

IN THE SUPREME COURT OF NEW ZEALAND

I TE KŌTI MANA NUI O AOTEAROA

SC 34/2026  
[2026] NZSC 110

|         |                                           |
|---------|-------------------------------------------|
| BETWEEN | JAMES PHILIP DONELLAN<br>Applicant        |
| AND     | ATTORNEY-GENERAL<br>First Respondent      |
|         | MINISTER FOR JUSTICE<br>Second Respondent |

Counsel:           Applicant in person  
                      No appearance for Respondents

Judgment:           17 August 2026

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**JUDGMENT OF KÓS J**

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**The notice of application for leave to appeal is struck out.**

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**REASONS**

[1]     In February 2026, Mr Donellan filed an application in the High Court under the Habeas Corpus Act 2001, ostensibly on behalf of two children, alleging that parenting orders made in the Family Court have resulted in their unlawful detention.<sup>1</sup> He states that he is their stepfather, and that he is currently seeking appointment as their litigation guardian. No such appointment has been made.

[2]     Three similar applications had earlier been brought, unsuccessfully, by the children's mother, Ms Dunstan, a person now subject to an order made under s 166 of the Senior Courts Act 2016 preventing her from bringing proceedings without first

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<sup>1</sup>     The Family Court parenting orders share care of the children between their biological parents.

receiving leave from the High Court.<sup>2</sup> Since then, Ms Dunstan has employed a pseudonym, Melanie Rolls, to attempt to file proceedings.<sup>3</sup> While there has been some uncertainty as to Mr Donellan’s identity, that is immaterial for the purpose of this application.

[3] Returning to the present filing, in the High Court, Powell J struck the application out under ss 14 and 15 of the Habeas Corpus Act—essentially because the matter was *res judicata* because of prior judgments in which like applications and arguments had been made by Ms Dunstan.<sup>4</sup>

[4] An attempted appeal to the Court of Appeal was struck out in that Court by Courtney J under s 164B of the Senior Courts Act.<sup>5</sup> In doing so, Courtney J noted the history set out at [11]–[12] below.<sup>6</sup> She recorded that this was the first strike-out order under that section made in respect of a proceeding filed by Mr Donellan.<sup>7</sup>

[5] Mr Donellan then sought to file a notice of application for leave to appeal the judgment of the Court of Appeal in this Court. A Deputy Registrar took the view that the application was plainly an abuse of process. He therefore referred it to me under s 164A(2)(a) of the Senior Courts Act for consideration as to whether any orders or directions should be made or given under s 164B.

### **The legislation**

[6] The Judicature (Timeliness) Legislation Amendment Act 2025 inserted ss 164A–164C into the Senior Courts Act, with effect from 1 February 2026, to deal with applications for the filing of civil proceedings which are “plainly abusive” of court process.<sup>8</sup>

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<sup>2</sup> *Re Dunstan* [2023] NZHC 3176; and see below at [11]–[13].

<sup>3</sup> *Re Dunstan* [2026] NZSC 71 at [5].

<sup>4</sup> *Re Donellan* [2026] NZHC 330.

<sup>5</sup> *Donellan v Attorney-General* [2026] NZCA 60.

<sup>6</sup> At [4]–[5].

<sup>7</sup> At [7].

<sup>8</sup> Judicature (Timeliness) Legislation Amendment Act 2025, s 7.

[7] When a civil proceeding is tendered for filing in a senior court, a registrar has three broad options:

- (a) To reject the filing if it is non-compliant with rules of court<sup>9</sup> or—in the Court of Appeal and Supreme Court—if the court lacks jurisdiction or the filing contains plainly abusive material the applicant will not remove.<sup>10</sup>
- (b) To accept the document for filing, but refer it to a judge as soon as practicable if the registrar considers the proceeding is, on its face, “plainly an abuse of the process of the court”.<sup>11</sup> The registrar may then decline to take any further action on the proceeding until the judge has considered it.<sup>12</sup>
- (c) To accept the filing in the usual way.

[8] If the document is referred to a judge under option (b) and the judge is satisfied the proceeding is plainly an abuse of process, he or she may order that the proceeding be struck out, or make an order or give directions to ensure the proceeding is disposed of or proceeds in a manner compliant with relevant court’s rules.<sup>13</sup> The Act provides expressly that such orders or directions may be made on the papers and without giving the applicant the opportunity to make submissions.<sup>14</sup> If a strike-out order is made under s 164B(2)(a), the order must contain a statement explaining the effect of the order and the person’s appeal rights.<sup>15</sup>

[9] Section 164C automatically restrains a person from commencing or continuing a civil proceeding if, within two years, two s 164B(2)(a) strike-out orders are made in respect of proceedings filed by that person.<sup>16</sup> It is immaterial whether the orders were

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<sup>9</sup> Supreme Court Rules 2004, r 6(3); Court of Appeal (Civil) Rules 2005, r 6(1); and High Court Rules 2016, r 5.2. See also *Wolfe v Governor-General of New Zealand* [2026] NZSC 109.

<sup>10</sup> Supreme Court Rules, r 5A(1)(a)–(b); and Court of Appeal (Civil) Rules, r 5A(1)(a)–(b).

<sup>11</sup> Senior Courts Act 2016, s 164A(1) and (2)(a).

<sup>12</sup> Section 164A(2)(b).

<sup>13</sup> Section 164B(2). See also s 81(2A)(a).

<sup>14</sup> Section 164B(3).

<sup>15</sup> Section 164B(4).

<sup>16</sup> Section 164C(1) and (3).

made in the same or different courts, and whether the proceedings were against the same or different persons.<sup>17</sup> The restraint applies until the earlier of three years from the date of the second strike-out order or, as the case may be, the date either order is set aside on appeal.<sup>18</sup> A restrained person is prevented from commencing or continuing a civil proceeding, including an appeal, in any court or tribunal without first obtaining leave of the High Court.<sup>19</sup> The High Court's decision on such a leave application must be determined on the papers, unless exceptional circumstances and the interests of justice indicate otherwise, and is final.<sup>20</sup>

[10] The restraint against commencing or continuing civil proceedings does not apply to an appeal against a strike-out order made under s 164B(2)(a).<sup>21</sup> A single judge of the Court of Appeal may hear and determine an appeal against a s 164B(2)(a) strike-out order.<sup>22</sup> Similarly, a single permanent judge of the Supreme Court may act as the Court to hear and determine an application for leave to appeal against a s 164B(2)(a) strike-out order.<sup>23</sup>

### **The notice of application for leave to appeal to this Court**

[11] The current proceedings have this procedural background. Two previous, comparable habeas corpus applications had been made in 2020 by Ms Dunstan, by way of an ulterior challenge to the parenting orders referred to above. Those applications failed in the High Court.<sup>24</sup> Appeals against both decisions failed before the Court of Appeal.<sup>25</sup> An application for leave to appeal the second decision to this Court was dismissed in 2021 as an abuse of process.<sup>26</sup>

[12] Ms Dunstan is now subject to an order made under s 166 of the Senior Courts Act. In January 2026, she again applied a third time for habeas corpus in

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<sup>17</sup> Section 164C(2).

<sup>18</sup> Section 164C(4).

<sup>19</sup> Section 164C(3). This does not apply to private criminal prosecutions: s 164C(7).

<sup>20</sup> Section 164C(5)(b)–(c). The application may also be made without notice, but the High Court may direct the application for leave be served on any specified person: s 164C(5)(a).

<sup>21</sup> Section 164C(6).

<sup>22</sup> Section 49(2A)(b).

<sup>23</sup> Section 81(2A)(b).

<sup>24</sup> *D v Judge Adams* [2020] NZHC 2253; and *Re Dunstan* [2020] NZHC 2972.

<sup>25</sup> *D (CA504/2020) v Judge Adams* [2020] NZCA 454; and *D (CA654/2020) v High Court Auckland* [2020] NZCA 605.

<sup>26</sup> *D (SC 83/2021) v High Court Auckland* [2021] NZSC 96.

respect of the children. The application was filed under a pseudonym, “Melanie Rolls”. The High Court dismissed it on the basis that the s 166 order applied and leave had not been sought; and alternatively because it was an attempt to reopen a matter that was *res judicata*.<sup>27</sup> Ms Dunstan sought to appeal to the Court of Appeal, but that appeal was not accepted for filing due to the s 166 order, and a leapfrog application for leave to appeal to the Supreme Court, now substituting Mr Donellan’s name as applicant, was similarly rejected by the Registrar. An application for review by a Judge of the Registrar’s decision failed.<sup>28</sup> A further application for review by a panel of three Judges also failed.<sup>29</sup>

[13] Mr Donellan’s February 2026 application to the High Court is therefore the fourth attempt to seek habeas corpus by way of an ulterior challenge to orders made by the Family Court.

#### **How a registrar’s reference should be processed in this Court**

[14] The text and purpose of the legislation suggests the procedure to be applied on a s 164A(2)(a) reference by a registrar should be as follows:

- (a) the reference will be determined by a single judge of the Court, as ss 81(2A)(a), 164A and 164B provide;
- (b) before considering whether the proceeding is plainly an abuse of the process of the Court, the judge will consider whether further submissions (beyond the application and anything filed along with it) are needed to fairly determine that question (and its consequence, if affirmative); and
- (c) the judge will then go on to consider the matters provided in s 164B(1) and (2)—namely, whether the proceeding is “plainly an abuse of the process of the court”, and if so, whether the proceeding should be struck out, or whether to make an order or give directions to ensure the

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<sup>27</sup> *Dunstan v Attorney-General* [2026] NZHC 6.

<sup>28</sup> *Re Dunstan* [2026] NZSC 4.

<sup>29</sup> *Re Dunstan* [2026] NZSC 71.

proceeding is either disposed of or proceeds in a manner compliant with the Supreme Court Rules 2004.

[15] Our constitutional arrangements regard access to the courts as a matter of real importance. A finding that a proceeding is an abuse of process is not to be lightly reached and pre-emptive intervention of this kind is only justifiable in cases involving clear abuses of process.<sup>30</sup> Such cases may include (without limitation) those brought with an improper motive or in an attempt to obtain a collateral benefit, or where service of the proceedings would be manifestly unfair to another party or would bring the administration of justice into disrepute.<sup>31</sup>

### **Are further submissions required?**

[16] The circumstances before me are clear. Mr Donellan has filed a detailed, five-page notice of application for leave to appeal. In it, he submits that the summary dismissal of the appeals breaches s 143 of the Care of Children Act 2004, the Habeas Corpus Act and various provisions in the New Zealand Bill of Rights Act 1990. He likewise submits that the dismissals breached numerous international treaties. Procedural fairness grounds (including bias) are also relied upon.

[17] Along with his notice of application, Mr Donellan filed materials which it appears were before the Courts below in this proceeding and/or the related proceedings brought by Ms Dunstan. While these materials were initially rejected for filing, I have nevertheless also reviewed them in reaching my decision.

[18] I am satisfied that no further submissions are needed for me to fairly determine whether the proceeding is plainly an abuse of the process of the Court, and the consequence of any such finding.

[19] I will therefore determine the application on the papers before me.

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<sup>30</sup> See for example *Te Wakaminenga o Ngā Hāpū Ki Waitangi v Waitangi National Trust Board* [2023] NZCA 63, [2023] NZAR 180 at [15].

<sup>31</sup> *Commissioner of Inland Revenue v Chesterfields Preschools Ltd* [2013] NZCA 53, [2013] 2 NZLR 679 at [89]; *Fuller v Patel* [2025] NZCA 72 at [8]; and *Mathiesen v Fildes* [2017] NZHC 2258, (2017) 24 PRNZ 405 at [4].

### **Is Mr Donellan’s current application plainly an abuse of process?**

[20] Having considered the application filed by Mr Donellan and the prior relevant decisions cited in this decision, I am satisfied that the conclusion reached by Courtney J in the Court of Appeal was correct. Final judgment was given in 2020 that the children are not unlawfully detained.<sup>32</sup> No change of circumstance or status impeaching that final judgment is adverted to in the present notice. The only available inference is that the new, fourth habeas corpus proceeding is a collateral challenge to the final judgment of 2020. It is plainly an abuse of process and must be struck out. I will make that order under s 164B(2)(a).<sup>33</sup>

### **Consequences of the Court’s conclusion**

[21] Courtney J’s decision was a first strike-out order for the purposes of s 164B(4)(a).<sup>34</sup> For the avoidance of doubt, this Court’s decision to strike out the purported application for leave to appeal from Courtney J’s decision is not a “subsequent strike out order” for the purposes of s 164C. Such an order must be made “in respect of another proceeding filed by the same person”.<sup>35</sup> Section 164B(4)(c) requires that when a strike-out order is made, advice is to be given of a person’s appeal rights from the High Court and Court of Appeal, from which it must follow that those rights may be exercised without peril of falling into debarral under s 164C.

[22] Section 164C does not apply therefore to an attempted appeal against a prior s 164B strike-out order in the same proceeding, despite the fact that that attempt is a further perpetuation of the abuse of process. Its consequence will be repeated strike-out or failure, but not debarral under s 164C.

[23] The consequence of this Court’s s 164B strike-out order is that the notice of application for leave to appeal will be struck out. This remains a first strike-out order for the purposes of ss 164B(4) and 164C.

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<sup>32</sup> See above at [11]; and see *D (CA654/2020) v High Court Auckland*, above n 25.

<sup>33</sup> I note for completeness the provisions of the Habeas Corpus Act 2001 referred to at [3] above, on which Powell J had relied.

<sup>34</sup> See above at [4].

<sup>35</sup> Senior Courts Act, s 164C(1)(b).

[24] If a subsequent strike-out order is made in respect of another proceeding filed by the applicant in any of the senior courts within two years of the date of this judgment, the applicant will be restrained from commencing or continuing a civil proceeding in a senior court, another court or a tribunal without first obtaining the leave of the High Court for the earlier of three years from the date of this judgment or the date either strike-out order is set aside on appeal.<sup>36</sup>

## **Result**

[25] The notice of application for leave to appeal is struck out.

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<sup>36</sup> See s 164B(4)(a).