

CURRICULUM VITAE

KAREN J LE FAUCHEUR BARRISTER AND MEDIATOR

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EDUCATION

1997 – 2001: University of Melbourne - Bachelor of Laws (Hons)/Commerce (Finance major)

2000: University of British Columbia (Vancouver, Canada) - International Exchange

PROFESSIONAL EXPERIENCE

Karen was admitted to the legal profession on 29 March 2004.

Karen signed the Bar roll on 19 May 2011 and practises in commercial litigation, equity and trusts, property and wills/deceased estates.

Karen is experienced mediating disputes in the following areas: commercial, building/construction, equity and trusts, property and wills/deceased estates. On 16 July 2021, she was first accredited as a Nationally Accredited Mediator (NMAS) and maintains her accreditation (AMDRAS). She presents and coaches in the Victorian Bar Lawyers' Mediation Certificate Course.

A summary of her general experience as a barrister is set out below:

COMMERCIAL

- ***Mercedes-Benz Australia/Pacific Pty Ltd v Automotive Retail Group Pty Ltd and ors***: Federal Court of Australia - Acted for franchisee of Fuso and Unimog truck dealerships against franchisor claiming alleged breaches of agreements/misleading and deceptive conduct and defending alleged trademark breaches (settled during trial 2019). Junior to Gerard Mehan and subsequently, David Gilbertson KC.
- ***Fulton Hogan Construction Pty Limited v Grenadier Manufacturing Pty Ltd (in liq) & Ors*** [2012] VSC 358: 23 day Supreme Court trial - Acted for head contractor engaged to construct, supply and install footbridge in action against sub-contractor engaged to apply protective coating and coating manufacturer. Claim in negligence for failure of coating. Involved significant technical scientific expert evidence. Damages awarded involving calculation of economic loss and proportionate liability. Junior to Paul Hayes (Now Mr Hayes KC).
- ***Fulton Hogan Construction Pty Limited v (No 2) Grenadier Manufacturing Pty Ltd (in liq) & Ors*** [2012] VSC 569: Application for costs - calderbank offer, bullock/sanderson orders, issue by issue costs and apportionment of costs between concurrent wrongdoers. Appeared unled.

CONSTRUCTION

- ***Melbourne Water Corporation v Aurecon Australia Pty Ltd & Ors***: Supreme Court of Victoria - Acted for subcontractor Structural Systems in defence of third-party claims by Tenix, relating to the construction of the Eastern Treatment Plant (settled 2015). Junior to Toby Shnookal KC and subsequently, Peter Jopling KC.
- ***Miscellaneous***: Settling response to Adjudication Application on behalf of respondent sub-contractor, a provider of services in respect of communication, electricity, water and gas networks,

pursuant to *Building and Construction Industry Security of Payment Act 1999 NSW*. Acting in VCAT domestic building disputes. Advising owners corporation as to defective remediation works.

EQUITY/TRUSTS

- ***Hercus v Estate of Hercus***: Supreme Court – acting for original registered proprietor in action for setting aside property/water shares transfer on the grounds of undue influence and unconscionability.
- ***McFarlane v McFarlane*** [2021] VSC 197: Acted for original registered proprietor in action for setting aside property transfer, order for reinstatement of registered proprietor and equitable compensation on the grounds of undue influence and unconscionability. (Not involved in the trial – on leave from the Victorian Bar)
- ***State Trustees Limited (as executor) v A'Speculo***: Supreme Court – acted for administrator on behalf of deceased estate against previous administrator, for alleged breach of fiduciary duties, seeking declaration of constructive trust and order for payment for alleged misappropriated proceeds of sale of property.
- ***Andonovski v Andonovski*** (in capacity as Administrator): Supreme Court trial - Acted for registered proprietor of land seeking orders for partition of land and equitable estoppel and seeking specific enforcement of alleged agreement (settled during trial 2014). Junior to Carolyn Sparke KC.
- ***Kettering Pty Ltd and ors v Rayner*** - County Court trial: Acted for trustee seeking a constructive trust or equitable compensation based on setting aside a gift on grounds of undue influence and special disadvantage (settled during trial 2013). Junior to Mark Robins KC.
- ***Miscellaneous***:
- Advised administrator regarding setting aside Bank's judgment enforcing Guarantee on basis of alleged unconscionable conduct, contrary to section 12CB, alternatively, section 12CA of the *Australian Securities and Investments Commission Act 2001* and alleged breach of contract on basis of breach of incorporated clauses of the Code of Banking Practice.
- Acted for guarantor in Supreme Court proceeding alleging unconscionable conduct pursuant to section 12CB and 12CC of the ASIC Act and seeking injunction.
- Advised in actions involving restitution and the change of position defence.
- Advised trustees as to various powers and applications pursuant to section 63(3) of the *Trustee Act 1958 (Vic)* to authorise dealings with trust property.

WILLS/DECEASED ESTATES

- ***Re Brumer; Sternfein v Bloom & Anor*** [2024] VSC 121 – appeared at the hearing defending defendant's summary judgment application. Involved claim by former stepchild and interpretation of term 'parent'.
- ***Do v Registrar of Births, Deaths and Marriages*** [2023] VSC 200 – appeared at the hearing of the appeal to the Supreme Court from VCAT pursuant to section 148 of the VCAT Act. Issues concerned statutory interpretation and definition of 'domestic relationship' under the *Births, Deaths and Marriages Regulations 2008 (Vic)*.
- ***Faragher v Faragher***: Supreme Court; no published judgment – acted for party to Deed of Family Arrangement in application for orders to transfer real property.
- ***Mokbel v Mokbel***: County Court; settled at trial – acted for plaintiff in proceeding brought pursuant to Part IV of the *Administration and Probate Act (Vic) 1958 (APA)*.
- ***Miscellaneous***:
- Advising and acting in numerous proceedings for both plaintiff and executor brought pursuant to Part IV of the APA including at mediations.
- Acting in applications for approval of compromise pursuant to Rules 15.08 and/or 54.02(2)(c)(i) of the *Supreme Court Civil Procedure Rules (Vic) 2015*.
- Appeared in estate disputes involving multiple proceedings in the Supreme Court and enforcement of Deed of Family Arrangement in Family Court.
- Appearing in applications to remove trustees/executors in Supreme Court.
- Advising clients on various issues including merits and prospects of claims pursuant to Part IV of the APA, extension of time applications, executor's commission, winding up and administration of

testamentary trusts, removal of executor pursuant to section 34 APA, application of s 39A APA, settlements involving establishment of special disability trust, proper construction of Wills and applications for grants/letters based on admission of informal will pursuant to section 9 of the APA (written Will with handwritten amendments, incomplete Will kits and others) and other unusual probate applications.

PROPERTY/COMPULSORY LAND ACQUISITION

- Advising landowner as to the statutory offer process pursuant to the *Land Acquisition and Compensation Act* 1986 (Vic) re acquisition for Western Outer Ring Gas Pipeline.
- ***Bricland Nominees Pty Ltd & Rancho Developments Pty Ltd v Vallence*** – advised and acted for licensee defending application recovery of land under Order 53 of the County Court (Civil Procedure) Rules.
- ***Harrison v Harrison and ors*** - Supreme Court: Acted for registered proprietor of farming property seeking orders pursuant to section 228 of the *Property Law Act* (Vic) 1958 (PLA) for the physical division of co-owned land and section 230 of the PLA for the payment of compensation.
- Advising on removal of caveat applications.

DEFAMATION

- ***Nunn v Fullagar and Southern Basketball Association Incorporated***: Supreme Court – Acted for plaintiff in defamation proceeding (settled 2020). Junior to Paul Hayes (Now Mr Hayes KC).
- ***Le Tete v Menzies and others***: Supreme Court – Acted for plaintiff in defamation proceeding (settled at mediation). ***Junior to Paul Hayes (Now Mr Hayes KC)***.
- ***Miscellaneous***: Drafting/settling Concerns Notices pursuant to section 14(2) of the Defamation Act 2005 Vic and drafting form of apologies.

OTHER

- Advise and appear on behalf of the Attorney General at review and application for variation or order hearings under the *Crimes (Mental Impairment and Unfitness to be Tried)* Act 1997.

MALLESONS STEPHEN JAKES, Melbourne

May 2007- August 2009

Solicitor, Dispute Resolution

At Mallesons, Karen worked on general commercial litigation matters including large construction/infrastructure and contract disputes, including:

- acted for an international provider of operations, maintenance and asset and project management services. Litigation involved breach of contract and trade practices claims against the designer and builder of a hydro-power station in the Philippines (Turnkey contract US\$98 million). Involved conferring with technical engineering expert witnesses.
- acted for company which owned and maintained gas transmission pipelines. The multi-party litigation involved the construction of the 442 km gas pipeline from Port Hedland to the Telfer Gold Copper mine in Western Australia. The construction contractor claimed compensation for delay.
- acted for a financial services company against manufacturer/installer of lifts in a commercial building.
- achieved a favourable judgement in the Supreme Court of NSW in a breach of contract proceeding involving the transportation (including land and marine aspects) of a 270 tonne butadiene sphere.

Mallesons, Climate Change and Carbon

At Mallesons, Karen also developed expertise in climate change law and assisted with the development of Mallesons' National Sustainable Enterprises practice. She advised companies in the mining, banking, gas supply, telecommunications and financial services industries on emissions trading and greenhouse and energy reporting, specifically with respect to the *National Greenhouse and Energy Reporting Act*, the

Energy Efficiency Opportunities Act and the impact of the Federal Government's proposed emissions trading scheme (Carbon Pollution Reduction Scheme (CPRS)).

RUSSELL KENNEDY, Melbourne

February 2003 – May 2007

Solicitor (*Commercial Litigation*) (from date of admission, 29 March 2004)
Articled Clerk (February 2003 – March 2004)

At Russell Kennedy, Karen worked on a variety of matters, including banking and finance, contract disputes, defamation, sports disputes (Court of Arbitration for Sport), torts and trade practices.

KPMG, MELBOURNE

2002

Graduate - Taxation

At KPMG, Karen advised corporate clients in the Consumer and Industrial markets sector on the taxation and business implications of various transactions including mergers, take-overs and share-buybacks.

COMMITTEES

Secretary St Mary's Altona School Advisory Council
ADR Committee member (Victorian Bar) 2022 and 2023 and Chair Publicity, Marketing and Communication Sub-committee 2023
Victorian Commercial Arbitration Scheme Committee member (Victorian Bar) 2023

RECENT PRESENTATIONS

5 March 2025 – Presenter at **Wills and Estates Conference** - Proper Provision for a Spouse in Part IV cases – life interests v absolute interests

5 October 2023 – Presenter at 'Signposts in Succession Law: The Journey to Now'

28 February 2023 – Legalwise Property Law Conference: ethical issues for property lawyers with a focus on caveats and conflicts of interest

29 March 2023 - Legalwise Contract Law Conference: a review and analysis of significant contract decisions during the last 12 months

18 November 2022 – Panel Speaker at the Victorian Bar CommBar Annual Conference: update on alternative dispute resolution for commercial construction disputes in Victoria

MEMBERSHIPS

Commercial Bar Association
Women Barristers Association