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Michael Kotrly

Barrister
Call 2019

Scope of Practice

• Arbitration • Banking and Financial Services • Breach of Warranty • Civil Fraud and Investigations • Contempt Proceedings • Commercial Litigation • Contractual Disputes • Disclosure and Privilege • Restitution • Energy and Natural Resources • Jurisdiction and Conflict of Laws • Unjust Enrichment • Sale of goods & supply of services • Sports, Gaming and Licensing

Overview

Described as a *"spectacular advocate and brilliant intellect"* Michael has a broad practice spanning international arbitration (both commercial and investor-state) and commercial litigation. He is regularly instructed in high-value, complex disputes, often including a foreign law or public international law element. He is equally comfortable working on cases of lesser value, whether led or unled.

Michael's current/recent matters include:

- **LCIA Proceedings (London Seat) -** Acting in an English law dispute following the termination of a contract relating to the construction of a processing facility in Russia.
- *Goh Chin Soon v People's Republic of China* - defending the People's Republic of China (led by Michael Sullivan KC) in investor-state arbitration proceedings administered by the Permanent Court of Arbitration.
- *Municipio de Mariana v BHP Group (UK) Ltd* – acting for BHP Group (UK) Ltd and BHP Group Limited in the US$ multi-billion group litigation arising from the Fundão dam collapse in Brazil (with a team including Daniel Toledano KC and Nicholas Sloboda KC)

Michael is listed by Legal 500 as a Leading Junior (Band 3) in International Arbitration and as a Rising Star in Commercial Litigation. Michael is also listed as Recommended in International Arbitration by Lexology Index.

Examples of Recent Cases

Arbitration

Prior to coming to the Bar, Michael was a Senior Associate in the International Arbitration Group at Freshfields Bruckhaus Deringer LLP in London where he exclusively worked on commercial and investor-state arbitration

matters. Prior to that was a Disputes Associate in the Dubai office of Norton Rose Fulbright LLP. Given his previous international arbitration experience he is instructed on arbitration matters with responsibility (in terms of both strategy and oral advocacy) well beyond his year of call. His recent arbitration experience since transferring to the Bar includes:

- LCIA Proceedings (London Seat)
  Acting in an English law dispute following the termination of a contract relating to the construction of a processing facility in Russia.
- Advising various clients on potential set-aside applications in the High Court under ss. 67 and 68 of the Arbitration Act 1996.
- Advising a subsea services company facing parallel proceedings in the English courts and in arbitration.
- LCIA Proceedings (London Seat) Acting in arbitration proceedings in an English law licensing dispute in the professional football industry.
- UNCITRAL Rules (Johannesburg Seat)
  Acted in arbitration proceedings (led by John McCaughran KC) in a Zambian law shareholder dispute relating to a mining company
- *Goh Chin Soon v People's Republic of China*
  Defending the People's Republic of China (led by Michael Sullivan KC) in investor-state arbitration proceedings administered by the Permanent Court of Arbitration
- LCIA Proceedings (Dubai Seat)
  Acted for a subcontractor in proceedings relating to the construction of a luxury hotel in the Middle East pursuant to a contract governed by UAE law
- Advised a distributor on potential obligations of good faith in the termination of an agency agreement (ICC Rules, Ontario law).

Banking and Financial Services

- *Fir Tree Capital Opportunity Master Fund LP v SBB Treasury Oyj*
  Settling a Statement of Defence on behalf of SBB in response to a claim arising from a bondholder alleging breach of covenants contained in the terms of an EMTN Programme (with Sonia Tolaney KC and Adam Rushworth)
- Acting for various business lenders in enforcement proceedings
- *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
- Acted (unled) in various proceedings involving allegations of the mis-selling of PPI

Civil Fraud and Investigations

Breaches of fiduciary duty

- Prepared a Letter Before Claim on behalf of a litigation investment company against a former director in relation to claims alleging breach of director duties and transactions at an undervalue relating to the disposal of share capital to an employee ownership trust.
- 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 Litigation

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 a team led by Neil Kitchener KC) 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 KC 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.

Disclosure

- ***Danish Customs and Tax Administration v Solo Capital Partners & Ors (Commercial Court)***
  Acted for the Danish Customs and Tax Administration (with Jamie Goldsmith KC, Abra Bompas and James

Fox) in various applications in relation to disclosure.

Equity

- Prepared a Letter Before Claim on behalf of a litigation investment company against a former director in relation to claims alleging breach of director duties and transactions at an undervalue relating to the disposal of share capital to an employee ownership trust.
- 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 KC 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.

Group Litigation

- *Municipio de Mariana v BHP Group (UK) Ltd* – acting for BHP Group (UK) Ltd and BHP Group Limited in the US$ multi-billion group litigation arising from the Fundão dam collapse in Brazil (with a team including Daniel Toledano KC and Nicholas Sloboda KC)

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.
- ***Municipio 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.

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

- Prepared a Letter Before Claim on behalf of a litigation investment company against a former director in relation to claims alleging breach of director duties and transactions at an undervalue relating to the disposal of share capital to an employee ownership trust.
- 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.

Competition and EU Law

Abuse of Dominant Position

- Advising a Class Representative (with Laurence Rabinowitz KC and Niranjan Venkatesan KC) on the heads of damages available in a collective proceeding arising from allegations of an abuse of dominant position.

Energy and Natural Resources

- *Municipio de Mariana v BHP Group (UK) Ltd*
  Acting for BHP Group (UK) Ltd and BHP Group Limited in the US$ multi-billion group litigation arising from

the Fundão dam collapse in Brazil (with a team including Daniel Toledano KC and Nicholas Sloboda KC)

- 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 KC and Adam Rushworth) on a contractual dispute arising from a Joint Operating Agreement in relation to petroleum exploration and development activities in Central Africa.

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

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Rankings

- Leading Junior (Band 3), International Arbitration: Counsel (Legal 500)
- Rising Star, Commercial Litigation (Legal 500)
- Listed as Recommended in International Arbitration by Lexology Index
- Who's Who Legal (now Lexology Index) – Future Leader in Arbitration (2018-2025) ("Most Highly Regarded" in 2025)
- Who's Who Legal (now Lexology Index) – Thought Leader Global Elite in Arbitration (Under 45) (2023 & 2025)

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]

Professional Contributions

- Duty Scheme Advocate, Asylum Support Appeals Project – as part of his pro-bono practice Michael represents asylum seekers appealing decisions about accommodation and financial support before the First Tier Tribunal (Asylum Support)
- Faculty Member and Mentor (EMEA) of the Delos Remote Oral Advocacy Program, an advanced oral advocacy course in international arbitration
- Member of ICC Task Force on Maximizing the Probative Value of Witness Evidence. The Task Force produced its Report "The Accuracy of Fact Witness Memory in International Arbitration" in 2020.
- Michael regularly serves as a Judge in the UK rounds for the Philip C. Jessup International Law Moot Court Competition (having previously represented Canada in the International Rounds of the competition)

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)

Awards





Contact Clerks



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