

# JULIAN E O'SULLIVAN

BA LLB (Syd)

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## Education & Qualifications

- 1979 – 88** Barker College – Higher School Certificate
- 1989 – 1994** University of Sydney – BA, LLB
- 1995 – 1996** College of Law, St Leonards – Practical Legal Training
- 1996 – 1997** Securities Institute of Australia – selected subjects in Graduate Diploma in Applied Finance & Investment including accounting, valuation, foreign exchange trading, futures trading & financial markets
- 8 Mar 1996** Admitted as a Legal Practitioner of the Supreme Court of New South Wales
- 24 Mar 2003** Admitted to practice as a barrister in the Supreme Court of New South Wales
- 13 Aug 2004** Admitted to practice as a barrister in the High Court of Australia
- May 2015 -** Currently undertaking CIARB Diploma in International Commercial Arbitration
- Nov 2015** NSW Bar Association accredited “BarADR” arbitrator

## Career Summary

- Mar 2003 - Barrister at Law – 5 & 13 Wentworth Chambers**
- Main areas of practice include aviation, banking & finance, bankruptcy, contracts, corporations, directors’ duties, equity, fraud, insolvency, intellectual property, IT, telecommunications & cyber-crime, professional negligence & trade practices

See attached list of selected cases

### *Aviation*

*Onus v Telstra Corporation Ltd* [2010] NSWSC 33;  
*Onus v Telstra Corporation Ltd* [2010] NSWSC 1146:  
Successfully obtained interlocutory and final injunctions, restraining Telstra from erecting a telecommunications tower in the vicinity of an airport

Wylie & Ors v Tarrison Pty Ltd & Ors [2007] NSWCA 95: Successfully defended appeal brought by purchaser against vendor of Rose Bay float plane fleet

*Confidential matter*: Negotiating successful claim for compensation to relatives arising out of fatal pilot training accident

### ***Corporations & Directors' Duties***

Appeared for ASIC (led by Macfarlan QC JA, Durack SC & Beamont SC) in its claim against the former directors of One.Tel Ltd for \$92M compensation & civil penalties, including numerous interlocutory decisions regarding evidentiary & procedural issues:

ASIC v Rich [2004] NSWSC 923

ASIC v Rich & Ors [2004] NSWSC 934

ASIC v Rich & Ors [2004] NSWSC 951

ASIC v Rich & Ors [2004] NSWSC 963

ASIC v Rich & Ors [2004] NSWSC 969

ASIC v Rich [2004] NSWSC 970

ASIC v Rich [2004] NSWSC 1062: 213 ALR 338, 51 ACSR 363, [2005] ALMD 2778

ASIC v Rich [2004] NSWSC 1089

ASIC v Rich & Ors [2004] NSWSC 1090

ASIC v Rich & Ors [2004] NSWSC 1104

ASIC v Rich & Ors [2005] NSWSC 62 188 FLR 416, 220 ALR 324, 52 ACSR 374, [2005] NSWSC 62, [2005] ALMD 4014

ASIC v Rich [2005] NSWSC 149 190 FLR 242, 3 ABC(NS) 390, 53 ACSR 110, 23 ACLC 430, [2005] NSWSC 149, [2005] ALMD 4913

ASIC v Rich & Ors [2005] NSWSC 256

ASIC v Rich [2005] NSWSC 296

ASIC v Rich [2005] NSWSC 417 191 FLR 385, 216 ALR 320, 53 ACSR 752, 23 ACLC 838, [2005] NSWSC 417, [2005] ALMD 5431

### ***Insolvency***

Timberland v Abercrombie [2012] NSWSC 379: Resisted application to set aside statutory demand

Challenge Home Loans v Etienne Lawyers [2007] NSWSC 1145: Resisted application to set aside a statutory demand

Hunter Wholesale Confectioners Pty Ltd v Sweeties Confectionery Pty Ltd [2010] NSWSC 1257: Defending a claim by a liquidator to recover an unfair preference & cross-claim for bailment & conversion of goods

Priority One Home Loans & Anor v Amplitude Investments Pty Ltd & Ors [2007] NSWSC 845: Obtained order removing receivers & managers

Aztech Science Pty Ltd v Daevys [2005] FCA 1828: Obtained leave to continue proceedings against a bankrupt

### ***IT / Telecoms***

Sites N Stores Pty Ltd v Whirlpool.Net.Au Pty Ltd [2015] FCA 1474: Obtained preliminary discovery to identify the authors of actionable posts published on a product review website, publicised in:

<http://www.news.com.au/national/breaking-news/forum-ordered-to-hand-over-user-details/news-story/19e719e469e9af9c1578dbca12c9c817>

<http://y7-aap-yahoopartner.tumblr.com/post/135744537474/forum-ordered-to-hand-over-user-details>

<http://www.9news.com.au/national/2015/12/23/12/06/online-forum-host-to-supply-details>

<http://www.brunchnews.com/yahoo-7-news/general-news/online-forum-host-to-supply-details-aap-3961389>

AS v Murray [2013] NSWSC 733: Obtained preliminary discovery, Anton Piller & suppression orders, damages & exemplary damages for the tort of intimidation against cyber extortionist, widely publicised in:

University of NSW Faculty of Law tort reading list

NSW Bar Association practice update 33

[www.nswbar.asn.au/circulars/2013/jun/clpu33.pdf](http://www.nswbar.asn.au/circulars/2013/jun/clpu33.pdf)

“Further perils of Online Dating”

<http://www.lexology.com/library/detail.aspx?g=dab4e21d-4076-4709-9ee7-c4e300e11cad>

“Tort of Intimidation in Internet Extortion Case”

<http://www.kellyco.com.au/library/TortofIntimidationininternetextortioncase.pdf>

“Benchmark” AR Connolly & Company website

[http://www.arconolly.com.au/benchmark/composite/benchmark\\_13-06-2013\\_insurance\\_banking\\_construction\\_government.pdf](http://www.arconolly.com.au/benchmark/composite/benchmark_13-06-2013_insurance_banking_construction_government.pdf)

### ***Intellectual Property***

Recommended by Doyle's Guide (2010) as intellectual property counsel

*Qualify Me Pty Ltd v Get Qualified Australia Pty Ltd* [2016] FCA 192: Obtained order striking out substantial part of Statement of Claim alleging infringement of trademark, passing off and deceptive and misleading conduct in relation to Google Adwords

*Mont Adventure Equipment Pty Limited v Phoenix Leisure Group Pty Limited* [2008] FCA 1476; *Mont Adventure Equipment Pty Ltd v Phoenix Leisure Group Pty Ltd* [2009] FCAFC 84, 176 FCR 575, 81 IPR 505, [2009] AIPC 92-346, [2009] FCAFC 84 [2009] ALMD 5635 (led by Stephen Burley SC): Won appeal concerning the "grace period" for prior disclosure of patents

*Tramanco Pty Ltd v BPW Transpec Pty Ltd* [2009] FCA 509: Obtained *quia timet* interlocutory injunction to restrain infringement of a patent

*Fogin v Lacey* [2003] FCAFC 147 (led by A Bowne SC): Appeared for respondent in appeal concerning design infringement of the "Orgasmatron" head massager

### ***Mining & Resources***

Legal counsel on retainer to Javelin Minerals Inc & Azimuth Resources Ltd (subsequently acquired by Troy Resources Ltd for \$188M), advising in relation to ASX & TSX listings, mineral exploration & mining licenses, employment agreements & equipment acquisitions in Guyana

### ***Practice & Procedure***

*Maecher Pictureproducts Pty Ltd v R E Davison Pty Ltd* [2013] NSWSC 352: Obtained order for security for costs

*Reeve v Aqualast Pty Ltd* [2012] FCA 679: Obtained orders for preliminary discovery

*Green v AMP Financial Planning Pty Ltd* [2007] NSWSC 235: Resisted application for security for costs

Wily v Terra Cresta Business Solutions Pty Ltd & Ors [2006] NSWSC 949: Excluded hearsay evidence in interlocutory proceedings where maker of statement was not sufficiently identified

### ***Trade Practices & Competition***

*eBay*: Full time retainer to eBay for 9 months in 2008 advising in relation to competition issues arising under Pt IV of the *Trade Practices Act 1974*

### ***Equity***

Fuentes v Bondi Beachside Pty Ltd [2016] NSWSC 531: Obtained injunction for specific performance of contract for sale of land

Josip Duic v Emil Duic [2012] NSWSC 76; Duic v Duic [2013] NSWCA 42: Successful appeal resisting claim for equitable interest in land, reversing decision at first instance

Anna Katherine Szozda & Ors v NSW Trustee & Guardian & Ors [2012] NSWSC 194: Resisted application to extend the operation of caveats on the basis of alleged equitable interest in land

Kelly v Kelly [2007] NSWSC 1076: Resisted application for sale of land where estate was incompletely administered

### ***Constitutional***

Ashjal Pty Ltd -v- Elders Toepfer Grain Pty Ltd [2012] NSWSC 545; Ashjal Pty Ltd v Alfred Toepfer International (Australia) Pty Ltd [2012] NSWSC 1306 (led by Francis Douglas QC): Constitutional challenge to validity of *Commercial Arbitration Act 2010* (NSW), widely publicised in:

ThomsonReuters: “International arbitration in Australia: 2011/2012 in review” by Albert Monichino SC & Alex Fawke

[http://barristers.com.au/wp-content/uploads/2013/05/International-arbitration-in-Australia-2011\\_2012.pdf](http://barristers.com.au/wp-content/uploads/2013/05/International-arbitration-in-Australia-2011_2012.pdf)

LexisNexis Legal Newsroom

<http://www.lexisnexis.com/legalnewsroom/mealeys/b/newsheadlines/default.aspx?keyword=international%20law&pi25564=2>

International Arbitration website

[http://international-arbitration-attorney.com/ashjal-pty-ltd-v-alfred-toepfer-international-australia-pty-ltd-supreme-court-of-new-south-wales-equity-division-commercial-arbitration-list-26-october-2012-a-contribution-by-the-ita-board-of/#.UIJn\\_iTrySo](http://international-arbitration-attorney.com/ashjal-pty-ltd-v-alfred-toepfer-international-australia-pty-ltd-supreme-court-of-new-south-wales-equity-division-commercial-arbitration-list-26-october-2012-a-contribution-by-the-ita-board-of/#.UIJn_iTrySo)

Practical Law Company “Australian Arbitration Roundup 2012/2013”

<http://us.practicallaw.com/7-523-8003>

Technology Arbitrators & Mediators website

[http://www.arbitrator.com.au/doku.php?id=ashjal\\_v\\_alfred\\_toepfer\\_international\\_australia](http://www.arbitrator.com.au/doku.php?id=ashjal_v_alfred_toepfer_international_australia)

Kluwer Arbitration ITA Arbitration Report, Volume No. X, Issue No. 8, 22 August 2012

<https://groups.google.com/forum/#!msg/visbrasil/NGp3gNeMkOg/9cF72EiWckMJ>

“The right to appeal an arbitral award: Express may be best”; Clayton Utz website

[http://www.claytonutz.com/publications/news/201207/02/the\\_right\\_to\\_appeal\\_an\\_arbitral\\_award\\_express\\_may\\_be\\_best.page](http://www.claytonutz.com/publications/news/201207/02/the_right_to_appeal_an_arbitral_award_express_may_be_best.page)

“New Commercial Arbitration Act survives Constitutional Challenge”; CBP website

<http://www.cbp.com.au/Publications/New-Commercial-Arbitration-Act-survives-constituti>

“Benchmark”; AR Connolly & Company website

[http://www.arconolly.com.au/benchmark/composite/benchmark\\_24-05-2012\\_insurance\\_banking\\_construction\\_government.pdf](http://www.arconolly.com.au/benchmark/composite/benchmark_24-05-2012_insurance_banking_construction_government.pdf)

**2001 – 2002 Solicitor - Linklaters (London) Intellectual Property, IT & Communications Group**

Worked on intellectual property & IT transactions, (including negotiating & drafting £300M contract for content provision by large media organisation & £80M contract for IT services for major UK utility provider) & provided intellectual property & IT due diligence support on major mergers & acquisitions

**1998 – 2001 Solicitor – King & Wood Mallesons (Sydney) Dispute Resolution Group**

Worked on litigious matters involving contractual, trade practices, insolvency, intellectual property & corporate governance issues including in particular:

*Southern Equities Corporation (Ltd)(In liq) v Arthur Anderson & Co* (being \$300M claim by liquidators of Bond Corporation)

*Telstra v AAPT* (being a \$120M claim by Telstra with a \$500M cross-claim by AAPT)

Acting for Telstra in numerous disputes with telecommunications resellers & internet service providers arising out of claims from \$3M - \$50M

**1996 – 1998 Solicitor -Harris & Company, Solicitors  
Commercial Litigation Group**

Worked on general commercial litigation & insolvency matters, including acting for Walter Bau AG on a claim for \$90M arising out of acquisition of a large Australian construction company

**CLE Presentations & Papers**

Seminar Presenter for Brothers & Sisters in Law, Continuing Legal Education Centre, Continuing Professional Development Seminars, iCLE, Legal Training Australia, Legalwise Seminars, North Metropolitan Law Society, State Legal Conference, University of New South Wales Faculty of Law, Young Lawyers NSW & numerous law firms, delivering papers & presentations on the following topics:

*ASIC v Rich – An Insider’s Guide*

*Bankruptcy & Insolvency – common issues*

*Directors’ Duties & Liabilities*

*Mareva & Anton Piller Orders*

*Personal Property Securities*

*Setting Aside Statutory Demands*

*Shareholders’ Agreements – Common Disputes*

*Subpoenas & Notices to Produce*

*The Australian Consumer Law*

*The Litigator’s Toolkit – a Vade Mecum*

**Professional Memberships & Activities**

Member of Asia Pacific Forum for International Arbitration, Aviation Law Association of Australia & New Zealand, Banking & Financial Services Law Association, Commercial Law Association of Australia,

Intellectual Property Society of Australia & New Zealand & NSW  
Society for Computers & the Law

Mentor for NSW Bar Association's Indigenous Law Students  
Mentoring Scheme (2013 - 2014)

Judge for University of New South Wales Mooting Competition  
(2012)

Member of NSW Bar Association Health Sport & Recreation  
Committee (2010)

Winner of audience choice award for best speaker at NSW Young  
Lawyers "Golden Gavel" public speaking competition (1998)

Member of Australian Youth Orchestra (1989 to 1994)

## **References**

Contact details for referees will be provided upon request

