



DUNCAN HAMILTON KC

Year of Call

2006

Year of Silk

2021

Devil Masters

Robert Milligan KC

Roddy Dunlop KC

Mathew Jackson KC

LinkedIn Profile



Duncan Hamilton KC

Practice Profile

Duncan is one of Scotland's leading Silks in the area of defamation, privacy, data protection and media law. He is top ranked by Chambers and The Legal 500 also has Duncan as a Band 1 Silk in Public and Administrative Law. The Legal 500 shortlisted Duncan as 'Scottish Silk of the Year' for 2023.

Duncan has an extensive Inquiry practice, most recently in the high-profile public inquiries into the death of Sheku Bayoh, the Scottish Child Abuse Inquiry and the Scottish Covid Inquiry. He also acts regularly in major FAI's, including the recent 'M9 FAI' into the deaths of two members of the public.

He has an additional specialism in high value personal injury actions and clinical negligence, having acted in all types of such cases for both pursuers and defenders over nearly 20 years. He also maintains a commercial practice.

In media law, Duncan has acted for the BBC and other leading media outlets since 2007 including in the Supreme Court. He also regularly acts for private individuals and has extensive experience of defamation proceedings, privacy actions, interdict proceedings and challenges to reporting restrictions.

In public law, Duncan has acted both for and against public bodies. He successfully represented Alex Salmond in the former First Minister's successful judicial review of the Scottish Ministers. Equally, Duncan acted on behalf of the Scottish Government from 2013 to 2021 as Standing Junior Counsel. He regularly appeared in judicial review and personal injury cases for the Scottish Ministers, including for Transport Scotland, the Scottish Prison Service and the Forestry Commission.

Duncan was appointed to the position of Part-Time Sheriff in 2022 with an All-Scotland jurisdiction. He serves as a member of the Shrieval Panel of the Mental Health Tribunal for Scotland. He was appointed ad hoc Advocate Depute in 2018. Duncan was previously a Member of the Scottish Parliament from 1999-2003.

Education & Professional Career to Date

Bar Traineeship, Simpson & Marwick

Part-time Special Adviser to the First Minister of Scotland (2007-08)

Member of the Scottish Parliament ('MSP'), serving on six Parliamentary Committees including the Justice Committee (1999-2003)

MA (Hons); LLB; Diploma in Legal Practice; Kennedy Scholarship to study at Kennedy School of Government, Harvard

Appointments

- Part-Time Sheriff (2022–present)
- Ad Hoc Advocate Depute (2018–present)
- Standing Junior to the Scottish Government (2013–2021)
- Member of the Shrieval Panel of the Mental Health Tribunal for Scotland (2018–present)

Selected Cases

- **Feb 2023 - Application to name a Protected Person on behalf of Associated Newspapers & Others**
Appearing on behalf of multiple Scottish media interests at Public Inquiry to challenge restriction on reporting in relation to alleged sex offender. Order successfully lifted.
- **Scottish Child Abuse Inquiry**
March-May 2021 - representing the interests of Morrisons Academy at Inquiry in relation to historic child abuse.
- **HMA v Salmond (Spectator Magazine) 2021 HCJ 1**
Instructed on behalf of Spectator magazine in relation to intimation of threatened proceedings for contempt of court. High Court challenge to the existing scope of the order made under Section 11 of the Contempt of Court. Order amended.
- **FAI into the death of Angus McAskill (January 2021)**
FAI arising from death in prison. Representing the interests of the Scottish Ambulance Service.
- **Petition of Alex Salmond (2019)**
Instructed on behalf of former First Minister in successful judicial review of decision of the Permanent Secretary of the Scottish Government.
- **HMA v KM (2019)**
Instructed on behalf of multiple media organisations. Successful challenge to order made by the Court under Section 11 of the Contempt of Court Act 1981
- **Petition of William Beggs [2018] CSOH 72**
Successfully representing Scottish Ministers in resisting Judicial Review of decision to refuse prisoner ownership of laptop.
- **FAI into the death of Paul Raymond Beckley 2017 FAI 29**
Successful representation of paramedic and Scottish Ambulance Service at lengthy FAI arising

from death in police custody.

- **Beroghani v Secretary of State for the Home Department (Inner House, 23rd March 2017, unreported)**
Successful challenge on behalf of BBC Scotland to reporting restriction imposed by the Inner House under Section 11 of the Contempt of Court Act 1981.
- **HMA v Craig Whyte (Glasgow High Court May 2017 unreported)**
Appearing for BBC Scotland in first successful motion in Scottish Courts to recall reporting restriction placed on journalists preventing use of live text based social media coverage of High Court criminal trial.
- **R (on the application of Miller and another) v Secretary of State for Exiting the European Union [2017] UKSC 5**
Instructed on behalf of Scottish Ministers in Supreme Court case concerning the triggering of Article 50 in order that the UK might leave the EU and additionally the correct interpretation of the legislative consent procedure of the Scottish Parliament under Section 28(8) of the Scotland Act 1998.
- **William Beggs v Scottish Ministers [2016] CSOH 153**
Acting on behalf of the Scottish Ministers in Judicial Review brought by life prisoner
- **Janet Hill v Highland Health Board [2016] CSOH 146**
Representing the Health Board at a debate on the question of Personal Injury Trusts in high value Personal Injury claims
- **FAI into the death of Gerard Tierney 2015 FAI 32**
Successful representation of the Scottish Ambulance Service at lengthy FAI arising from the death of a patient due to paracetamol overdose
- **David McMahon v Gavin Dear [2014] CSOH**
Successful defence of case in negligence brought against professional golfer. Case additionally providing authoritative review of common law liability of sporting participants.
- **A v BBC [2014] UKSC 25**
Recent Supreme Court authority on interpretation of key aspects of Contempt of Court Act 1981 and existence and extent of inherent jurisdiction. See previous reports from Inner and Outer Houses at [2012] CSOH 185 & [2013] CSIH 43
- **PF v Mountain Animals Sanctuary Trust (March 2014)**
Appearing for the accused at Health & Safety prosecution
- **Massie v McCaig & Others [2013] CSIH 14**
Leading recent Inner House authority on defamation and interim interdict.
- **Petition of the BBC for Access to Crown Productions in the case of HMA v Kimberley Hainey [2012] HCJDV 10**
Media law, privacy and defamation. Landmark ruling in relation to Article 10 right for media to broadcast, and citizen to receive, information relating to the productions lodged in criminal trial
- **BBC Petrs [2012] HCJ 2**
Media law, privacy and defamation. Petition to nobile officium in relation to establishing correct procedure for review of Crown decision in relation to accessing court materials being used in the context of a criminal trial
- **Inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 into the sudden death of Mrs Mary MacAuley (February 2012)**
Fatal accident inquiry. FAI involving multi-agency review of procedures relating to equipment and emergency support provided by public authorities to elderly, home based clients.
- **Petition of Her Majesty's Secretary of State for Business Enterprise and Regulatory Reform [2010] CSIH 80**
Public law. Appointed amicus curiae by Second Division seeking to establish the basis upon which

company directors might appear without a legal representative in relaxation of the rule in Equity and Law Life Ass Soc v Tritonia Ltd

- **Scottish National Party v BBC [2010] CSOH 56**

Public law. High profile judicial review ahead of the 2010 UK general election relating to judicial review of the decision of the BBC to exclude the petitioners from participation in televised leaders' debate

- **Martin Hines and Wallace Commercial Ltd v King Sturge LLP [2009] CSOH 96 & [2010] CSIH 86**

Negligence. Successful appeal on existence of duty of care, assumption of responsibility, the necessary components of the 'special relationship' and the extension of the 'White v Jones' principle in a Scottish context

- **Response Handling Ltd v BBC [2008] SLT 51**

Media law, privacy and defamation. Important early Scottish challenge in relation to the relative rights to privacy in the context of investigative journalism

Areas of Practice

- Clinical and Professional Negligence
- Commercial
- Media Law, Privacy and Defamation
- Personal Injury
- Public and Fatal Accident Inquiries
- Public Law

Publications & Seminars

Seminar- The Defamation and Malicious Publications (Scotland) Act 2021 delivered to the Central Legal Office in February 2023

Media Law, Freedom of Expression and the challenges of Social Media, delivered to John Smith Trust in 2017

Scots Law for Journalists, Rosalind McInnes (Ed.), contributor to 8th edition

'Can the Union Survive?', Royal Society of Edinburgh seminar, 2012

'The Rule of Law, Democracy, Media and Constitutional Change' - 2012

Seminar, Glasgow University School of Law 2011

'The legal implications of the future expansion of the powers of the Scottish Parliament', Scottish Public Law Group Annual Conference 2010

Directories

Duncan was shortlisted by the Legal 500 as 'Silk of the Year' in Scotland for 2023.

The Legal 500 give Duncan a Band 1 ranking noting the following

'Duncan has the ultimate advocacy skill: the ability to persuade. He does this by an ability to tailor his approach to the individual judge or sheriff. He knows when to push and when to give ground, in a graceful way which notably lacks either blandishment or personal ego.'

He is also ranked as a Band 1 Silk by Chambers and Partners UK Bar. He has maintained that Band 1 ranking as Counsel for 12 years.

"He is excellent at building a rapport with clients during consultations, which puts them at ease and assists in preparing the case."

"His knowledge of the law is excellent and he presents very well in court"

"He is brilliant and so enthusiastic about the work, as well as being an engaging and persuasive advocate."

In Public and Administrative Law, Chambers and Partners (2024) note

"Duncan Hamilton KC is well viewed for his work in judicial reviews, particularly those crossing over with media law. He is particularly well known for having represented Alex Salmond in his challenge to the Scottish Government's investigation into allegations of misconduct.'

Recommended in the Legal 500 UK Bar Guide:

2021 Silk for Commercial Disputes

'An excellent advocate who solicitors go back to time and time again for media law. He is reliable and thorough, and can be relied upon to fight in court when that is required.'

Nominated by the Legal 500 for Scottish Junior Counsel of the year 2020.

Recommended in The Legal 500 UK Bar Guide since 2016

"He is always willing to go the extra mile in cases."

Quotes from previous editions of Chambers and Partners:

"He has a media savvy other advocates struggle to match, and has a real gravitas in court"

"He has a good knowledge of the issues and he knows exactly when to argue and when not to."

"An excellent junior, one of the few at the Scottish Bar to have a good deal of media law experience."

"He is brilliant and so enthusiastic about the work, as well as being an engaging and persuasive advocate."