

DOMINIQUE HOGAN-DORAN SC

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Overview

Dominique Hogan-Doran SC was admitted in 1994 and appointed silk in 2015.

Dominique has practiced widely at the Australian Bar. She was recognized by *Doyles' Guide to the Australian Legal Profession* as a Leading Commercial Litigation & Disputes Resolution Senior Counsel NSW in 2016 and 2017, and was the *Lawyers Weekly* Barrister of the Year in 2016.

Dominique is a Fellow of the Chartered Institute of Arbitrators with numerous panel appointments, including for the National Broadband Network, the Australian Energy Regulator, Essential Services Commission of South Australia, and the Gateway Network Governance Body for the Australian Superannuation Transactions Network.

Academic Qualifications

Master of Laws, University of Sydney (2004)
Bachelor of Civil Laws (First Class Honours) Oxford University (1995)
Bachelor of Laws (First Class Honours), University of Sydney (1992)
Bachelor of Economics (Social Sciences), University of Sydney (1990)

Academic Awards

Sir Robert Menzies Scholarship in Law to Oxford University (1994-1995)
Convocation Medal, University of Sydney (for academic excellence and outstanding contribution to University life) (1993)
Nancy Gordon Smith Prize at Graduation, 3rd in Year (1992)
Tress Cox Maddox Scholarship in Law (1991)
Aaron Levine Prize for Criminal Law (1990)
Phillips Fox John L Mant Scholarship in Law (1990)

Professional Education

Company Directors Course, Australian Institute of Company Directors
Trustee Directors Course, Australian Institute of Superannuation Trustees
Program on Negotiation and Leadership, Harvard Law School
Practitioner's Certificate in Mediation, Institute of Arbitrators and Mediators

Royal Commissions and Public Inquiries

Public Inquiry under the *Charitable Fundraising Act 1991* (NSW) before the Hon. Patricia Bergin SC (2017). Appearing for RSL LifeCare Ltd in inquiry into the RSL charities.

Special Commission of Inquiry into the Greyhound Racing Industry in NSW before the Hon. Michael McHugh QC (2015-2016). Appeared for CEO Greyhounds NSW, Mr Brent Hogan.

Commonwealth Royal Commission into Trade Union Corruption & Governance before the Hon. J. Dyson Heydon QC (2015). Appeared for Mr Stephen Sasse, former Executive General Manager, John Holland Group, concerning his negotiations with Federal Opposition Leader, the Hon. Bill Shorten MP (when Secretary of the Australian Workers Union).

Commonwealth Parliamentary Joint Committee into Corporations and Financial Services Inquiry into the collapse of Trio Capital (2012). Acted for Tarrant Financial Consultants Pty Ltd & Mr Ross Tarrant.

Special Commission of Inquiry into The Medical Research & Compensation Foundation (the *James Hardie Inquiry*) (2004) - Junior Counsel Assisting the Commission; subsequently appeared as counsel for the Australian Securities & Investments Commission in civil penalty proceedings: *ASIC v Macdonald (No 12)* [2009] NSWSC 714; 73 ACSR 638 and *ASIC v Macdonald (No 11)* [2009] NSWSC 287; (2009) 71 ACSR 368.

Commonwealth Royal Commission into the collapse of HIH Insurance Ltd before the Hon. Justice Neville Owen (2001-2003). Acted for Hannover Re & senior executives. Subsequently acted in APRA disqualification proceedings and challenges to APRA's use of evidence adduced at the Commission: *X & Ors v Australian Prudential Regulation Authority* [2007] HCA 4; (2007) 226 CLR 630 on appeal from *Applicant Y v APRA* [2006] FCAFC 37, on appeal from *Applicant X v APRA* [2005] FCA 1288; (2006) 14 ANZ Ins Cases 61.

Integrity and Probity Matters

City of Parramatta Council re certain issues (2017).

Major contractor to various NSW local councils re certain allegations of corruption (2017).

NSW ICAC – Operation Credo (Australian Water Holdings) (2014-2017). Appeared for Senator the Hon. Arthur Sinodinos AO, former Chairman of Australian Water Holdings Pty Limited.

NSW ICAC – Operation Ricco (Botany Bay Council) (2017). Acted for Deputy General Manager, Ms Lorraine Cullinane.

Commonwealth Senate Economics References Committee Inquiry into Foreign Bribery (2016). Acted for Mr Stephen Sasse, former Senior Executive Manager, in relation to his allegations concerning payments by Leighton International.

NSW ICAC – Operation Spicer (Political Donations) (2014-2016). Appeared for Sen. the Hon. Arthur Sinodinos AO, former Treasurer, Liberal Party of Australia (NSW Division).

NSW ICAC – Operation Tunic (2014-2015). Appeared for NSW Mine Subsidence Board (statutory body established to administer compensation scheme for damage caused by mine subsidence).

NSW ICAC – Operation Vesta (2010-2011). Appeared for Mr Rodric David in inquiry concerning allegations against officer of Sydney Harbour Foreshore Authority.

NSW ICAC – Operation Ambrosia (2005). Appeared for witness in fraudulent occupational licensing schemes investigation.

NSW ICAC - Investigation into evaluation conducted by Public Employment Office of position of Director-General, NSW Department of Community Services (1996). Appeared for Director-General, Mr Ken Cripps.

Major litigation related to regulatory investigations

ASIC appointed investor representative Mr Peter Warne (Chair, Macquarie Group) in winding up of unregistered managed investment scheme in Victoria at first instance and on appeal - *ASIC v GDK Financial Solutions Pty Ltd (in liq)* (2016) FCA (Middleton J); *ASIC v GDK (No 14)* [2013] FCA 459 (Gordon J); *ASIC v GDK (No 11)* [2012] FCA 1034 and *(No 12)* [2012] FCA 1035 (Dodds-Streton J); *ZMB Australia Pty Ltd v Warne* [2011] FCA 311 (Ryan J); *ZMB Australia Pty Ltd v Warne* [2011] FCAFC 65 (appeal); *ASIC v GDK (No 8)* [2011] FCA 997 (Dodds-Streton J) (*ex parte* for approval of compromise); *ASIC v GDK* [2010] FCA 710 (Gray J); *ASIC v GDK (No 6)* [2010] FCA 1092 (Finkelstein J); *AVS Property Pty Ltd v McMaster* [2010] FCAFC 81; (2010) 79 ACSR 89 (appeal); *AVS Property Pty Limited v Western Retirement Village Management Ltd (In Liq)* [2009] FCA 512 (Ryan J); *ASIC v GDK Financial Solutions Pty Ltd (in liq) No 3* [2008] FCA 448 (2008) 169 FCR 497 (2008) 248 ALR 766; and *(No 4)* [2008] FCA 858 (Finkelstein J).

MF Global Australia customers: *In re MF Global Australia Ltd (in liq) (No 2)* [2012] NSWSC 1426; (2012) 267 FLR 27 and *In re MF Global Australia Ltd (in liq)* [2012] NSWSC 994 (Black J) re liquidation of AFS licensee and proper construction of Pt 7.8 Div 2 Subdiv A (ss 981A-981H) of the *Corporations Act 2001* (Cth) and regs 7.8.01-7.8.05 of the *Corporations Regulations 2001* (Cth) (client money provisions).

MFS Class Action: *Mercedes Holdings Pty Ltd v Waters (No 6)* [2012] FCA 1412 acted for founder/former Chairman of the MFS Group, Michael King in Court approval of compromise of claims arising from failure of MFS Premium Income Scheme and alleged breaches of ss 208, 601FC, 601FD, 601HG, 601LC of the *Corporations Act 2001* (Cth).

ASIC in One.Tel recovery action: proceedings by trustee in bankruptcy in action against D&O insurers to secure indemnity for agreed ASIC compensation order arising out of collapse of telecommunications company One.Tel Ltd; *Kerr v CGU Insurance Ltd; Donnelly v CGU Insurance Ltd* (2010-2011) (Hammerschlag J).

ASIC re legality of issue of Westpac Debit Mastercard: *Westpac Banking Corporation v ASIC* [2009] FCA 1506; (2009) 181 FCR 379.

ASIC in Multiplex class action: *P Dawson Nominees Pty Ltd v ASIC & Ors* [2008] HCATrans 409 on appeal from *ASIC v P Dawson Nominees Pty Ltd* [2008] FCAFC 123; (2008) 169 FCR 227; (2008) 247 ALR 646; (2008) 66 ACSR 704 and from *P Dawson Nominees Pty Ltd v Multiplex Ltd* [2007] FCA 1659; (2007) 65 ACSR 239.

ASIC in James Hardie civil penalty proceedings: *ASIC v Macdonald (No 12)* [2009] NSWSC 714; 73 ACSR 638 and *ASIC v Macdonald (No 11)* [2009] NSWSC 287 (2009) 256 ALR 199; (2009) 230 FLR 1; (2009) 71 ACSR 368; 27 ACLC 522; *James Hardie Industries NV v ASIC* [2009] NSWCA 18 (2007-2010).

For Hannover Re in shareholder class action in relation to collapse of HIH Insurance Limited: *Johnstone v HIH Insurance Limited* [2004] FCA 1414; *Johnstone v HIH Limited* [2004] FCA 190 (settled, 2005).

Corporate & Prudential Regulatory Matters

Trustee of Energy Industries Superannuation Scheme with respect to its obligations under APRA Prudential Standards, adequacy of funding of defined benefit schemes, constitutional and trust deed amendments, and negotiations with State of New South Wales concerning “Poles & Wires” privatization of state electricity network assets (retainer since 2012).

Australian Financial Services Licensee in relation to ASIC investigation into suspected breaches of FOFA conflicted remuneration prohibition in Pt 7.7A, Div. 4 of the *Corporations Act* 2001 (Cth) (2017).

Registered Training Organization stay application on review of cancellation of Australian Financial Services License & banning orders: *The Sharemarket College Pty Ltd & Ors v ASIC* [2016] AATA 1057.

ASX listed company director in relation to ASIC investigation into suspected insider trading and breach of continuous disclosure obligations contrary to Part 7.10, Div. 3 and Chapter 6CA of the *Corporations Act* 2001 (Cth) (2016).

The Star Casino in relation to certain regulatory issues under the *Casino Control Act* (2015).

Macquarie Bank options trader in ASIC investigation & banning hearing re unlicensed discretionary trading and falsification of records contrary to Part 7.6 and 7.12 of the *Corporations Act* 2001 (Cth) (2015).

ATO Project Wickenby hearings into suspected tax evasion & other alleged criminal offences (2012/2013).

Australian Financial Services Licensee responsible entity of registered investment scheme in relation to ASIC investigation into alleged non-compliance with scheme constitution and under Chapter 5C of the *Corporations Act* 2001 (Cth) (2012-2013).

Senior Executive in ASIC Investigation into suspected insider trading & other alleged criminal offences under Part 7.10, Div. 3 the *Corporations Act* 2001 (Cth) (2012).

Independent financial planner in ASIC investigation, banning hearing, and administrative review proceedings re advice to retail investors invest in Trio Capital: 2009- 2012; *Tarrant and ASIC* [2011] AATA 945; (2011) 56 AAR 257; (2011) 128 ALD 376.

Former Chairman of FAI Insurance Rodney Adler in ASIC investigation into allegations of managing a corporation whilst disqualified under Part 2D.6 of the *Corporations Act* 2001 (Cth) (2010).

ASIC in investigation into Australian Lending Centre Pty Ltd for suspected breaches of consumer credit laws (2009-2010).

Granada Productions & ITV Plc in re RSPCA investigation in relation to alleged animal cruelty in production of "I'm a Celebrity - Get Me Out of Here" (2009).

ASIC in investigation into affairs of Ezybonds Pacific Limited Partnership under the *ASIC Act 2001 (Cth)* (2007-2009).

ASIC in investigation into Offset Alpine & Estate of late Renee Rivkin under the *Corporations Act 2001 (Cth)* (2006-2007).

Corporate Superannuation Fund in Australian Prudential Regulation Authority investigation under the *Superannuation Industry (Supervision) Act 1993 (Cth)* (2005-2006).

Hannover Re and Senior Executives in Australian Prudential Regulation Authority investigation and show cause hearings for “fit and proper” banning under the *Insurance Act 1973 (Cth)*, and AAT, Federal Court and High Court challenges: *X & Ors v Australian Prudential Regulation Authority* [2007] HCA 4; (2007) 226 CLR 630; *Applicant Y v APRA* [2006] FCAFC 37; *Applicant X v APRA* [2005] FCA 1288; (2002-2006).

Company Affairs, Partnerships, Insolvency & Commercial Claims

Dual South African/Australian national in variation of *ex parte* freezing orders and defence of preference claim by liquidators of insolvent company: *Humantech Pty Ltd (In Liq) v Thomas International Management Systems (SA) & Schutte* [2016] NSWSC.

ASX listed company resisting extension of injunction obtained *ex parte* by executive directors seeking to restrain termination of employment and proposed market statements (raising continuous disclosure issues): *Cohen v Invigor Group Ltd* [2015] NSWSC.

Cargo Services Far East Ltd (incorporated in Hong Kong) & CS Logistic Solutions Pty Ltd (Qld) in defence of claims by liquidators for recovery of alleged unfair preferences; matter raised good faith defence and scope of contractual liens, including application of foreign law of Hong Kong and China; matter resolved after interlocutory hearings on joinder and separate question directions: *In Re Retail Adventures Pty Ltd (in liq)* (2015-2016) NSWSC.

National Australia Bank financial planner in Victorian Supreme Court proceedings in defence of claim by high net worth investors concerning complex financial product advice; matter resolved on eve of 2 week hearing: *Hanley v National Australia Bank* (2015).

Senator the Hon. Arthur Sinodinos AO, former Chairman, Australian Water Holdings Pty Ltd, in defence of claim for breach of duty by minority shareholders, successfully negotiated discontinuance after strike out/security for costs hearing: *TSDack Pty Ltd & 4 Ors v Australian Water Holdings Pty Ltd & 10 Ors* [2015] FCA 93.

Westpac Bank (business banking group) claiming under guarantee of commercial bill facility: *Westpac Banking Corporation v Nitopi* (2015) NSWSC.

Responsible entity of managed investment scheme and its CEO; case involved successor R.E. issues, director duties and insurance claims; case settled on eve of 3 week trial in Federal Court’s Queensland Registry: *Leda Holdings Pty Ltd v Securcorp Ltd as Responsible Entity of Securcorp Mortgage Income Scheme & 2 Ors* (March 2015) earlier *Leda Holdings Pty Ltd v Securcorp Ltd* [2013] FCA 1364 (transfer of proceedings from NSW to Qld).

Founders/minority shareholders with respect to suspected breaches of the *Takeovers Code* arising out of share transactions associated with a conversion of a public company to a private company (2014).

High net worth investors re compensation claims against financial advisor concerning advice to invest in highly geared, complex structured financial products: *Espire Creations Pty Limited & 3 Ors v Omniwealth Services Pty Limited & 2 Ors* (2014).

China National Coal Corporation, a Chinese state-owned enterprise, in relation to its wholly owned Australian subsidiary in NSW Supreme Court proceedings (2014).

Shareholders in manufacturing company; successfully obtained and continued freezing orders & injunctions restraining conduct of directors and associated third parties diverting business opportunities to associates: *Australian Mortgage & Finance Pty Ltd & Ors v Rome Euro Windows Pty Ltd & Ors* (2014) NSWSC 29; [2014] NSWSC 1173; [2014] NSWSC 996 (Black J); 29 & 31 Jan 2014 (Sackar J), 3 Feb 2014 & 17 Dec 2014 (Ball J).

Financial planner in defence of claim concerning investment advice in agribusiness schemes: *Tugrul v Tarrants Financial Consultants Pty Ltd* [No 4] [2014] NSWSC 291; [No 2] [2013] NSWSC 1971; [No 1] [2013] NSWSC 1561.

Shareholders in manufacturing company: in oppression suit: *Nowland v Maiolla; Casbee Properties Pty Ltd v Eastwood Air Conditioning Pty Ltd* [2013] NSWSC 980.

Commercial arbitration party in relation to arbitration in Hawaii of dispute arising under corporate restructure agreement between US and Australian corporations.

Independent Private Hospitals of Australia in relation to Victorian staff dispute.

Investors in successful defence of priority claim by promoters of unregistered managed investment scheme to proceeds of \$24.5m sale of scheme property at first instance and on appeal to Full Federal Court: *ZMB Australia Pty Ltd v Warne* [2011] FCA 311; *ZMB Australia Pty Ltd v Warne* [2011] FCAFC 65 (successful negotiation and approval by Full Court of compromise of appeal).

Australian energy infrastructure company in senior executive dispute: *de Boer v Jemena Asset Management Pty Ltd*. (District Court of NSW) (2010).

John Holland Group in senior executive pay dispute: *Bruce v John Holland Group Pty Ltd* (District Court of NSW) (2010).

Director on application for appointment of provisional liquidator: *Wajs v Active Optics Pty Ltd* [2008] NSWSC 23.

Ex-husband of bankrupt in hearing of an inquiry and account: *Official Trustee as Trustee of Estate of Alexander Samootin v Shea* (2007) NSWSC (Hammerschlag J); earlier *Samootin v Shea* [2007] NSWSC 785 and subsequently *Samootin v Official Trustee in Bankruptcy* [2007] FCA 1618.

Retired partners of Phillips Fox in defence of investor compensation claim: *Ingot Capital Investments Pty Ltd & Macquarie Equity Capital Markets Limited* [2007] NSWSC 124; (2007) 63 ACSR 1.

Appellant in contract dispute: *McIntosh & Anor v ARAF Capital Funding* [2003] NSWSC 843.

Shareholder in construction suit: *Climit Pty Ltd v Captech Group Limited* [2003] NSWSC 491.

Appellant in trade practices dispute: *Avora v Maxwell* [2002] NSWCA 346.

Partner in dissolution and winding up of textile manufacturing partnership: *Xie v Zhou* [2002] NSWSC 1114.

Intellectual Property, Media, Entertainment & Defamation

Californian movie production studio & its CEO in Federal Court defamation & Australian Consumer Law proceedings, and subsequently contempt of court: *Thunder Studios Inc & Anor v Kazal* (2014-2017).

Super Radio Network in defence of Federal Court proceedings by software copyright owners for damages/account of profits against the 29 companies & officers in the Broadcast Operations Group. Matters successfully resolved after interlocutory hearings refusing preliminary discovery in one case (*Adobe Systems Inc & Microsoft Corp v 2GF AM Radio Pty Ltd & 24 Ors* (2013) FCA (NSW) (unrep.) (Jagot J)) and prior to determination of hearing on strike out of pleadings in the other: *Adobe Systems Inc & Microsoft Corp v Western Broadcasters Pty Ltd & 5 Ors* (2013) FCA (NSW) (Foster J).

Prime Media Group in relation to program supply & ratings agreement dispute with the Seven Network.

Software licensee in defence of Federal Court proceedings for breach of copyright; matter resolved: *FTI Technology LLC v Ringtail Asia Pacific Pty Limited*.

Chugg Entertainment re dispute with Sydney Entertainment Centre & Ticketek.

Nippon Telecom, University of NSW, University of Queensland and Monash University as subjects of *Anton Piller* orders made in relation to claim of infringement of musical copyrights by operation of 'peer to peer' computer file sharing known as "Kazaa": *Universal Music Australia Pty Ltd v Sharman License Holdings Ltd* [2004] FCA 183.

Australian Broadcasting Corporation in defence of defamation and injurious falsehood claims concerning 'Four Corners' program: *Griffith & Ors v Australian Broadcasting Corporation & Anor* [2004] NSWSC 582; earlier [2003] NSWSC 1244.

F.Hoffman-La Roche AG in world-wide litigation for revocation of Hepatitis C Virus Nucleic Acid Testing patent: *F. Hoffmann-La Roche AG v Chiron Corp* [2000] FCA 346. Matter resolved during 9 week final hearing in October 2000 (led by A Bennett SC).

Trusts, Probate & Administration of Estates

Income beneficiary in Queensland Supreme Court proceedings by trustee of testamentary trust for judicial advice and directions as to proper classification as income or capital of special dividends received following sale of business line: *In re Simpson Trust* (2016-2017).

Executor of deceased estate in NSW Supreme Court proceedings in circumstances of partial administration of estate property by Serbian Court and real property & company assets in Serbia and Croatia: *Cupic v Cupic; Zelenovic v Cupic*. (2016-2017).

Unitholder in proceedings in Canberra concerning proper construction of unit trust deed; part heard when resolved at court-referred mediation: *SR Tech Pty Ltd v Kousba Holdings Pty Ltd & 2 Ors* (2013) FCA (ACT) (Foster J).

Jewish son who married a Catholic in claim on deceased estate, proceedings tested scope and application of modern law of disentitling conduct as son excluded from his father's \$2.4 million estate because he married a Catholic, contrary to his father's wishes, leaving the remainder to a Jewish charity (2012).

Greek Orthodox Church Community in relation to trust deed amendments (2012).

Executor of deceased estate on application for provision: *McGrath & Duncan v Hartley, McCully v Hartley* [2010] NSWSC 893.

Solicitor executor of deceased estate on application for provision: *Garofolo v Capogreco* [2006] NSWSC 1116.

Property

Home unit company in defence of challenge by shareholder re potential conversion from company to strata title: *John Mellick Investments Pty Limited v Harbourview Mansions Pty Ltd* (2017).

Property developers, successfully resisted application for injunction of development: *Bechara & Akcan v Lane Cove Trading Company Pty Ltd & 2 Ors* (2014) NSWSC (unrep.).

Strata title lot owner in exclusive use by-law hearing: *Webb v Borg* [2012] NSWSC (unrep.).

Home unit company in challenge to redevelopment levy and variation of class rights: *In the matter of Nevada Pty Ltd* [2011] NSWSC 1499.

Managers of Victoria Docklands mixed residential and commercial complex in Supreme Court of Victoria & VCAT proceedings; matter successfully resolved post interlocutory hearings: *SSKB, Victoria Point Docklands Real Estate Pty Ltd & Ors v OC1 & OC4 (Plan of Subdivision PS 509916K)*.

Body corporate of community title scheme in Supreme Court of Queensland proceedings concerning management rights of residential complex on the Gold Coast: *Henderson & Body Corporate of Merrimac Heights CTS 19563* [2011] QSC 336.

Sub-developer & 19 Chinese purchasers of off-the-plan units in Sydney CBD development in successful suit for specific performance in face of purported rescission by developer: *West Apartments Pty Ltd v Austino Property Development Pty Limited & 19 Ors* (2011) NSWSC.

Landlord in successful defence of claim by tenant for unconscionable conduct: *Vale v Rosychamp Pty Ltd* [2008] NSWSC 1373 and previously Administrative Decisions Tribunal proceedings and Supreme Court injunctions: *Vale v Rosychamp Pty Ltd* [2006] NSWSC 1341.