
Michael Kotrly

Barrister
Call 2019



Scope of Practice

- Arbitration • Banking and Financial Services • Breach of Warranty • Contempt Proceedings • Contractual Disputes
- Disclosure and Privilege • Restitution • Energy and Natural Resources • Jurisdiction and Conflict of Laws

Overview

Michael has a broad practice covering all areas of Chambers' work, including commercial litigation, arbitration and advisory work. He brings particular expertise to international arbitration (both commercial and investor-state) and arbitration-related litigation.

Prior to coming to the Bar, Michael was a Senior Associate in the International Arbitration Group at Freshfields Bruckhaus Deringer LLP in London. He was previously a Disputes/Litigation Associate in the Dubai and Toronto offices of Norton Rose Fulbright LLP. He has conducted advocacy before the Commercial Court, the Insolvency and Companies List, and the County Court. In terms of his international advocacy experience, he has appeared before tribunals administered by the DIAC (Dubai International Arbitration Centre), ICSID (International Centre for the Settlement of Investment Disputes), LCIA (London Court of International Arbitration), and the PCA (Permanent Court of Arbitration). He has also conducted advocacy before the Dubai World Tribunal, the Ontario Superior Court of Justice (Canada) and the Ontario Court of Appeal (Canada).

Michael's current/recent matters include:

- *Município de Mariana & ors v BHP Group Plc and BHP Group Ltd* - Acting (with Daniel Toledano KC, Shaheed Fatima KC, Nicholas Sloboda KC and others) for BHP in the group action brought by over 600,000 claimants arising from the collapse of the Fundão Dam in Brazil.
- *Rolls-Royce Holdings plc v Goodrich Corporation* – acting for various Rolls Royce entities (with Daniel Toledano KC and David Caplan) in Commercial Court proceedings against Goodrich Corporation relating to the exercise of a call option and allegations of breaches of exclusivity rights
- Advising an ultra-high net-worth individual (including in proceedings in Jersey) in relation to a family dispute

involving the wrongful transfer of assets and mismanagement of various offshore entities (led by John McCaughran KC)

- *Goh Chin Soon v People's Republic of China* - acting for the People's Republic of China (led by Michael Sullivan KC) in investor-state arbitration proceedings before the Permanent Court of Arbitration
- Acting in arbitration proceedings (LCIA Rules) (led by Michael Sullivan KC) in a licensing dispute in the professional football industry

Michael is currently serving as a Faculty Member (EMEA) of the Delos Remote Oral Advocacy Program, an advanced oral advocacy course in international arbitration. He is also a member of the Rising Arbitrators Initiative. Michael has been listed as a Future Leader in International Arbitration by Who's Who Legal since 2018 with referees describing him in 2022 as a "*spectacular advocate and brilliant intellect.*"

Examples of Recent Cases

Arbitration

- Advising various clients on potential set-aside applications in the High Court
- Advising a subsea services company facing parallel proceedings in the English courts and in arbitration
- Acting in arbitration proceedings (LCIA Rules) (led by Michael Sullivan KC) in a licensing dispute in the professional football industry
- Acted in arbitration proceedings (UNCITRAL Rules) (led by John McCaughran KC) in a shareholder dispute relating to a mining company
- **Goh Chin Soon v People's Republic of China**
Acting for the People's Republic of China (led by Michael Sullivan KC) in investor-state arbitration proceedings before the Permanent Court of Arbitration.
- Acted for a subcontractor in LCIA proceedings relating to the construction of a luxury hotel in the Middle East
- Advised a distributor on potential obligations of good faith in the termination of an agency agreement (ICC Rules, Ontario law).
- **Deutsche Telekom AG v Republic of India**
Acted for Deutsche Telekom in a bilateral investment treaty dispute in relation to the expropriation of an investment in a satellite-terrestrial hybrid communications business (while at Freshfields)
- **ICC proceedings (Paris seat)**
Acted for an international energy company in an ICC arbitration against the Republic of Yemen in relation to various claims arising under a production sharing contract (while at Freshfields)
- **Anglo American plc v Bolivarian Republic of Venezuela**
Acted for Anglo American in a bilateral investment treaty arbitration (ICSID Additional Facility) relating to the expropriation of a ferronickel processing plant and other government measures (while at Freshfields)

Banking and Financial Services

- Acting for various business lenders in enforcement proceedings
- **Helix Subco SARL v Bank of Cyprus**
Acted for the Bank of Cyprus in High Court litigation proceedings arising out of the bank's sale of a portfolio of mortgage loans
- Acted (unled) in various proceedings involving allegations of the mis-selling of PPI
- **LCIA proceedings** (London seat)
Assisted Nicholas Sloboda (during pupillage) with written submissions in relation to a note trustee seeking to enforce c. US\$375m loan notes.

Civil Fraud and Investigations

Breaches of fiduciary duty

- Drafted pleadings on behalf of a litigation investment company in relation to claims alleging transactions at an undervalue, unlawful preference, misfeasance and breach of fiduciary duty.
- Advised a litigation investment company in relation to claims arising against a former director of a company for misappropriation of funds.

Dishonest Assistance

- Advising an ultra-high net-worth individual (including in proceedings in Jersey) in relation to a family dispute involving the wrongful transfer of assets and mismanagement of various offshore entities (led by John McCaughran KC). The dispute included various claims of dishonest assistance

Dishonesty and Deceit

- ***Quantum Care Ltd and anor v Lalit Modi***
Successfully obtained permission from the Court of Appeal to appeal the dismissal of Quantum Care Ltd's deceit claim (led by Neil Kitchener KC; Neil and Michael were instructed for the first time at the permission to appeal stage).

Misfeasance and misconduct

- Drafted pleadings on behalf of a litigation investment company in relation to claims alleging transactions at an undervalue, unlawful preference, misfeasance and breach of fiduciary duty.
- Advised a litigation investment company in relation to claims arising against a former director of a company for misappropriation of funds.

Unjust Enrichment

- Advising an ultra-high net-worth individual (including in proceedings in Jersey) in relation to a family dispute involving the wrongful transfer of assets and mismanagement of various offshore entities (led by John McCaughran KC). The dispute included various unjust enrichment claims.

Commercial Dispute Resolution

Breach of warranty

- **Travelport Limited & Ors v WEX Inc.**
Assisted Sonia Tolaney QC, James MacDonald QC, Emma Jones, and Andrew Lodder (during pupillage) in a preliminary issues trial in a dispute arising from the invocation of a Material Adverse Effect clause in an agreement for the \$1.7bn purchase of Optal/eNett.

Contempt Proceedings

- **Deutsche Bank v Sebastian Holdings Inc / Vik**
Assisted Sonia Tolaney QC, James MacDonald QC, and Andrew Lodder (during pupillage) in applications relating to suspended committal proceedings against Mr. Vik.

Contractual Disputes

- **Rolls-Royce Holdings plc v Goodrich Corporation** – acting for various Rolls Royce entities (with Daniel Toledano KC and David Caplan) in Commercial Court proceedings against Goodrich Corporation relating to the exercise of a call option and allegations of breaches of exclusivity rights
- Advising (unled) a multinational technology company in a multi-party dispute relating to the procurement of cloud software services
- Acted (unled) in a dispute relating to the purchase and sale of go-karts, including allegations as to defects re same.
- Acted in arbitration proceedings (LCIA Rules) (led by Michael Sullivan KC) in a licensing dispute in the professional football industry
- Acted in arbitration proceedings (UNCITRAL Rules) (led by John McCaughran KC) in a shareholder dispute relating to a mining company.
- **Helix Subco SARL v Bank of Cyprus**
Acted for the Bank of Cyprus (led by James MacDonald) in High Court litigation proceedings arising out of the bank's sale of a portfolio of mortgage loans.
- **Castle Water v Thames Water Utilities**
Acted for Castle Water (with Neil Kitchener QC, Michael Clark, and Andrew Lodder) in the litigation between CWL and TWUL arising out of the sale by TWUL of its non-household retail division of water and sewerage services. The case involved thirteen separate heads of claim in contract and tort totalling £40 million and various contractual counterclaims by TWUL.

- Advised a company in relation to claims arising from amounts owing under a Shareholders Agreement
- Acted (unled) for **eBay (UK) Limited** in County Court proceedings regarding an online marketplace fee dispute with a reseller.
- Drafted pleadings on behalf of a global manufacturer in a dispute relating to unpaid invoices.
- Advised (with Sa'ad Hossain QC and Adam Rushworth) on a contractual dispute arising from a Joint Operating Agreement in relation to petroleum exploration and development activities in Central Africa.
- Advised an investor in a joint venture dispute arising in the medical/cosmetic industry.
- **Biosol Renewables UK Ltd v R&A Properties**
Assisted Laurence Emmett (during pupillage) in a six day High Court trial relating to the purchase and sale of biomass boilers

Disclosure

- **Danish Customs and Tax Administration v Solo Capital Partners & Ors** (Commercial Court)
Acted for the Danish Customs and Tax Administration (with Jamie Goldsmith QC, Abra Bompas and James Fox) in various applications in relation to disclosure.

Equity

- Advising an ultra-high net-worth individual (including in proceedings in Jersey) in relation to a family dispute involving the wrongful transfer of assets and mismanagement of various offshore entities (led by John McCaughran KC). The matter involves various equitable claims including tracing and knowing receipt.
- **Quantum Care Ltd and anor v Lalit Modi**
Successfully obtained from the Court of Appeal permission to appeal the dismissal of Quantum Care Ltd's deceit claim (led by Neil Kitchener KC; Neil and Michael were instructed for the first time at the permission to appeal stage).
- Drafted pleadings on behalf of a litigation investment company in relation to claims alleging transactions at an undervalue, unlawful preference, misfeasance and breach of fiduciary duty.
- Advised (with Sa'ad Hossain QC and Adam Rushworth) on potential equitable remedies arising from a contractual dispute in relation to petroleum exploration and development activities in Central Africa.
- Advised an investor in a joint venture dispute in the medical/cosmetic industry on potential equitable remedies.

Jurisdiction and Conflict of Laws

- Advised a shipping company and its insurer on jurisdictional issues in offshore litigation proceedings arising from allegations of tortious acts committed on the high seas.
- **Public Institution for Social Security of Kuwait v Man Group PLC & Ors**
Assisted James MacDonald (during pupillage) with legal research on conflict of laws issues in a dispute

alleging large-scale fraud with allegations of bribery and corruption spanning three decades.

- ***Município De Mariana & Ors v BHP Group***

Assisted Nicholas Sloboda (during pupillage) with legal research on jurisdictional issues in group litigation proceedings relating to the collapse of the *Fundão dam* in Mariana, Brazil.

Restitution

- Advising an ultra-high net-worth individual (including in proceedings in Jersey) in relation to a family dispute involving the wrongful transfer of assets and mismanagement of various offshore entities (led by John McCaughran KC). The dispute includes various restitutionary claims.
- Advised an investor in a joint venture dispute in the medical/cosmetic industry on a potential claim in restitution.

Sale of Goods and Supply of Goods and Services

- Acting (unled) in a dispute relating to the purchase and sale of go-karts, including allegations as to defects re same.
- Acted (unled) on behalf of a foodservice equipment distributor in a dispute regarding allegations of defective products.
- Drafted pleadings on behalf of a global manufacturer in a dispute relating to unpaid invoices.
- ***Biosol Renewables UK Ltd v R&A Properties***
Assisted Laurence Emmett (during pupillage) in a six-day High Court trial relating to the purchase and sale of biomass boilers

Shareholder Disputes

- Acted in arbitration proceedings (UNCITRAL Rules) (led by John McCaughran KC) in a shareholder dispute relating to a mining company
- Advised a company in relation to claims arising from amounts owing under a Shareholders Agreement.

Company and Insolvency

Administrations and Liquidations

- ***Porter v Henderson & Jones Ltd***
Acted for Henderson & Jones Ltd (unled) in successfully resisting an application to set aside a statutory demand. The applicant argued that the statutory demand was an abuse given that the debt could be paid by way of security held over assets owned by third parties in relation to the same debt.
- ***Henderson & Jones Ltd v Williams***
Acted for Henderson & Jones Ltd (unled) in a successful application to unwind payments made by a subsequently insolvent company on the basis that they constituted transactions at an undervalue and/or an

unlawful preference. A charging order was also obtained.

Corporate reconstructions

- Advised on the potential application of s. 190 of the Companies Act 2006 in relation to a substantial corporate restructuring.

Directors' Duties

- Advised a company in relation to claims against a former director relating to unpaid director loans.
- Advised a litigation investment company in relation to claims arising against a former director of a company for misappropriation of funds.

Energy and Natural Resources

- Acted in arbitration proceedings (UNCITRAL Rules) (led by John McCaughran KC) in a shareholder dispute relating to a mining company
- Advised (with Sa'ad Hossain QC and Adam Rushworth) on a contractual dispute arising from a Joint Operating Agreement in relation to petroleum exploration and development activities in Central Africa.
- **Biosol Renewables UK Ltd v R&A Properties**
Assisted Laurence Emmett (during pupillage) in a six day High Court trial relating to the purchase and sale of biomass boilers
- **ICC proceedings (Paris seat)**
Acted for an international energy company in an ICC arbitration against the Republic of Yemen in relation to various claims arising under a production sharing contract (while at Freshfields)
- **Anglo American plc v the Bolivarian Republic of Venezuela**
Acted for Anglo American in a bilateral investment treaty arbitration (ICSID Additional Facility) relating to the expropriation of a ferronickel processing plant and other government measures (while at Freshfields)

Sports, Gaming and Licensing

Internet gambling

- *Hyde & Ors (Joint Administrators of Betindex Ltd), Re* [2021] EWHC 1542 (Ch)
Acted for various customers of *Football Index* (led by Anthony de Garr Robinson QC) in proceedings relating to the distribution of funds from a trust account.

Sport and leisure industries

- Acted in arbitration proceedings (LCIA Rules) (led by Michael Sullivan KC) in a licensing dispute in the professional football industry

Rankings

- Who's Who Legal – Future Leader in Arbitration (2018-2024)
- Who's Who Legal – Thought Leader Global Elite in Arbitration (Under 45) (2023)
- Rising Star – Legal 500 International Arbitration Powerlist UK



Previous Employment

- Freshfields Bruckhaus Deringer LLP, London (Associate / Senior Associate, International Arbitration) [2013-2019]
- Norton Rose Fulbright LLP, Dubai (Associate, Dispute Resolution) [2012-2013]
- Norton Rose Fulbright LLP, Toronto (Associate, Litigation) [2008-2012]
- Judicial Law Clerk to the Federal Court of Appeal, Canada [2007-2008]

Education

- University of Toronto, Juris Doctor [2003-2006]
- University of British Columbia, BA (Honours) (Economics) (First Class) [1999-2003]

Positions of Responsibility / Academic Achievements

- Duty Scheme Advocate – Asylum Support Appeals Project
 - Member of ICC Task Force on Maximizing the Probative Value of Witness Evidence
 - Coach – University of Toronto Jessup International Law Moot Team [2006]
 - World University Debating Champion [2006]
 - Grand Moot (annual showcase moot before judges of the Supreme Court of Canada, Ontario Court of Appeal and Superior Court), University of Toronto [2005]
 - Canadian National University Debating Champion [2005]
 - Canadian National Champion, Philip C. Jessup International Moot Court Competition [2005]
 - Cambridge University Intervarsity Debating Champion [2005]
 - Winner, Goodman & Carr LLP Competitive (External) Moot [2004]
 - West Vancouver Foundation Faris Family Scholarship [1999-2003]
 - British Columbia 1958 Centennial Scholarship [2001]
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Publications

- The use of discount rates in the assessment of lost profits using the Discounted Cash Flow method (co-authored with Alexander Gunning KC), *The Paris Journal of International Arbitration*, no. 4 (2020)
 - Recent Developments in International Arbitration in England and Ireland (co-authored with Barry Mansfield), *Journal of International Arbitration* 36, no. 4 (2019)
 - Recent Developments in International Arbitration in England and Ireland (co-authored with Barry Mansfield), *Journal of International Arbitration* 35, no. 4 (2018)
 - Book Review of G. Blanke’s Commentary on the UAE Arbitration Chapter (co-authored with Reza Mohtashami), *The International Journal of Arbitration, Mediation and Dispute Management* 84, Issue 2 (April 2018)
 - Looking Out and Looking In: Reconciling Domestic and Internationalist Considerations in the Enforcement and Review of Arbitration Awards in Canada (co-authored with Justice J.E. Sexton) – *Arbitration International* Vol. 27, No. 2 (2011)
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Awards



Contact Clerks



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