



Year of Call

2006

Devil Masters

Robert Milligan QC

Roddy Dunlop QC

Mathew Jackson QC



Practice Profile

Top ranked in media law by both the Legal 500 and Chambers, Duncan was shortlisted by the Legal 500 as the 'Junior of the Year' at the Scottish Bar for 2020.

Duncan has a strong civil practice. He has developed a reputation as a leading Counsel in media law. He is frequently instructed in defamation, privacy, data protection and contempt proceedings by a range of media interests, particularly the BBC.

In public law, Duncan has been Standing Junior Counsel to the Scottish Government since 2013, and regularly appears in judicial review proceedings including successfully representing Alex Salmond in the former First Minister's successful judicial review of the Scottish Ministers.

Duncan also maintains a strong interest in personal injury and clinical negligence, acting regularly in both, including for public sector clients such as Police Scotland, Transport Scotland, the Scottish Prison Service and the Forestry Commission.

He has significant experience of Fatal Accident Inquiries, often appearing on behalf of Health Boards.

Duncan serves as a Legal Convener of the Mental Health Tribunal for Scotland. He was appointed as an 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

Appointments

- Ad Hoc Advocate Depute (2018–present)
- Standing Junior to the Scottish Government (2013–present)
- Legal Member of the Mental Health Tribunal for Scotland (2018–present)

Selected Cases

- **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
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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
- Employment, Discrimination and Harassment

- Media Law, Privacy and Defamation
- Personal Injury
- Public and Fatal Accident Inquiries
- Public Law

Publications & Seminars

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 is ranked as a Band 1 practitioner by Chambers and Partners UK Bar 2020.

"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."

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."

"Duncan Hamilton of Arnot Manderson is developing an impressive practice in privacy and defamation law. He has received instructions from a broad range of clients, including broadcasters, newspapers and notable individuals. Sources view him as one to watch in this area."

" he has built up a solid reputation for media and privacy disputes, and now represents key media clients such as the BBC. Sources agree that he is 'fluent and persuasive in his oral submissions', and that he exhibits 'a very good knowledge of media law'."