

Ailsa J. Carmichael QC

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Areas of Practice

Administrative & Constitutional Law, Alternative Dispute Resolution (ADR), Civil Liberties, Clinical Negligence, Damages, Discrimination, Employment Law, Extradition, Health & Safety, Human Rights, Judicial Review, Mediation, Medical Negligence, Mental Health, Personal Injury, Prison, Professional Negligence, Public Sector Regulation, Reparation.

Year of Call: 1993

Year of Silk: 2008

Devil Masters: Sheriff J.A. Baird; S.J. MacGibbon

Biography:

A specialist in the areas of human rights and public law, Ailsa has appeared in a number of leading cases in human rights, administrative and discrimination law in recent years, in the Court of Session and House of Lords. As junior counsel, Ailsa presented part of the oral submissions for the appellants in the House of Lords in *Somerville v Scottish Ministers* [2007] 1 WLR 2734. She was instructed to appear for the UK government without senior in the House of Lords in *Saber v Secretary of State for the Home Department* [2007] UKHL 57. She was standing junior counsel to the Home Department in Scotland from 2000 to 2008, which involved numerous substantive judicial review and appeal hearings in immigration and asylum and other public law matters. Ailsa gained substantial experience in public inquiries under the Inquiries Act 2005 in her role as junior counsel to the Fingerprint Inquiry Scotland.

Cases:

Judicial Review: *Tehrani v Secretary of State for the Home Department* 2007 SC (HL) 1 (House of Lords): jurisdiction of the Court of Session in relation to judicial review of decision of a UK-wide appellate tribunal

Abdulla v Secretary of State for the Home Department (Outer House) [2007] CSOH 34: whether judicial review can be brought notwithstanding statutory review process in immigration appeals Media: *Scottish National Party v British Broadcasting Corporation* [2010] CSOH 56: attempt to interdict the BBC from broadcasting Prime Ministerial Debates; freedom of expression, section 12, Human Rights Act 1998 Human Rights: *Somerville v Scottish Ministers* [2007] 1 WLR 2734 (House of Lords): prisoners' rights; decisions to segregate under Prisons and Young Offenders Institutions Rules; compatibility with Article 8 ECHR; relationship between Scotland Act 1998 and Human Rights Act 1998; damages claims; time-bar in claims for breaches of Convention rights; Public Interest Immunity; proportionality at common law *Helow: Petition to Nobile Officium* [2008] 1 WLR 2416 (House of Lords): Fair hearing at common law; apprehension of bias on the part of a Court of Session judge *Napier v Scottish Ministers* 2005 1 SC 229 (Outer House): prisoners' rights; contravention of Article 3 ECHR; slopping out; damages *DB v Scottish Ministers* [2007] CSOH 73: Prisoners' rights, A3P1 ECHR; whether act of Scottish Ministers ultra vires as incompatible with Convention rights where act allegedly incompatible because of effect of incompatible Westminster legislation *Birrell v Parole Board* 2007 SLT 440 (Outer House): compatibility of procedure in Life Prisoner Tribunal with Art 5 ECHR *Hallam v Care Commission* 2005 SCLR 982 (Outer House): Whether Article 6 ECHR engaged in relation to Care Commission investigation of complaint; common law fairness *Tehrani v UKCC* 2001 SC 581 (Outer House) Professional disciplinary body, compatibility of process with Art 6 ECHR Reserved Matters under the Scotland Act 1998: *Logan v P F Hamilton; Beattie v P F*

Jedburgh [2008] HCJAC 61: Whether an Act of the Scottish Parliament increasing the sentencing powers of the sheriff in relation to road traffic offences was outwith the legislative competence of the Scottish Parliament Immigration: *Saber v Secretary of State for the Home Department* [2007] UKHL 57 (House of Lords): appropriate disposal of immigration appeal *Bashkim Elshani v Secretary of State for the Home Department* [2007] CSOH 166: Family concession policy, legitimate expectation *Wani v Secretary of State for the Home Department* 2005 SLT 875 (Outer House): proper approach of decision-maker to plausibility of applicant's account of persecution *Saber v Secretary of State for the Home Department* 2003 SLT 1409 (Inner House): whether non-state entity can provide protection for purposes of Refugee Convention *Ali v Secretary of State for the Home Department* 2003 SLT, *Ibrahim v Secretary of State for the Home Department* 2002 SLT 1150 (Outer House): Time limits under Dublin Convention; Third Country cases; certification; legitimate expectation Discrimination/Employment: *MacDonald v Advocate General* 2003 SC (HL) 25 (House of Lords): whether Sex Discrimination Act could be construed as rendering unlawful discrimination against homosexual serviceman, retrospectivity of Human Rights Act *BBC Scotland v Souster* 2001 SC 458 (Inner House): racial discrimination on basis of English national origins *British Airways v Boyce* 2001 SC 510 (Inner House): racial discrimination on basis of English national origins; res judicata in context of employment proceedings Extradition: *Kropiwnicki v H M Advocate* [2010] HCJAC 41: European Arrest Warrant, whether contrary to Article 3 ECHR to remove appellant to Poland in light of the decision in *Orchowski v Poland* regarding conditions of detention in Polish penal institutions *Goatley v H M Advocate* 2007 SLT 14 (High Court of Justiciary): European Arrest Warrants, devolution issue Reparation: *McDyer v Celtic FC* 2000 SC 379 (Inner House): Res ipsa loquitur, strict liability under Roman law actio de positis vel suspensis *Gibson v Orr* 1999 SC 420 (Outer House): duties of care incumbent on police officers in relation to the protection of members of the public

Publications:

Pending: Practice and Procedure of the Mental Health Tribunal for Scotland (with D Auchie), Dundee University Press

Appointments:

2000-2008: Standing Junior Counsel to the Home Department

2000: Reporter to Scottish Legal Aid Board

2004: Member of Mental Health Tribunal for Scotland

2005: Ad Hoc Advocate Depute

2007: Part-time Sheriff

2008: Junior Counsel to the Fingerprint Inquiry Scotland

Further Information:

Ailsa has undertaken training with Mediation Forum Ireland (2006)