

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 16/2025  
[2025] NZSC 98

BETWEEN                      GAUTAM JINDAL  
   Applicant  
  
AND                              CHERAG DARUWALLA  
   Respondent

Court:                      Ellen France and Williams JJ  
  
Counsel:                      Applicant in person  
   D H McLellan KC and S O H Coad for Respondent  
  
Judgment:                      4 August 2025

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JUDGMENT OF THE COURT

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- A      The application for an extension of time to apply for leave to appeal is granted.**
- B      The application for leave to appeal is dismissed.**
- C      The applicant must pay the respondent costs of \$2,500.**
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REASONS

**Introduction**

[1]      The applicant brought proceedings in the High Court alleging emails sent by the respondent defamed him. He sought declaratory relief and damages. The respondent sought strike-out of part of the applicant's claim against him. The High Court struck out two of the causes of action on the basis they were not reasonably arguable as they were barred by the Limitation Act 2010.<sup>1</sup> Two of the other causes of action were found to have made on occasions of absolute privilege giving

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<sup>1</sup>      *Jindal v Daruwalla* [2023] NZHC 3315 (Associate Judge Taylor).

the respondent a complete defence. The applicant's appeal from that decision to the Court of Appeal was unsuccessful.<sup>2</sup> The applicant seeks leave to appeal the Court of Appeal's decision.<sup>3</sup>

## **Background**

[2] After completing his law degree in July 2020, the applicant applied in August 2020 to the New Zealand Law Society | Te Kāhui Ture o Aotearoa for admission as a barrister and solicitor of the High Court. As part of its enquiries, the Law Society received emails from the respondent about the applicant's character. The Law Society declined to issue a certificate of character which delayed his application for admission.<sup>4</sup>

[3] To put the present application in context, it is helpful to say a little more about the emails. As the Court of Appeal explained:<sup>5</sup>

[6] Applicants for a certificate of character are required to disclose if they had been a director of a company that had been put in liquidation. Mr Jindal disclosed that he was a director of Orange Capital Ltd (Orange) which was in liquidation. This led to the Law Society contacting the liquidator of Orange (Mr Kamal) who in turn contacted Mr Daruwalla, of Adon Holdings Ltd (Adon), with whom there had been business dealings in 2017. This led to an exchange of emails that became the subject of Mr Jindal's intended defamation claim.

[4] The first set of emails, dated 1 May 2020 and 6 November 2020, were sent by the respondent to Mr Kamal (the Kamal emails). Mr Kamal gave the respondent the Law Society's contact details, and the respondent sent the next set of emails to the Law Society dated respectively 16 November 2020 and 17 November 2020 (the Law Society emails). The applicant learned of all of these emails on 20 April 2021 after the Law Society fulfilled an information request of his.

[5] The applicant's initial statement of claim was filed in time on 22 November 2022. It was based only on the two Law Society emails. An amended statement of

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<sup>2</sup> *Jindal v Daruwalla* [2024] NZCA 685 (Mallon, Gwyn and Moore JJ) [CA judgment].

<sup>3</sup> The application is out of time, but the delay is minimal.

<sup>4</sup> The applicant was eventually provided a certificate of good character and was admitted about a year later than he intended.

<sup>5</sup> CA judgment, above n 2 (footnote omitted).

claim filed on 1 March 2023 added a claim based on a LinkedIn statement which the applicant only became aware of in February 2023. The applicant sought leave to add to his statement of claim a cause of action that arose since the filing of the original statement of claim under r 7.77 of the High Court Rules 2016. The application was to add his claim based on the LinkedIn statement—and nothing more—on 9 March 2023. Orders were made by consent on 21 April 2023 allowing amendment of the claim pursuant to the applicant’s request.

[6] The subsequent “First Amended Statement of Claim” filed by the applicant on 24 April 2023 and backdated to 9 March 2023, however, also included the Kamal emails. The parties accept that, given the date when the applicant learnt of these two emails, the late knowledge period under the Limitation Act in relation to them expired on 21 April 2023.<sup>6</sup> The respondent filed the strike-out application following the filing of this pleading.

### **The proposed appeal**

[7] In relation to the Limitation Act, in the Court of Appeal the applicant relied, amongst other matters, on the fact the registry had accepted for filing the claim including the Kamal emails. The Court of Appeal rejected that and other arguments, concluding that the Kamal email claims were filed out of time and so correctly struck out.

[8] While the argument about the impact of the registry accepting the claim for filing is still pursued, the applicant now also says, amongst other matters, that he was precluded from adding the Kamal email claims in time while the High Court determined the earlier application for the consent orders under r 7.77. He relies in this respect on arguments about the interplay between the various limbs of r 7.77.

[9] We agree with the submission for the respondent that these proposed arguments have insufficient prospects of success. No question of general or public importance or of general commercial significance arises.<sup>7</sup> Nor is there any appearance of a

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<sup>6</sup> See Limitation Act 2010, ss 11(2), (3)(a) and 15.

<sup>7</sup> See Senior Courts Act 2016, s 74(2)(a) and (c).

miscarriage of justice as that term is used in the civil context.<sup>8</sup> As the Court of Appeal said:

[39] None of this, however, enabled Mr Jindal to file two further causes of action (the first and second causes of action) on 24 April 2023 when they were time barred as at that date and no application for leave to amend the claim to include them had been made before 22 April 2023.

[10] In relation to the claims based on the Law Society emails, the applicant says the Court of Appeal was wrong to strike-out these claims on the basis the emails were sent on an occasion of absolute privilege. In particular, it is argued that the Court erred in treating the Law Society's statutory responsibility for deciding on applications for a certificate of character as integrally connected to judicial proceedings.<sup>9</sup> The applicant also says the Court did not analyse whether absolute privilege was necessary or whether qualified privilege would suffice.

[11] In addressing this point, the Court of Appeal summarised its conclusions as follows:<sup>10</sup>

[88] ... the correct analysis is that the Law Society's role is part of judicial proceedings in the High Court, namely a candidate's application to the High Court for admission as a barrister and solicitor. The [Lawyers and Conveyancers Act 2006] authorises the Law Society to perform this investigatory role for the purpose of such judicial proceedings. As discussed, the procedure under the [Lawyers and Conveyancers Act (Lawyers: Admission) Rules 2008] requires that the applicant must first apply for the certificate of character before making their application to the High Court. An application to the Law Society for a certificate of character is therefore the initiating step to applying to the High Court (along with the application for a certificate of completion from the [New Zealand Council of Legal Education]) and integral to an application to the High Court. The Law Society's role is to provide evidence to the Court whether by a certificate or, if a certificate is not given, by affidavit.

[89] In short, the communications made to the Law Society as part of its enquiries are evidence brought into existence for the purpose of a judicial proceeding. It can either be said to be within the second or third categories discussed by Lord Devlin in *Lincoln v Daniels*. If the communications end up as part of the evidence before the High Court, they will be in the first category. Either way, such communications are protected by the common law absolute

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<sup>8</sup> See s 74(2)(b); and *Junior Farms Ltd v Hampton Securities Ltd (in liq)* [2006] NZSC 60, (2006) 18 PRNZ 369 at [5].

<sup>9</sup> The applicant submits that the Law Society emails do not come within any of the categories of proceedings identified in *Lincoln v Daniels* [1962] 1 QB 237 (CA) at 257–258 per Devlin LJ.

<sup>10</sup> CA judgment, above n 2 (footnote omitted).

privilege that applies to witnesses, judges, counsel, parties and every document produced in the course of judicial proceedings.

[90] This conclusion is consistent with the public policy underpinning absolute privilege. In the context of the Law Society's disciplinary jurisdiction, it is well established that the public policy that the law should provide a remedy to a person who is maliciously defamed should yield to the need for persons to give their testimony about the conduct of a barrister or solicitor without fear of action against them, whether their testimony is true or false. The public interest in the need for free and frank testimony of a person's character for the purposes of admission to the High Court as a barrister and solicitor is as comparably strong as in the Law Society's disciplinary jurisdiction and should be appropriately recognised in this case.

[12] We accept the submissions for the respondent that nothing raised by the applicant suggests an error in the Court of Appeal's orthodox approach to the construction of the Lawyers and Conveyancers Act or in its consideration of the underlying policy considerations.<sup>11</sup> The criteria for leave to appeal are not met in relation to this proposed ground either.

## **Result**

[13] The application for an extension of time to apply for leave to appeal is granted.<sup>12</sup>

[14] The application for leave to appeal is dismissed.

[15] The applicant must pay the respondent costs of \$2,500.

Solicitors:  
Ormiston Legal, Auckland for Applicant  
Anthony Harper, Auckland for Respondent

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<sup>11</sup> The Court of Appeal took a different view as to the categorisation of the proceedings in terms of *Lincoln v Daniels*, above n 9.

<sup>12</sup> Leave to file the submissions out of time is also formally granted to the applicant.