

GREENS LIST

BARRISTERS



TOBY MULLEN

BAR ROLL: 2010 | ADMITTED: 2006

Toby has a broad commercial practice, with particular experience in commercial disputes, including contractual, equitable, projects/infrastructure and construction, Australian Consumer Law, professional negligence and corporations matters. Toby also has extensive defamation experience.

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CHAMBERS: Chancery Chambers

EXPERTISE

Alternative Dispute Resolution | Appellate | Banking & Finance | Bankruptcy Law & Insolvency Law | Building Law & Construction Law | Commercial Law | Common Law | Competition Law & Consumer Law | Corporations Law & Securities Law | Defamation | Equity & Trusts Law | Industrial Relations Law & Employment Law | Property Law

PROFILE

Toby has a strong commercial practice, with significant experience in contractual, equitable, projects/infrastructure/construction, ACL, professional negligence and corporations' matters.

He also has extensive defamation experience, regularly advising and appearing for both plaintiffs and defendants in defamation and related actions.

Toby accepts briefs as sole counsel, as well as junior counsel in major litigation and arbitrations.

He regularly advises and appears in interlocutory applications, trials (including jury trials in defamation actions), final hearings and appeals, most regularly in the Supreme Court of Victoria but also in the County Court, the Court of Appeal, the Federal Court, the Supreme Courts of other states, and in certain VCAT lists.

He also advises and appears as counsel in arbitrations (both domestic and international, often projects related), and before sporting tribunals, most regularly in Super Rugby judicial hearings for the Melbourne

Rebels.

Toby has completed a Masters of Commercial Law, been involved in a variety of law reform submissions (most recently, as part of each of the Victorian Bar's working groups on defamation law reform) and presented numerous CLEs on various areas of law and practice.

Prior to coming to the Bar, Toby was a solicitor at Clayton Utz (Melbourne and Sydney) and the Associate to the Hon Justice Neave AO at the Victorian Court of Appeal.

A sample of the types of matters Toby has recently acted in are:

- Acting for companies/directors/shareholders in various different Supreme/Federal proceedings involving allegations of breaches of fiduciary/statutory duties, breach of contract, misleading or deceptive conduct, oppression and/or fraud (some ongoing, many settled, some judgments eg. *Sacca v El Saafin & Anor* [2021] FCA 383; [2021] FCA 987; *Gregorich v Khouri & Ors* [2019] VSC 79 and [2020] VSC 5)
- Acting for a contractor in various domestic arbitrations, including related proceedings for enforcement of the awards (arbitrations private but see, for example, enforcement proceedings in Court: *Winslow Constructors Pty Ltd v Head, Transport for Victoria* [2020] VSC 790; (2021) 64 VR 200 (costs));
- Acting for a joint venture head contractor in various streams of an ICC arbitration arising out of the design and construction of the [Icthus LNG project](#), involving numerous significant variations, delay and disruption claims under an EPC contract;
- Acting for insureds in professional negligence and related actions (for example, acting for a geotechnical consultancy in the lengthy multiparty Vaughan Constructions trial in the Supreme Court, and for architects, surveyors and fire engineers in various combustible cladding claims in the Supreme and County Courts);
- Acting for various plaintiffs and defendants in the Commercial Division of the County Court, often involving business disputes, property developments and/or sale of land, alleged breaches of contract, misleading or deceptive conduct, or related causes of action, as well as some mortgagee or unconscionable conduct matters;
- Acting for both plaintiffs and defendants in numerous defamation claims, including some recent cases raising novel issues: eg. *Srecko and David Lorbek v Peter King* [2022] VSC 218; [2023] VSCA 111 (first successful qualified privilege defence for a Google review in Australia), *Wilks v Qu (Ruling)* [2022] VCC 620 (first s10A(5) serious harm ruling, with [extensive press coverage](#)), and suing Google over [fake defamatory reviews](#) written by others as part of a malicious campaign); high profile cases (eg. *Mirabella v Price & Anor* [2018] VCC 650) and various appeals (*Charan v Nationwide News Pty Ltd* [2019] VSCA 36; *Fenn & Anor v ABC* [2018] VSCA 166; [2017] VSC 486); *Qu v Wilks* [2023] VSCA 198; and
- Various retail leases or large domestic building disputes in the VCAT, such as acting for builders/engineers in complex multi-party claims, or tenants in rent review or demolition clause disputes (most ultimately settled but some judgments eg. *Owners Corporation & Ors v Shangri-La Construction & Anor* [2023] VCC 222; *Owners Corporation 1 Plan No. P5707553K v Shangri-La*

Construction Pty Ltd (No 3) (Building and Property) [\[2022\] VCAT 1385](#); Di Dio Nominees Pty Ltd v JVR Enterprises (Vic) Pty Ltd (Building and Property) [\[2018\] VCAT 772](#); Roach v Nava Homes Pty Ltd (Building and Property) [\[2016\] VCAT 1861](#))

Memberships & Committees

[Victorian Bar](#)

To get in touch with Toby Mullen | or for more information please contact the Clerk on:

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