

**Michael  
Orlov**  
Barrister

### Career Summary

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Michael was admitted as a solicitor in 1983 and commenced employment as a litigation lawyer and later, a construction lawyer, at Freehill Hollingdale & Page in Sydney. He was made partner in 1988 and was a member of the Commercial Litigation Group and the Engineering and Construction Group.

Michael was called to the Bar in NSW in 1995. Since then he has practiced predominantly in commercial and construction law. He has acted for and against principals, developers, contractors, design professionals and their insurers in complex commercial, contract, negligence and misleading or deceptive conduct claims arising out of a wide range of civil, industrial, mining, commercial and residential construction projects in all States and Territories. In more recent years Michael's particular area of interest and expertise has focused on claims by owners corporations and strata lot owners to recover the cost of repairs to common property in multi-storey residential and mixed use strata developments in NSW and the ACT and the circumstances in which recourse may be available under residential building works insurance policies in NSW or under the fidelity fund scheme operating in the ACT.

Since joining the Bar, Michael has done extensive pro bono work, particularly representing indigenous Australians. Between 2010 and 2013 he appeared pro bono for an indigenous group in Western Australia in various proceedings relating to intra-native title claim group disputes, disputes with the native title representative body with respect to the conduct of the native title claim, challenges to the State's attempted compulsory acquisition of native title for the purposes of facilitating the construction of an LNG processing facility at James Price Point near Broome and the validity of the Browse LNG Precinct Project Agreement between the State, Woodside, native title claimants and various other stakeholders.

Michael has a reputation for thorough preparation, mastery of detail in factually complex matters, giving pragmatic and accurate legal advice, and as an effective advocate and negotiator. He accepts briefs to appear in NSW and the ACT.

### Practice areas

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- Commercial and Contract Law
- Construction Law
- Equity and Trusts

- Professional Indemnity (builders, architects, engineers, certifiers)

### Core Capabilities:

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- Demonstrated capacity to analyse, distil and absorb large volumes of documentation and complex technical information, quickly and efficiently
- Demonstrated capacity to identify, distil and focus on the critical issues
- Demonstrated capacity to provide sophisticated risk analysis and practical, commercially useful, advice to decision makers at board and senior management level
- Demonstrated capacity to provide effective advice and guidance for the preparation of evidence by multi-disciplinary teams of experts
- Demonstrated capacity to engage with stakeholders and negotiate, implement and manage collaborative alternative dispute resolution processes in high value multi-party disputes
- Proven record of mentoring and encouraging the professional development of young lawyers

### Career History:

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- Commercial and construction barrister (Sydney, Perth and Canberra) 1995 to date
- Freehill, Hollingdale & Page (Sydney)  
Commercial Litigation and Engineering & Construction Groups  
Partner 1988 to 1994  
Solicitor 1983 to 1988
- Devilling for BW Collins (barrister) 1982
- Hotel Broker, Freeman Real Estate, Cairns, Qld 1980 to 1981
- Wedding and function photographer (Sydney) 1976 to 1979
- Underground miner, Gunpowder Copper Ltd, Qld 1975

### Qualifications:

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- Bachelor of Arts and Bachelor of Laws – University of New South Wales, 1982
- Admitted as a solicitor in 1983 (NSW and subsequently in all States and Territories)
- Admitted to the Bar in 1995
- Completed Resolution Institute mediation training in March 2019

### Sample cases include:

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- *Commissioner for Social Housing v Bellerive Homes Pty Ltd and Ors*: representing the structural engineer in a claim for damages in the Supreme Court of the ACT arising out of alleged defective design and construction of a multi-unit social housing development in Canberra - ongoing
- *The Owners – Units Plan No. 3115 v The Trustees of the Master Builders Fidelity Fund* [2019] FCA 115: representing the owners corporation and unit owners of the Elara

Apartments in Canberra in proceedings in the Federal Court claiming an entitlement to be indemnified under the ACT Master Builders Association Fidelity Fund Scheme in respect of the cost of rectifying defective residential building work following the insolvency of the builder – involving difficult questions of interpretation of the *Building Act 2004* (ACT), various other legislative instruments, the Fidelity Scheme Trust Deed and certificates issued under the Fidelity Scheme – currently awaiting decision on appeal to the Full Court

- *Lang and Anor v Helkeast Pty Ltd and Anor*: representing the plaintiff unit owners in a class action in the Supreme Court of the ACT against the builder and developer of a multi-storey residential apartment complex, claiming damages for breach of contract and breach of statutory warranty – ongoing
- *Harrison ats Strongbuild Pty Ltd (Subject to Deed of Company Arrangement)*: representing the home owners in proceedings in the District Court of NSW by a builder claiming payment for work done – ongoing
- *Duggan ats Reardon*: representing the defendant in proceedings in the District Court of NSW arising out of a failed scheme for the importation of fertiliser from China - ongoing
- *Cervo v Rashidi*: representing the landlord in proceedings under the *Leases (Commercial and Retail) Act 2001* (ACT) in the Magistrates Court of the ACT - ongoing
- *The Owners - Units Plan No. 3899 v Project Coordination (Australia) Pty Ltd*: representing the owners and owners corporation in proceedings in the Supreme Court of the ACT against the builder, claiming damages for breach of statutory warranty under the *Building Act 2004* (ACT) - ongoing
- *The Owners - Units Plan No. 3664 v Meier Constructions Pty Ltd*: representing the owners corporation in proceedings in the Supreme Court of the ACT against the builder, claiming damages for breach of statutory warranty under the *Building Act 2004* (ACT) – currently stayed
- *Reed Constructions Australia Pty Ltd (In Liq) v State of NSW*: representing the liquidator of a construction company in proceedings in the Supreme Court of NSW (T&C List) claiming damages for loss suffered as a result of securities being called upon in circumstances where the contractor claims that the State had no right to do so - ongoing
- *Higgins Coatings Pty Ltd and Anor ats The Owners – Strata Plan No 51360; Higgins Coatings Pty Ltd ats The Owners – Strata Plan 53188*: representing a painting contractor in proceedings in the Supreme Court of NSW (T&C List) by the owners corporations of a multi-tower residential development claiming damages for defective work under the *Home Building Act 1989* (NSW) – settled at mediation
- *The Owners – Units Plan No. 3865 and Ors v Meier Constructions Pty Ltd*: representing the owners and owners corporation in proceedings in the Supreme Court of the ACT against the builder’s PI insurer, claiming damages for breach of statutory warranty under the *Building Act 2004* (ACT) - ongoing
- *Lippmann Partnership Pty Ltd and ABC Consultants Pty Ltd ats Camden Council*: representing an engineer and architect in proceedings in the Supreme Court of NSW (T&C

List) by a council claiming damages arising out of alleged defective design of a municipal swimming pool complex - ongoing

- *Cervo v Kingsley's Pty Ltd* [2018] ACTSC 179: representing the appellant landlord in proceedings under the *Leases (Commercial and Retail) Act 2001*- appeal from Magistrate's decision dismissing proceedings for damages for breach of lease on the grounds of *res judicata* - settled following the successful determination of the appeal
- *Butler Winbi Management Pty Ltd v Master Design Builders (Vic) Pty Ltd and Anor*: representing the strata manager in proceedings in the Magistrates Court of Victoria concerning the validity of strata by-laws relating to payment of fees for the use and maintenance of the common property of a water-skiing holiday resort
- *Capital Insight Pty Ltd and Ors vs NSW Land and Housing Corporation*: representing the project management firm in multi-party proceedings brought by the NSW Land and Housing Corporation in the Supreme Court of NSW (T&C List) claiming substantial damages arising out of alleged defective design and construction of ten multi-unit residential developments in Moree – settled prior to hearing
- *Wright v Mackenzie Architects Pty Ltd*: representing the plaintiff home owners in an action in the Supreme Court of NSW (T&C List) against an architect for recovery, under the second limb of *Barnes v Addy*, of moneys provided to the firm on trust for the purpose of meeting the cost of construction of alterations and additions to a luxury home – settled during the hearing
- *Flowpex Piping Systems Pty Ltd v Scheirs* – representing the plaintiff in a misleading and deceptive conduct claim in the Federal Court against an expert who issued a report condemning an industrial product – settled prior to hearing
- *Canberra Childcare Pty Ltd v 11 Cessnock St (ACT) Pty Ltd*: representing the tenant in several commercial leasing disputes in the Federal Court and Supreme Court of the ACT – settled at mediation
- *Alcazar-Stevens v Stevens* [2017] ACTCA 12: representing the appellant in an application involving a question of the standing of a relative to bring a claim for compensation under s 50 of the *Powers of Attorney Act 2006* (ACT) against the donee of an enduring power of attorney
- *St Hilliers Property Pty Ltd v ACT Projects Pty Ltd and Simon Wilson* [2017] ACTSC 177 – representing the adjudicator in proceedings claiming recovery of fees paid for an invalid adjudication determination
- *Council of the Law Society of the ACT v Practitioner D3* [2017] ACAT 9; reversed on appeal to the Supreme Court in *Council of the Law Society of the ACT v Legal Practitioner D3* [2018] ACTSC 45 (2018) 331 FLR 132: representing pro bono the respondent legal practitioner in various applications for dismissal of charges of professional misconduct on the grounds that the Law Society and Tribunal lacked jurisdiction to deal with the matter – involving difficult issues of statutory construction. See also *Council of the Law Society of the ACT v The Legal Practitioner D3* [2018] ACTSC 95; *Council of the Law Society of the ACT v Legal Practitioner D3* [2017] ACAT 9;

- *Practitioner P1 v ACT Civil and Administrative Tribunal* [2017] ACTSC 173; 322 FLR 169: representing the respondent solicitor in an application by the Council for an order under s 424 of the *Legal Profession Act* seeking to excuse non-compliance with s 395(2) of the LPA in connection with the commencement of disciplinary proceedings against the practitioner outside the statutory limitation period – successful application for judicial review of ACAT decision involving difficult issues of statutory construction. See also *Council of the Law Society of the ACT v Legal Practitioner P1* [2016] ACAT 66
- *Damiano v The Owners – Units Plan No 584* [2017] ACAT 63 – representing owners corporation in ACAT proceedings concerning a strata dispute with a commercial lot owner
- *Australian National Maritime Museum v Crawford Architects Pty Ltd*: representing the architect in a claim for damages brought in the Supreme Court of NSW (T&C List) arising out of alleged negligent design of fire safety measures - settled at mediation.
- *Astell v Australian Capital Territory* [2016] ACTSC 238; 11 ACTLR 273: representing the plaintiff (former) home owner in a statutory claim for damages against the Territory under s 155 of the *Land Titles Act 1925* (ACT) for deprivation of land as a result of fraud by an unknown person
- *Gardez Nominees Pty Ltd v NSW Self Insurance Corporation* [2016] NSWSC 532: representing the defendant home warranty insurer in a determination of separate questions concerning the interpretation of amendments to the *Home Building Act 1989* (NSW) inserted to overcome the effect of the Court of Appeal's decision in *Ace Woollahra Pty Ltd v The Owners of Strata Plan 61424* (2010) 77 NSWLR 613.
- *McElwaine v Owners Corporation SP 75975* [2016] NSWSC 1589, 18 BPR 36437; reversed on appeal [2017] NSWCA 239: representing the plaintiff unit owner in proceedings for the determination of a separate question concerning whether a body corporate is capable of being held liable in nuisance to an individual lot owner following the decision of the Court of Appeal in *The Owners of Strata Plan 50276 v Thoo* (2013) 17 BPR 33,789 – involving issues of statutory construction
- *Barton Property Partnership No 2 v Foote* [2015] ACTSC 204, *Foote v Barton Property Partnership No 2* [2014] ACTSC 330; [2015] ACTCA 53: representing one of the partners in a partnership dispute and various associated commercial disputes
- *Picos v Servcorp Ltd* [2015] FCA 494; [2015] FCA 344; [2015] FCA 343; [2014] FCA 922; *Picos v Hyatt Hotel Canberra* [2015] FCA 262; [2015] FCA 101 – appearing for various parties in proceedings brought by litigant in person – all proceedings were eventually dismissed
- *Lend Lease Project Management & Construction (Australia) Pty Ltd v Kellogg Brown & Root Pty Ltd*: representing an engineering design firm (with Greenwood SC) in proceedings brought by the main contractor in the NSW Supreme Court (T&C List) claiming damages for alleged misleading and deceptive conduct, breach of contract and negligence arising out of a subcontract for the detailed design of a Commonwealth munitions facility – settled at mediation
- *Dealer Support Services Pty Ltd v MTAA House Pty Ltd: In re MTAA House Pty Ltd as*

*Trustee for MTAA Unit Trust* [2014] ACTSC 236: representing the trustee in an application for judicial advice under s. 63 of the Trustee Act 1925 (ACT)

- representing the Dutch designers of a desalination plant on the Burrup Peninsula in WA in the mediation of claims and counterclaims arising out of alleged deficiencies in the performance of the plant – settled at mediation
- *Roe v State of Western Australia and Woodside Ltd*: representing a Traditional Owner (pro bono with Collins QC) in proceedings against the State of Western Australia and Woodside Ltd in WA Supreme Court challenging the validity of the Browse LNG Precinct Project Agreement and the power of the State of WA to compulsorily acquire native title required for the Browse LNG Precinct pursuant to replacement compulsory acquisition notices issued following the decision in *McKenzie v Minister for Lands* [2011] WASC 335 – discontinued following the announcement of the decision by Woodside Energy Ltd not to proceed with the proposed development
- *McKenzie v Minister for Lands* [2011] WASC 335; (2011) 45 WAR 1; (2011) 256 FLR 1; (2011) 187 LGERA 1: representing Traditional Owners (pro bono with Collins QC) in proceedings in WA Supreme Court challenging the validity of the State of Western Australia's compulsory acquisition notices issued in connection with the Browse LNG Precinct on the Dampier Peninsula
- *Rita Augustine v The State of Western Australia* [2013] FCA 338; *Roe and Anor v The State of Western Australia* [2011] FCA 421; *Roe v State of Western Australia (No. 2)* [2011] FCA 102; *Roe and Anor v The State of Western Australia* [2010] FCA 1436; *Roe v Kimberley Land Council Aboriginal Corporation* [2010] FCA 809; (2010) 215 FCR 131: representing the Goolarabooloo people (pro bono) in various proceedings in the Federal Court between 2010 and 2013 arising out of disputes within the Goolarabooloo Jabirr Jabirr native title claim group and the Kimberley Land Council
- representing a subcontractor in proceedings in the Supreme Court of WA in connection with disputes arising out of a bulk earthworks contract for a mining project – settled at mediation
- representing the former manager of a retail and wholesale business in proceedings brought by the owners in the ACT Supreme Court claiming damages and other equitable relief for alleged fraudulent misappropriation of funds from a business – settled prior to hearing
- representing the lessee in proceedings against the landlord in the Federal Court, claiming damages and other relief for alleged breaches of the Trade Practices Act in connection with a commercial lease – settled prior to hearing
- representing the lender in proceedings brought against a firm of valuers in the NSW Supreme Court alleging negligence and misleading and deceptive conduct in connection with valuations for mortgage purposes of properties on the Gold Coast and northern NSW – settled prior to hearing
- *Aquagenics Pty Ltd ats Break O'Day Council*: representing the contractor in arbitration proceedings brought by local water and sewerage authority claiming damages for breach

of contract arising out of the defective design and construction of a sewerage treatment plant in Tasmania

- representing the contractor in proceedings brought by the developer in ACT Supreme Court alleging fraud and claiming recovery of alleged overpayments on a commercial building contract – settled prior to hearing
- representing the lender in proceedings in the Supreme Court of Victoria against the borrower claiming damages in connection with an unenforceable loan allegedly procured by the borrower's fraud – settled at mediation
- representing the developer in proceedings brought by a golf course designer in the Supreme Court of Queensland claiming damages for breach of contract arising out of the cancellation of a contract for the design of a resort golf course near Gerringong – settled at mediation
- representing the purchasers/investors in proceedings in the ACT Supreme Court claiming damages for negligence and misleading and deceptive conduct by their solicitor and the vendor's agent in connection with the sale and purchase of unit investment properties in NSW – settled at mediation
- representing the taxpayer in ACAT proceedings against the ACT Commissioner for Revenue challenging assessments of payroll tax – settled prior to hearing
- *Creative Building Services Pty Ltd v Jolene Investments Pty Ltd* [2013] NSWSC 391: representing the contractor in proceedings in NSW Supreme Court claiming recovery of payments due under a building contract and a defending a cross claim by building owner for damages for defective work
- *SDR Australia Pty Ltd v Leighton Contractors Pty Ltd* [2012] WASC 434: representing the subcontractor in proceedings against the main contractor in the WA Supreme Court claiming payment for work done on a quantum meruit basis and defending cross claims for breach of contract and misleading or deceptive conduct
- *Southern Cross Constructions (NSW) Pty Limited (Administrators Appointed) v Bucasia Pty Limited* [2012] NSWSC 1419: representing the administrator of a failed construction company in proceedings concerning the principal's right to have recourse to security.
- representing the owner of a commercial laundry in Perth (with Greenwood SC) in proceedings brought by the equipment supplier in the NSW Supreme Court claiming the balance of the contract price and damages for breach of an agreement for the design, supply and installation of a fully automated linen sorting, washing and ironing system, including cross claim by the laundry owner for abatement or extinguishment of the price on the due to defects in the system – settled at the hearing
- *Warren v Dickson* [2011] NSWSC 79: representing a firm of solicitors in proceedings in NSW Supreme Court involving claims and counter claims alleging various breaches of a consultancy agreement between the firm and its former senior partner
- *North Steyne Investments Pty Ltd v Rapone*: representing the developer in proceedings brought by a purchaser of a unit off-the-plan in NSW Supreme Court claiming equitable relief in connection with a purported rescission of the contract in reliance on a sunset

clause – settled at the hearing

- *Cleary Bros Pty Ltd v Waste Recycling and Processing Corporation*: representing a waste management contractor (with Collins QC) in proceedings in NSW Supreme Court against the Waste Recycling and Processing Corporation involving claims and counterclaims arising out of the operation of a large landfill and waste management and disposal centre – settled prior to hearing
- *Ace Woollahra Pty Ltd v The Owners of Strata Plan 61424* [2010] NSWCA 101, 77 NSWLR 613; *The Owners of Strata Plan 61424 v Reed Constructions Pty Ltd* [2009] NSWSC 692: representing the builder/developer in proceedings in the NSW Court of Appeal concerning the proper construction of the warranty provisions of the *Home Building Act 1989* (NSW)
- *Canberra Residential Developments Pty Ltd v Brendas (No 5)* [2009] FCA 34; 69 ACSR 435: representing a property joint venture company in proceedings brought against a former director in the Federal Court, claiming damages for breach of fiduciary duties in connection with the purchase of a development site
- *Gordon Martin Pty Ltd v State Rail Authority of NSW* [2009] NSWCA 287; [2008] NSWSC 343; 53 MVR 474: representing the State Rail Authority in proceedings in the NSW Court of Appeal concerning a property damage claim arising out of a collision between a truck and a train at a level crossing
- *McManus RE Pty Ltd v Ward* [2009] NSWSC 440; 74 NSWLR 662: representing the vendor in proceedings brought by the purchaser in the NSW Supreme Court claiming recovery of deposit paid pending exchange of contracts for purchase of an interest in a hotel
- *Campbell v CJ Cordony & Sons Pty Ltd* [2009] NSWSC 63: representing the home owners in proceedings against the builder in the NSW Supreme Court claiming damages for defective work
- *Public Transport Authority of Western Australia v BGE Pty Ltd and Ors*: representing the piling design contractor in proceedings in the WA Supreme Court arising out of damage to a railway bridge over the Swan River caused by unexpected settlement and lateral movement of bridge abutment – settled at mediation

### • Personal details

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- Michael's interests outside work include the theatre, reading, fine dining, cooking, surfing, skiing, fishing, 4-wheel driving and remote outback travel.

### • Social media

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