

John Macdonald QC

Called: 1955

Silk Date: 1976

"The admirable Mr Macdonald...displaying that passionate detachment that characterises the English lawyer at his best" Bernard Levin, The Times, writing on John Macdonald's defence of the Soviet dissident Yuri Orlov.



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Practice Overview

John Macdonald is a skilful cross examiner, a persuasive advocate, and a very experienced trial lawyer. He is the senior QC at the Chancery Bar.

In January 2016 John was asked to settle proceedings on behalf of inhabitants of the island of Barbuda alleging that the Paradise Found (Project) Act of the Antigua Parliament, passed to facilitate a massive development on the island of Barbuda, where Princess Diana liked to holiday, is unconstitutional and invalid. The Defendants are the developers Robert De Niro and Kerry Packer, and the Attorney General of Antigua and Barbuda. He made his name in the Ocean Island case, *Tito v Waddell* [1977] Ch 106 in which Sir Robert Megarry, Vice Chancellor, reviewed 50 years of British Colonial history. John's extensive knowledge of the ways of government at all levels and his great experience as a trial lawyer have been employed across the whole field of chancery litigation and public law. In giving judgment in the Ocean Island case Megarry said:

"I shall add a word about Mr Macdonald. I hope it will not be thought improper, if I say that however disappointed the Banabans may be at the result of this litigation, they have reason to be deeply grateful to Mr Macdonald for all the skill and effort that he had manifestly put into his tenacious presentation of their case."

Commercial Litigation

From 2010 to 2013 John was immersed in complex litigation about the ownership of British Natural Energy (BNE), the only company producing oil in Belize. The litigation involved multiple interlocutory applications in the High Court in Nevis, and in the Court of Appeal of the Eastern Caribbean in Anguilla and St. Kitts, culminating in a trial before Bannister J in the Commercial Court in the British Virgin Islands. John, on behalf of the defendants, defeated a claim by a minority shareholder to be bought out and to wind up BNE. In 2013-4 John was consulted by the Seigneur of Sark, the Channel Island where the traditional inhabitants have an uneasy relationship with the Barclay brothers, who acquired the neighbouring island of Brecqhou. In 2015 John represented a 36% shareholder of a company which owns three of London's most prestigious hotels the Connaught, the Berkeley and Claridge's in the closing stages of a shareholder's dispute, which satisfactorily resolved.

In the 1990s John represented purchasers of flats in the development at the old West London Air Terminal. As a result of John's work, the developers were ordered to return substantial deposits paid by 200 of the purchasers, see *Chattey v Farndale* [1997] 1 EGLR 153 CA. In 1999-2000 John Macdonald appeared for the claimant in

Landare Investments Limited v Welsh Development Agency, a claim of misfeasance in public office against the Agency, arising out of the development of a super market, a trial which lasted 40 days.

Public law, judicial review and human rights

John Macdonald has appeared in three leading cases in the European Court of Human Rights *Lithgow and others v The United Kingdom* [1986] EHRR Vol 8 329 in which the Strasbourg Court held that nationalisation of the UK shipbuilding industry was permitted under Article 1 of Protocol 1, and that the amount of compensation was within the discretion of the UK government; *Ashingdane v United Kingdom* [1985] EHRR Vol 7 528 a case under Article 6 (the right to a fair trial); and *Al Adsani v United Kingdom* [2002] 34 EHRR 273, where the Court held by a majority of 9 to 8, that torture did not override state immunity.

Highlights of John Macdonald's distinguished career include the defence in 1977 of the Soviet dissident Yuri Orlov. John Macdonald was refused a visa to go to Orlov's trial in Moscow, so he presented Orlov's Defence in the Institute of Physics in London. This was broadcast into the Soviet Union by the BBC, as Orlov's show trial was unfolding in the suburbs of Moscow. Orlov's contribution to the history of the Soviet Union has a new relevance today.

John Macdonald represented the people of Barbuda at the Antigua Constitutional Conference at Lancaster House in 1980 and appeared for the Barbuda Council and Sir Hilbourne Frank, Barbuda's MP, in extensive litigation in the High Court and Court of Appeal in Antigua about land rights in Barbuda. The dispute has troubled the two islands since independence. An appeal to the Privy Council was settled when a new government passed the Barbuda Land Act 2007, drafted by John, which confirmed that land in Barbuda is owned in common by the people of Barbuda.

John has conducted four public law cases in the House of Lords. Two were concerned with statutory construction in relation to caravan sites used by gypsies, *Wyre Forest DC v Secretary of State for the Environment* [1990] AC 357 and *Greenwich LBC v Powell* [1989] AC 995. In *Jones v Swansea City Council* [1990] 1 WLR 1453 the Court of Appeal accepted the existence of the tort of misfeasance in public office and were persuaded to order a new trial to determine whether the proper inference was that a majority of the Swansea City Council had acted with malice towards the plaintiff, Mr Jones. In *Pearce v Secretary of State for Defence* (1988) AC 855 John acted for the plaintiff who alleged that he had sustained injuries during the H bomb tests on Christmas Island because of the negligence of employees of the Atomic Energy Authority. The House of Lords held, on a preliminary point, that the immunity of suit provision in section 10 of the Crown Proceedings Act did not exempt the Minister from liability.

Information Rights

John Macdonald is the lead author of *Macdonald on the Law of Freedom of Information*, the third edition of which will be published by Oxford University Press in April 2016. John has long been a supporter of the Campaign for Freedom of Information. He has written guidance on the Cayman Freedom of Information Act. Lord Scott of Foscote in the foreword to the first edition of *Macdonald on the Law of Freedom of Information* says "The book has been written as a practitioners' handbook but the commendably simple, clear language of the text makes its exposition of the law as accessible to non-lawyers as to lawyers... John Macdonald and his team from New Square Chambers, Lincoln's Inn are to be congratulated".

Cases

Name: Harry Thorpe v HM Commissioners for Revenue and Customs

Reference: [2010] EWCA Civ 339, [2010] STC 964, [2009] STC 2107

Date: 23rd January 2013

Court: High Court

Comment:

Where payments to a director from a pension scheme were unauthorised and so in breach of trust, the director could not receive the payments free from the trusts of the scheme and there was no payment to him triggering a charge to tax under the Income and Corporation Taxes Act 1988 s 596A and s600. Where the sole director of a company, who was the sole member of an exempt approved pension scheme, directed the trustees to transfer funds to him prior to retirement he was liable for assessment under the 1988 Act s519C.

Practice Area: Trusts and Estates

Name: SM Life Ventures LLC v Susan Morrice and others

Reference: 16 July 2012 (as yet unreported).

Date: 23rd January 2013

Court: High Court, British Virgin Islands

Comment:

A minority shareholders' action heard in the commercial court in the British Virgin Islands. Bannister J considered the Nevis Limited Liability Company Ordinance 1995 ("NLLCO") and whether the majority were guilty of unfairly prejudicial conduct. He also considered whether the Court had power under NLLCO to order the company to purchase any oppressed member's shares and whether the Court had power under NLLCO or its inherent jurisdiction to order the dissolution of the Company.

Practice Area: Company

Name: R (Southall and another) v The Secretary of State for Foreign and Commonwealth affairs

Reference: [2003] EWCA Civ 1002

Date: 23rd January 2013

Court: Court of Appeal

Comment:

The Court of Appeal held that the applicant had no real prospect on an application for judicial review in obtaining a declaration that either the common law or constitutional convention required a referendum before the Government could introduce legislation ratifying a draft treaty establishing a constitution for Europe.

Name: Indicii Salus v Chandrasekaran and others

Reference: [2007] EWHC 406 (Ch)

Date: 2nd March 2007

Court: High Court

Comment:

Intellectual property: The circumstances in which the Court will discharge a search order where that is the only thing of substance remaining in the litigation.

Practice Area: Commercial Litigation

Name: McFaddens Solicitors v Chandrasekaran

Reference: [2007] All ER (D) 336 (Feb)

Date: 26th February 2007

Court: Court of Appeal

Comment:

This was an application (by the defendants to the main action; D), to discharge a search order regarding software in their possession. D had set up the Claimant company (C) some years earlier, and still held information relating to that company on computers in their home. D submitted that they did not intend to use any of that information to develop a new product as was claimed, that they would not have disposed of the software upon which C's claim was based had they been given notice of it, and thirdly that the claim was incomplete and misrepresented as a result of C not giving full and frank disclosure.

Held:

There had been established a prima facie case upon which the search order was granted. This had not been rebutted by the applicants. Accordingly the order could not be discharged on that ground.

The court did not have to be satisfied that D would destroy the evidence, rather C need only show a real possibility that it would be destroyed. The court was satisfied that there was such a possibility that the software would be hidden, or destroyed, by D. The application was accordingly dismissed.

An appeal from the Master who had granted leave to defend where solicitors were seeking payment of their costs and the terms of the retainer was disputed.

Practice Area: Commercial Litigation

Articles

Date	Title	Contributors
30th June 2007	Where does the public interest lie? Published In <i>New Square Chambers</i>	John Macdonald QC

Publications

Date	Title	Contributors
14th April 2016	Macdonald on the Law of Freedom of Information Third Edition Oxford University Press	John Macdonald QC Ross Crail Edwin Simpson Simon Adamyk Adrian Pay Charlotte Ford
30th May 2009	The Law of Freedom of Information 2009 Oxford University Press	John Macdonald QC Ross Crail Stephen Schaw Miller Edwin Simpson Mark Hubbard Adrian Pay Charlotte Ford
20th March 2003	The Law of Freedom of Information 2003 Oxford University Press	John Macdonald QC Ross Crail Stephen Schaw Miller Edwin Simpson Mark Hubbard Adrian Pay