

## Miranda Hamilton

**Year of Call:** 2007

miranda.hamilton@axiomadvocates.com  
07989 332298



### Professional Career to date

2007: Year of call

2006-2007: Devilling, with Jonathan Lake QC, Gary Allan QC and Robert Milligan QC

2005-2006: Senior Solicitor, Maclay Murray & Spens, Edinburgh

Construction & Engineering Dept - all aspects of contentious work.

2002-2005: Assistant Solicitor, Maclay Murray & Spens, Edinburgh

Construction & Engineering Dept - all aspects of contentious work.

2000-2002: Trainee Solicitor, Maclay Murray & Spens, Edinburgh and Glasgow

Worked in commercial property, intellectual property and construction & engineering departments.

### Education & Professional Qualifications

LLB, Ordinary & Diploma in Legal Practice, University of Edinburgh (1997 - 2000)

MA (Hons), Classics, University of St Andrews (1993 - 1997)

### Areas of Expertise

- Alternative Dispute Resolution
- Construction and Engineering
- Professional Liability
- Clinical Liability
- Commercial Contracts

### Professional Experience

As a solicitor, Miranda was involved in several high-profile construction disputes in commercial actions in the Court of Session. These included the building contract/insolvency case of Melville Dundas (in receivership) v George Wimpey & Norwich Union (at Outer House and Inner House stages) and a long-running, multi-million pound road works contract dispute. In addition, she gained wide experience representing clients in the Sheriff Court and at adjudication. This has included successfully representing employer clients in an action for damages at first instance and on appeal to the Sheriff Principal and in adjudication in a dispute about defective works at a popular retail outlet centre in southern Scotland. Miranda also gained experience as a solicitor of advising internationally-based clients, including a dispute in respect of the refurbishment and upgrade of a client's drilling platform in Singapore.

As an advocate, Miranda practises extensively in the field of construction and engineering disputes. These have concerned alleged professional negligence of construction professionals, contract claims and adjudicators' decisions. She has recently been instructed in several complex, high-value disputes in the commercial court. These include a claim relating to a defective hot water system in a Scottish hospital and an action arising out of a hydro-electric scheme.

Miranda is also frequently instructed in other commercial disputes and in negligence claims against medical and other professionals. In that regard she acts, and has acted for, Health Boards in a variety of professional negligence actions.

### Recent Cases

*Anderson Floor Warming Limited v Antrim Electrical & Mechanical Engineers Limited* 2015 CSOH 164: action of reduction of a decree in foro.

The pursuers sought reduction of a decree that had passed against them in the Sheriff Court due to non-appearance at an Options Hearing. The parties diverged on the precise test to be applied by a court when deciding whether or not to reduce a decree in foro. Lord Matthews agreed with the defenders that the test was one of exceptional circumstances and that in this case there was nothing exceptional that would justify the granting of the remedy; that the pursuers were the "authors of their own misfortune".

*Stork Technical Services (RBG) Limited v Ross's Executor* 2015 SLT 160: repayment of adjudicator's fees where decision rendered a nullity; whether a remedy in unjustified enrichment.

The pursuers sought repayment of the substantial fees and expenses that they had paid to the adjudicator during the course of an adjudication. The adjudicator's decision had, in subsequent enforcement proceedings, been found to have been reached in breach of the rules of natural justice and the court also held that the adjudicator had failed to exhaust his jurisdiction. The decision was accordingly rendered a nullity.

Lord Tyre held that the adjudication contract had in fact been concluded between the parties to the dispute and the adjudicator's employers, a firm of solicitors. Accordingly, he concluded that the pursuers were not entitled to a remedy from the adjudicator's executor (the adjudicator having subsequently died). Notwithstanding that decision, Lord Tyre went on to make certain observations about the sort of remedy that might be available to a party who found itself in the position of the pursuers in this case. He stated that he was satisfied that the authorities supported the proposition that (i) a remedy in restitution is available in circumstances where a party to a contract has made payment in anticipation of a counterpart performance which never occurs, and (ii) that that remedy was available under the law of contract and mutual obligations.

*Friends Provident Life Assurance Limited v Sir Robert McAlpine Limited* [2014] CSOH 74: whether instance falls when Summons called in name of previous pursuer entity; collateral warranties.

The pursuers raised an action for damages for breach of a collateral warranty agreement. The defenders advanced two preliminary challenges: (1) that at the time the Summons had been lodged for calling the pursuers had no authority to do so (the pursuers having by then transferred their whole business and assets to Friends Life Limited) and therefore the instance had fallen; and (2) that the defenders had no liability to the pursuers under the collateral warranty because any claim available to the employer under the building contract had prescribed and the defenders had "no greater liability" in terms of clause 1.2. The pursuers successfully resisted both preliminary challenges.

*Richard Heis and Others as Joint Administrators of Connaught Partnerships Limited (In Administration) v Perth and Kinross Council* 2014 SLT 608; G.W.D. 13-229: enforcement of adjudicator's decision  
In an action for enforcement of an adjudicator's decision, the question arose whether she had failed to exhaust her jurisdiction and/or breached the rules of natural justice by not dealing with an aspect of the defence relating to balancing of accounts in bankruptcy. The pursuers argued that this defence had never properly been put before the adjudicator and that therefore she was not bound to consider it; further, that the defenders could not now raise this as a defence in the enforcement proceedings.

*Norwest Holst v Carfin Developments* [2008] CSOH 138; 2009 BLR 167; [2008] GWD 33-493: arbitration clauses and ICE conditions of contract.

Under a contract incorporating the ICE Conditions of Contract 5th edition, the engineer issued what the pursuers purported to be a certificate, on the back of which they sought payment from the defenders. The defenders moved for the cause to be sisted for referral to the engineer in terms of clause 66 of the ICE Conditions. The pursuers resisted the motion to sist on the basis that there was no dispute or difference capable of being referred to the engineer and moved for summary decree/decree de plano.

The case involved the consideration of a Scottish line of authority bearing upon the question of when there is a "real" dispute.

*CSC Braehead Leisure Ltd v Laing O'Rourke Scotland Ltd* [2008] CSOH 119; [2009] BLR 49; [2008] GWD. 31-472: adjudication.

The pursuers sought enforcement of an adjudicator's decision awarding them £3.5 million in damages. The defenders argued that the decision was invalid on various grounds, requiring the court to consider the limited circumstances in which an adjudicator's decision is capable of being successfully challenged before the courts.

*Breitenbucher v Wittke* [2008] CSOH 145: jurisdiction.

Lord Brodie had to assess the meaning and effect of a jurisdiction clause in a contract under German law. The clause was purported to confer exclusive jurisdiction on the courts of Stuttgart, thereby trumping the jurisdiction of the Court of Session by virtue of the defender's domicile. The court had to consider evidence from an expert in German law as to the interpretation and effect of the clause under the laws of that country.

### **Advocates Courts & Tribunals**

Court of Session, Inner House; Court of Session, Outer House; High Court of Justiciary; Sheriff Court; Employment Tribunal; Mediation.

### **Advocates Appointments & Memberships**

2018 - Appointed Standing Junior Counsel to the Scottish Government

### **Directories**

Miranda is recommended by the Legal 500, 2016 edition, for construction and engineering cases. She is described as "Extremely user-friendly, approachable and commercial."