Sole 2013

Solicitor of the Supreme Court of England and Wales 1994

Barrister and Solicitor of the High Court of New Zealand 1988

### **Personal**

Married (1999) with three teenage children

New Zealand University Blue, Rowing 1987

New Zealand Representation, Rowing 1985-1987

### **Appointments/rankings**

Leading Construction Barrister – Doyle's Guide New Zealand Law Rankings 2017, 2018 and 2019

Chair, New Zealand Law Society Construction Law Intensive 2016

Faculty, New Zealand Law Society Advanced Litigation Skills Course since 2017

Faculty, NZLS Expert Witness Programme since 2014

Chair, Douglas Wilson Advocacy Scholarship Trust since 2012

New Zealand Dispute Resolution Centre – Arbitration Panel since 2016

New Zealand International Arbitration Centre – Arbitration Panel since 2016

Arbitrators' and Mediators' Institute of New Zealand - Arbitration and Adjudication Panels since 2015

Building Disputes Tribunal – Arbitration and Adjudication Panels since 2013

Surf Life Saving New Zealand Selection Ombudsman 2018

Triathlon New Zealand Selection Ombudsman since 2016

Sports Tribunal Legal Assistance Panel since 2014

Rowing New Zealand Selection Ombudsman since 2013

## **Areas of practice and expertise**

- Civil and commercial litigation
- International and domestic arbitration
- Building and construction matters
- Property/lease matters (including rent review and sale and purchase agreement disputes)
- Sports matters (non-selection and other disputes and anti-doping rule violation proceedings)
- Insurance matters
- Disciplinary processes/proceedings
- Company/shareholder matters
- Independent inquiries and reviews

## **Professional experience**

Andrew has over 25 years' experience as a civil and commercial litigator in New Zealand and the United Kingdom:

- Barrister Sole, Capital Chambers, Wellington, 2013 to date
- Kensington Swan, Wellington – Partner, Advocacy 1999-2012
- Kensington Swan, Wellington – Associate/Senior Associate, Litigation, 1996-1999
- Masons (now Pinsent Masons), Solicitors, London – Solicitor, Litigation, 1992-1995
- Kensington Swan, Wellington – Solicitor, Litigation and Commercial, 1989-1991.

Andrew's practice is principally in the areas of construction and property-related disputes, arbitration, insurance, sports disputes, disciplinary proceedings, company/shareholder disputes, and independent inquiries and reviews.

Andrew has appeared as counsel in the courts at first instance and appellate levels and before specialist tribunals including the Sports Tribunal and New Zealand Rugby Union Judicial Committee, and in numerous adjudication proceedings under the Construction Contracts Act 2002. He has significant experience in various forms of alternative dispute resolution, in particular arbitration, adjudication, conciliation and mediation and is a LEADR-qualified mediator.

Andrew is regularly appointed as an arbitrator and adjudicator and to conduct independent inquiries and reviews, including hearing and determining selection appeals as Selection Ombudsman for Rowing New Zealand, Triathlon New Zealand and Surf Life Saving New Zealand.

Andrew is an Associate of the Arbitrators' and Mediators' Institute of New Zealand and a member of the AMINZ Arbitration Panel and Adjudicators List. He is also a panel arbitrator for the New Zealand Dispute Resolution Centre and the New Zealand International Arbitration Centre, and a panel arbitrator and adjudicator for the Building Disputes Tribunal.

Andrew has been a faculty member of the New Zealand Law Society Litigation Skills course since 2005, the NZLS Expert Witness Programme since 2014 and the NZLS Advanced Litigation Skills Course since 2017. Andrew has also acted as a judge assessor on the Victoria University civil procedure course.

Andrew has written and presented many seminars and papers on his areas of expertise for the New Zealand Law Society, NZ Society of Construction Law and other organisations.

Andrew was chair of the New Zealand Law Society Construction Law Intensive seminar held in August 2016.

Andrew is a previous Board member and now advisor to the NZLS Continuing Legal Education Limited Board. He has been a trustee and chair of the Douglas Wilson Advocacy Scholarship Trust since 2012.

## **Notable cases/instructions**

### **General litigation**

*Openyd Limited v Lawrence Family Trusts* 2018-19: complex High Court proceedings and arbitration proceedings (before Hon Paul Heath QC) relating to disputes under a deed of association and lease for the Raumatī Dental Centre (two unreported judgments [2019] NZHC 46 and 583) (ongoing).

*Ministry of Education v H Construction North Island Limited* 2017-18: leaky school claim for \$25m in High Court; counsel for H Construction in interlocutory applications relating to particulars, discovery and adjournment, and in 4.5 week trial; legal issues as to duty of care and scope of standard of care (unreported judgment [2018] NZHC 871).

*Fraud case* 2017-19: co-counsel defending a private prosecution for fraud (the case is ongoing and currently subject to non-publication orders) (unreported judgments including Court of Appeal, [2018] NZDC 3228; [2019] NZCA 215).

*Woodrow v Custance* 2016-18: counsel for defendants in High Court proceedings involving claims under the Fair Trading Act, Consumer Guarantees Act and for breach of contract and negligence (settled at mediation).

*Bowie v Weyburne* High Court, Wellington 2014-15: counsel for third party in applications for setting aside of third party notice and strike out relating to nuisance claim involving Oriental Bay property (settled).

*Wellington City Council v Westview Aluminium Limited* High Court, Wellington 2014: counsel for Westview defending claim by Council relating to leaky building (settled).

*Te Pa Family Vineyards Limited v Daly*, High Court, Wellington, 2013: counsel for plaintiff in interim injunction proceedings relating to grape supply contract (unreported judgment, [2013] NZHC 901).

*Mainzeal Property and Construction Limited v Holmes Consulting Group Limited* High Court, Auckland 2008 – 2011: counsel for Mainzeal prosecuting claim for breach of contract and negligence against structural engineer relating to the design of the Vector Arena (settled at mediation).

*Wellesley Club Incorporated v Wellesley Property Holdings Limited* High Court, Wellington 2008: counsel for WPHL in interim injunction proceedings relating to minority shareholder oppression claim (unreported judgment, CIV-2007-485-133/747, 23/12/08).

*PES Finance Limited v SCL No 1 Limited* High Court, Wellington 2007- 2009: counsel for SCL No 1 Limited defending breach of warranty claim relating to sale of Hirequip Group (settled).

*Powell v Allianz New Zealand Limited* High Court, Wellington 2004-5: counsel for plaintiff in High Court proceedings against professional indemnity insurer under s 9 Law Reform Act 1936 (settled).

*Interact v McKay* High Court, Wellington 2003: counsel for party in arbitration proceedings in case dealing with the procedure for challenging the mandate of an arbitrator under the Arbitration Act 1996 (unreported judgment, CIV-2003-485-209, 14/7/03 and 6/8/03).

*Greer v The Institute of Chartered Accountants of New Zealand* High Court, Wellington 2002: counsel for NZICA defending injunction proceedings to prevent publication of Institute's journal following disciplinary proceedings (unreported judgment, CP 38/02, 11/3/02).

*Yawata Limited v Powell* High Court, Wellington 2000: counsel for Powells in case dealing with the relationship between summary judgment and arbitration proceedings (unreported judgment, AP 142/00, 4/10/00).

*Coastal Tankers Limited v Southport NZ Limited* (1999) 13 PRNZ 638, High Court, Christchurch: counsel for Coastal Tankers defending applications for strike out and summary judgment by defendant.

*Master Build Services Limited v Peterson* High Court, Wellington 1998: counsel for Master Build seeking leave to appeal an arbitration award under the Arbitration Act 1996 (unreported judgment, AP 55/98, 8/10/98).

*Queensgate Tower Limited v ANZ Banking Group (NZ)* High Court, Wellington 1998: counsel for ANZ in proceedings relating to the appointment of an arbitrator in a contentious rent review dispute (unreported judgment, M 285/98, 8/9/98).

*Mainzeal Property and Construction Limited v ANZ Banking Group* High Court, Wellington 1998: counsel for Mainzeal seeking an injunction to prevent payment under a performance bond (unreported judgment, CP 195/98, 10/8/98).

*M J Gleeson plc v Wyatt of Snetterton* (1994) 72 BLR 15, UK Court of Appeal: acted for M J Gleeson plc in proceedings relating to the appointment of an arbitrator under an international standard form of contract.

*Mardon v Pharmacy Board of Appeal* (1991) NZAR 561, High Court, Wellington: counsel for Pharmacy Board of Appeal defending judicial review proceedings relating to professional disciplinary prosecution.

*David Spencer Limited v Fletcher Properties Limited* [1991] BCL 143, Court of Appeal: counsel for Fletcher Properties Limited in High Court and Court of Appeal proceedings relating to lease dispute.

## **Building and Construction**

This part of Andrew's practice involves advising and appearing as counsel on disputes during and at the end of construction and infrastructure projects including tender disputes. Andrew advises on disputes involving all major New Zealand and international standard form construction contracts and a range of procurement methods including early contractor involvement, design/build, alliancing and PPPs.

*Major Building Project, Auckland CBD, 2018-2019:* counsel advising main contractor with regard to various issues relating to delay and potential adjudication proceedings (ongoing).

*Major Building Project, Auckland 2018-19:* counsel acting for respondent in complex adjudication proceedings on various variation and delay issues (settled after adjudication).

*PPP Highway Project, 2018:* counsel for a party in relation to dispute with regard to design and construction of motorway.

*Major Building Project, Auckland CBD, 2018:* counsel advising the engineer to contract in his role as independent decision-maker (ongoing).

*Anchor Project, Christchurch CBD, 2017-18:* counsel advising main contractor on disputes relating to potential claims and final account.

*PPP Highway Project, 2017:* counsel advising a party on disputes relating to design development and compliance with work requirements.

*Potentially Earthquake-Prone Buildings, Central North Island, 2017-2018:* counsel advising owner in relation to investigation of status of buildings and potentially liable parties and responsibilities of the owner in this regard; and issuing proceedings in the High Court (resolved).

*New Commercial Building, Christchurch CBD, 2016-17:* counsel for principal in relation to significant claims for variations and extensions of time (settled after 2-day mediation).

*Pitt Island Wharf Upgrade 2014-2016:* counsel for principal in relation to claims by main contractor for variations and extensions of time (settled).

*Hobson Street Substation Development, Auckland 2014-18*: counsel for main contractor in adjudication proceedings relating to final account dispute - issues included basis of payment, under-certification of subcontractor claims and direct costs claims, P&G thickening claim, CCA debt due claim (successful in adjudication).

*Bamyan Renewable Energy Programme 2014-15*: counsel for Bamyan Renewable Energy Programme Partnership in dispute with MFAT relating to renewable energy project in Afghanistan involving FIDIC form of contract; delay and scope issues (settled).

*North Island Grid Upgrade Project 2011-14*: counsel for Transfield in mediation proceedings against Transpower and main contractor; delay and scope issues (settled).

*Telecom Building, Wellington 2012*: counsel for Hawkins Construction in disputes and mediation proceedings relating to the design and construction of the new Telecom building in Wellington CBD; extensions of time and variation claims (settled).

*New Zealand Transport Agency 2008-2010*: advising NZTA's procurement team on the development of the new Procurement Manual and compliance with relevant statutory obligations.

*Vector Arena, Auckland 2008*: counsel for Mainzeal in adjudication proceedings under Construction Contracts Act 2002 against operator of Vector Arena (defects liability and retentions) (settled).

*Huntly Power Station 2007-2010*: counsel for Downer on disputes and potential adjudication proceedings relating to the design, construction and commissioning of new combined cycle gas turbine power plant; extension of time, time at large and variation claims (settled).

*Christchurch Women's Hospital 2005-6*: counsel for Canterbury District Health Board defending final account claims for variations and extensions of time (settled).

## **Arbitration, adjudication and independent inquiries/reviews**

Andrew appears as counsel in arbitration, adjudication and mediation proceedings and also accepts appointments as an arbitrator, adjudicator, conciliator and mediator and to undertake independent inquiries and reviews.

*Raumati Dental Centre: 2018-19*: Counsel for family trusts in complex consolidated arbitration involving property, trust and company law issues (before Paul Heath QC) (ongoing).

*Hobson Street Substation Development, Auckland 2014 -18*: counsel for Hawkins in major arbitration proceedings relating to final account dispute - basis of payment, under-certification of subcontractor claims and direct costs claims, P&G thickening claim, CCA debt due claim (ongoing).

*Earthquake damage arbitration proceedings 2015-16*: counsel for third party in multi-party arbitration and mediation proceedings relating to earthquake damage to Wellington building (settled at mediation).

*Nabouwalu Highway, Fiji 2000 – 2004*: counsel for Downer Construction in international arbitration under ICC Rules against Government of Fiji, involving unforeseeable physical conditions claim.

*Vector Tunnel, Auckland 2000 – 2004*: counsel for Downer Construction in arbitration proceedings and related High Court proceedings involving unforeseeable physical conditions claim including extensions of time (settled).

## **Arbitration and adjudication appointments**

*Private appointments as arbitrator or adjudicator* (agreed by parties): numerous appointments in relation to a wide range of disputes including shareholder disputes under shareholder agreements, lease disputes, easement disputes and building and construction disputes.

*New Zealand Law Society*: numerous appointments by President as arbitrator in relation to a wide range of disputes including lease disputes (reinstatement and rent review disputes), dispute under sale and purchase agreement in relation to pre-settlement damage, and building and construction disputes.

*Arbitrators' and Mediators' Institute of New Zealand:* numerous appointments by AMINZ as arbitrator and adjudicator in relation to a wide range of disputes including lease disputes and building and construction disputes.

*Building Disputes Tribunal:* numerous appointments by BDT as adjudicator in relation to wide range of building and construction disputes.

### **Independent inquiries**

*Independent inquiry/review 2016:* engaged by electricity distribution company to undertake inquiry and make recommendations with regard to safety incident at private electricity network following Kaikoura earthquake.

*Independent inquiry/review 2013:* engaged by electricity distribution company to undertake inquiry and make recommendations as to the status of a contractor as an approved contractor.

### **Sports matters**

*Edwards v Drug Free Sport New Zealand* (8 May 2019): counsel for applicant in anti-doping rule violation proceedings before the NZ Rugby Union Post Hearing Review Body (chair: Nigel Hampton QC) (successful in having the decision of the NZ Rugby Union Judicial Committee and the 4-year suspension quashed).

*Drug Free Sport New Zealand v Ratu* 6/2018: counsel for respondent in anti-doping rule violation proceedings before the NZ Rugby Union Judicial Committee (chair: Hon Barry Paterson QC).

*Nam v NZ Federation of Roller Sports* ST 10/2018: counsel for appellant in non-selection appeal before Sports Tribunal (chair: Sir Bruce Robertson).

*Drug Free Sport New Zealand v Laursen* 6/2018: counsel for respondent in anti-doping rule violation proceedings before the NZ Rugby Union Judicial Committee (chair: Nigel Hampton QC).

*Drug Free Sport New Zealand v Nuku* 11/2017: counsel for respondent in anti-doping rule violation proceedings before the NZ Rugby Union Judicial Committee (chair: Hon Barry Paterson QC).

*Drug Free Sport New Zealand v Pedersen* 04/2017: counsel for respondent in anti-doping rule violation proceedings before the NZ Rugby Union Judicial Committee (chair: Hon Barry Paterson QC).

*Drug Free Sport New Zealand v Ware* ST 09/2017: counsel for respondent in anti-doping rule violation proceedings before the NZ Sports Tribunal (chair: Dr James Farmer QC).

*Drug Free Sport New Zealand v King* ST 19/2016: counsel for respondent in anti-doping rule violation proceedings before the NZ Sports Tribunal (chair: Hon Sir Bruce Robertson QC).

*Drug Free Sport New Zealand v Gardiner* ST 06/2015: counsel for respondent in anti-doping rule violation proceedings before the NZ Sports Tribunal (chair: Hon Sir Bruce Robertson QC).

*Surf Life Saving New Zealand* 2018 to date: appointed as Selection Ombudsman for 2018 World Championship; heard and determined non-selection appeal.

*Triathlon New Zealand* 2017 to date: appointed as Selection Ombudsman for Rio Olympic Games and Gold Coast Commonwealth Games; heard and determined non-selection appeals.

*Rowing New Zealand* 2013 to date: appointed as Selection Ombudsman, reviewing elite team selection process and hearing and determining non-selection appeals.

## **Property/leases**

Andrew advises on property issues and acts as counsel on disputes under sale and purchase agreements and leases including rent review disputes.

*Paul Cheng & Co* 2019: counsel advising on easement dispute (ongoing).

*Napier City Council* 2017: appointed as conciliator in relation to dispute under facility management agreement regarding council infrastructure.

*Willis Bond & Co* 2013: opinion on easement issues relating to a Wellington CBD development.

*AWOF New Zealand Pty Limited* 2010: counsel in rent review arbitration relating to Wellington CBD property (settled).

*River City Port Limited v Whanganui District Council* High Court, Wellington 2009/10: counsel for WDC in arbitration proceedings and High Court proceedings relating to disputes under lease between WDC and the operator of the Port (settled at mediation).

*David Spencer Limited v Fletcher Properties Limited* [1991] BCL 143 (Court of Appeal): counsel for Fletcher Properties Limited in High Court and Court of Appeal proceedings relating to lease dispute.

## **Insurance**

Andrew principally advises the insured on policy interpretation, claims and disputes across a range of industries and types of insurance in particular contract works, public liability, professional indemnity, material damage and business interruption.

*Canterbury Earthquake Recovery Authority* 2013: advised CERA on insurance issues relating to residential red zone properties.

*Order of St John* 2011-13: acted for St John with regard to claims under material damage and business interruption policies arising out of Canterbury Earthquakes (settled).

*Powell v Allianz New Zealand Limited* High Court, Wellington 2004-5: counsel for plaintiff in High Court proceedings against professional indemnity insurer under s 9 Law Reform Act 1936 (settled).

## **Disciplinary matters**

Andrew advises professional bodies and individuals on professional disciplinary processes. He acts as prosecution or defence counsel in disciplinary proceedings before domestic tribunals and in judicial review proceedings in the High Court.

*The Institution of Professional Engineers New Zealand (IPENZ)* 2014-16: appointed by IPENZ as independent complaints reviewer to consider and make recommendations on whether complaints against engineers should proceed to the full disciplinary process.

*NZX v Norton and Forsyth Barr* 2008/9: counsel for Forsyth Barr defending disciplinary proceedings by NZX for breach of the NZX Participant Rules (settled).

*Greer v The Institute of Chartered Accountants of New Zealand* High Court, Wellington 2002 (unreported judgment): counsel for NZICA defending injunction proceedings to prevent publication of Institute's journal following disciplinary proceedings.

*Mardon v Pharmacy Board of Appeal* (1991) NZAR 561: counsel for Pharmacy Board of Appeal defending judicial review proceedings relating to professional disciplinary prosecution.

## **Selection of publications/papers**

“Lease Disputes” (paper prepared for NZLS CLE CPD seminar, February 2019)

“Construction adjudication case law: some interesting issues” (paper prepared for AMINZ seminars, November 2018 - February 2019)

“Construction Law in New Zealand” (foreword as chair of New Zealand Law Society Construction Law Intensive, August 2016)

“The Tender Process – Rights and Wrongs – Getting it Wrong” (paper prepared for NZ Society of Construction Law Conference, August 2015)

“Restitution for Wrongs” (paper presented with Tim Mullins as part of NZLS Issues in Unjust Enrichment Intensive, July 2014)

“Concurrent Delay Demystified” (paper presented to NZ Society of Construction Law, Auckland and Wellington, October 2013)

“Summary Judgment and Arbitration: The Contest between Pragmatism and Principle” (paper presented with Daniel Kalderimis to the AMINZ-IAMA Conference, Auckland, July 2013)

“Section 9 Contractual Remedies Act 1979” (paper presented as part of NZLS Current Issues in Remedies Intensive, Auckland and Wellington, March 2010)

“Tendering” (paper presented to LexisNexis Contract Law conference, Wellington, March 2009)

“Breach of Contract for the Sale and Purchase of Land: Rights and Remedies” (paper presented to LexisNexis Property Market Symposium, Auckland, July 2008)

“Options Available following a Breach of Contract” (paper presented to LexisNexis Contract Law Masterclass, Wellington, March 2008)

“Duties of Care in Building and Construction Cases: Recent Decisions and Key Issues” (paper presented to LexisNexis 3<sup>rd</sup> Annual Building and Construction conference, Auckland, March 2007)

*Restitution and Contract* (Mansfield Press, Oxford, 1998) (foreword by the late Professor Peter Birks QC)