



MARTIN JEFFERY SMITH

Seven Wentworth Selborne Chambers
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PROFESSIONAL

2011 - Current

Barrister

Seven Wentworth Selborne Chambers, Sydney (floor member since 2015)

Read on Eleven Wentworth Chambers with Hon Justice Kate Williams and Matthew Darke SC

Practice areas

- Commercial law including contractual disputes, corporations law and insolvency shareholder disputes, , bankruptcy, property, trade practices (in particular, misleading or deceptive conduct claims) and restraint of trade
- Construction and infrastructure disputes
- Insurance (coverage and liability issues)
- Commonwealth administrative law

Much of my practice involves dealing with experts in various disciplines. Based on this experience, I have been briefed to act as facilitator in expert conclaves.

Significant cases and areas of practice

- Presently acting for Infrastructure NSW in relation to a large development dispute (instructed by King and Wood Mallesons)
- Presently acted for a large international builder in relation to a community building project (instructed by Pinsent Masons)
- Presently acting for the Australin arm of a large PRC building company in proceedings concerning a large commercial development (instructed by Pinsent Masons)

- Presently acting for a builder in a claim against an engineer arising in relation to a large residential tower (instructed by Minter Ellison)
- Presently acting for importer of a building products in relation to a claim that the products supplied were defective (instructed by Gilbert Tobin)
- Presently acting for a large engineering joint venture in multibillion dollar proceedings in the Federal Court arising out of the construction of an LNG plant in Darwin. An 11-week trial took place in mid-2024 (the proceedings are ongoing). Although I was led, I ran parts of the case.

I previously acted in related arbitral proceeding.

Examples of interlocutory hearings in which I appeared (often unled, including against silk):

JKC Australia LNG Pty Ltd v AkzoNobel NV (No 7) [2024] FCA 72; *JKC Australia LNG Pty Ltd v AkzoNobel NV (No 6)* [2023] FCA 1616; *JKC Australia LNG Pty Ltd v AkzoNobel NV (No 5)* [2023] FCA 1248; *INPEX Operations Australia Pty Ltd v AkzoNobel NV* [2023] FCA 38; *JKC Australia LNG Pty Ltd v AkzoNobel NV (No 4)* [2023] FCA 456; *JKC Australia LNG Pty Ltd v AkzoNobel NV (No 3)* [2021] FCA 1217; *JKC Australia LNG Pty Ltd v AkzoNobel NV (No 4)* [2023] FCA 456; *JKC Australia LNG Pty Ltd v AkzoNobel NV* [2019] FCA 1032

- Acted for the builder (Icon) in the Opal Tower class action and other proceedings relating to the Opal Tower building. I was the sole junior counsel responsible for coordinating the defence of three sets of proceedings, in which claims totalling over \$100 million were made. Examples of interlocutory hearings in which I appeared; *Williamson v Sydney Olympic Park Authority & Ors* [2022] NSWSC 1618; *Icon Co (NSW) Pty Ltd v Australia Avenue Developments Pty Ltd* [2020] NSWSC 178; *Owners of Strata Plan No 97315 v Icon Co (NSW) Pty Ltd* [2023] NSWCA 303; *Owners - Strata Plan No 97315 v Icon Co (NSW) Pty Ltd* [2023] NSWSC 363; *The Owners - Strata Plan No 97315 v Icon Co (NSW) Pty Ltd (No 2)* [2024] NSWSC 19 (costs)

I also appeared unled (against silk) in a high value reference, resulting in a successful outcome for Icon (which was upheld by the Court of Appeal)

- Regularly acts in construction related disputes (including disputes relating to performance bonds) and security of payments disputes (see for instance, *Builtcom Construction Pty Ltd v VSD Investments Pty Ltd* [2025] NSWSC 25)
- Regularly acts for engineers and certifiers in relation to professional negligence actions
- Acting for external administrators and creditors in various external administrations. I appear in trials as well as in interlocutory applications (for instance, *Walker (Administrator), in the matter of Childcare Development Opportunities Pty Ltd* [2024] FCA 1133)
- Successfully defended a large international engineering firm in a professional negligence and misleading or deceptive conduct action brought against it. The amount claimed was in excess of \$50 million and it occupied six weeks of hearing time: *Downer EDI Rail Pty Ltd v John Holland Pty Ltd and Ors* (No 4) [2018] NSWSC 326
- *L & A Fazzini Pty Ltd v Amaca Pty Ltd* [2021] NSWCA 313 (restitution)
- *Northern Sydney Local Health District v Amaca Pty Ltd* (under NSW administered winding up) [2017] NSWCA 251; insurance; double compensation
- *SZTAL v Minister for Immigration and Border Protection* (2017) 262 CLR 362 (High Court of Australia) – statutory construction; interaction between the Convention against Torture and the Migration Act (successful, led by the Commonwealth Solicitor-General)
- Appeared for a law firm in the Royal Commission into Institutional Responses to Child Sexual Abuse
- *CGU Insurance Limited v AAI Limited* [2016] NSWCA 335 – insurance, statutory interpretation
- *Lock v Australian Securities and Investments Commission* (2016) 111 ACSR 318 – class action involving allegations of negligence; misfeasance in public office (for ASIC)
- Various professional negligence actions against solicitors (briefed by insurers)

- Acted for the successful defendants in a three-week confidential information trial. Indemnity costs were awarded in the defendants' favour
- In my earlier years at the Bar, I regularly appeared for the Minister for Immigration in judicial and merits review proceedings (and associated appeals) arising from migration decisions. I appeared in over 50 matters in the Federal Circuit Court and Federal Court, sometimes against silk. I appeared with Commonwealth Solicitor-General in the High Court

I also appeared in the Full Federal Court, including as sole counsel: see *SZWBH v Minister for Immigration and Border Protection* (2015) 229 FCR 317; *Shrestha v Migration Review Tribunal* (2015) 229 FCR 301 (test cases dealing with how first instance judges should deal with self-represented litigants); *Inderjit v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* (2019) 272 FCR 528; *SZRTN v Minister for Immigration and Border Protection* [2014] FCA 303; 141 ALD 395

2008-2009

Associate, Federal Court of Australia

Associate to Justice Moore

2006 – 2008

Solicitor

Freehills (now Herbert Smith Freehills), Sydney

PUBLICATIONS

- Case note on *Michael Wilson & Partners Ltd v Nicholls* [2011] HCA 48, *Bar News*, Autumn 2012
- “Illogicality and administrative decision-making after *Minister for Immigration and Citizenship v SZMDS*” (2011) 18 *Australian Journal of Administrative Law* 32
- “Judicial Review and Jurisdictional Errors: The recent jurisprudence of the High Court of Australia” (2010) 18 *Australian Journal of Administrative Law* 138
- Case note on *Wilson v State Rail Authority* [2010] NSWSC 198 in (2010) 101 *Precedent*
- Contributor to “Australia’s Right to Know”, Report of the Independent Audit into the State of Free Speech in Australia

