

31 July 2025

Hicksons, Hunt and Hunt
Level 24, Barangaroo Avenue
SYDNEY NSW 2000

By Email: Chloe.Ellis@hicksons.com.au; Tayah.Stevenson@hicksons.com.au

RE: Odtojan v Law Society of NSW 2025/00221675
Respondent's Late Filing and Grounds – Notice of Intention to Strike Out

Dear Ms Ellis,

I refer to the above matter and to your client's Response to the Summons, filed out of time on 28 July 2025 and served on me on 29 July 2025.

A. Out of time filing and communication with the Court

I note the following irregularities in your communication with the Court and your failure to confer with me beforehand:

1. On 25 July 2025, you emailed the Registrar requesting the Court to file your client's Response;
2. On 28 July 2025, the Registrar rejected your filing request and provided an alternative email address;
3. Later that same day, you emailed the Registrar again, purporting to file your client's Response to the email address provided. However, you failed to copy me into that communication or provide any explanation for the delay;
4. In that email, you improperly sought an extension of time without procedural basis, failed to engage with me, and purported, on my behalf, that no prejudice had been caused.
5. Your client's Response was ultimately stamped on 28 July 2025 and served on 29 July 2025, four days after the court-ordered deadline.

Your client is located on Phillip Street, in immediate proximity to the Supreme Court, and your firm is also situated within the Sydney CBD, minutes from the Registry. There is no reasonable justification for the delay, nor for your failure to notify or engage with me in relation to the filing.

Given the short timetable requiring me to file evidence by 7 August 2025, your delay has caused prejudice.

B. Objections to the Defendant's Filed Response

This is the first occasion on which I have received any response from the Respondent regarding the process it relies upon, despite repeated written requests for clarification between 13 August 2024 and May 2025. To date, your client has failed to clearly identify the legal basis, factual particulars, or procedural framework underpinning the actions taken.

Your client's filed Response is vague, deficient, and may amount to an abuse of process, as follows:

1. **Failure to Particularise Conduct Said to Constitute Unfitness**

At no stage has your client identified any specific act, omission, or breach under the *Legal Profession Uniform Law (Uniform Law)*, associated Regulations, or the Solicitors Conduct Rule that would justify a finding of unfitness.

2. **Lack of Procedural Framework or Legal Basis**

Despite repeated assertions that a valid section 45 process was followed, your client has failed to disclose any lawful decision-making framework, procedural pathway, or evidentiary foundation. Referring to section 45 Uniform Law, and Rule 13(1) of the *Legal Profession Uniform General Rules (Uniform Rules)*, without articulating a process, is not sufficient. It lacks jurisdictional clarity, procedural safeguards, and the elements of natural justice.

3. **Reliance on Misconduct Allegations While Denying Chapter 5 Process**

Your client's correspondence dated 8 July 2024, 24 March 2025, and 21 May 2025 consistently referenced "misconduct," sought admissions, and invited me to withdraw my practising certificate renewal application. These serious actions, including deletion of my solicitor's data, denial of paid Law Society membership renewal, and blocking access to the Professional Standards Scheme (which my firm has been part of since inception), were all carried out without initiating any Chapter 5 process under the Uniform Law and occurred prior to the section 45 Decision was made on 30 May 2025.

Yet, paragraph 75 of the 30 May 2025 Section 45 decision admits "no findings of professional misconduct." Your client cannot rely on misconduct as fact in one context and then deny it in another. This renders your client's actions procedurally flawed, substantively unlawful, and in breach of natural justice.

Notably, your client's Response to Grounds at paragraph 4.6 now states:

"There is no statutory requirement for... the Council to give consideration to Chapter 5 of the Uniform Law for the purposes of making a decision pursuant to Section 45 of the Uniform Law, nor is a referral to NSW Civil And Administrative Tribunal or a finding of professional misconduct or unsatisfactory professional conduct to be made before the Council can make a decision pursuant to s 45 of the Uniform Law."

This sweeping assertion purports to strip legal practitioners of statutory safeguards, without any requirement for investigation, findings, or referral to the Tribunal. It is not only inconsistent with your client's earlier reliance on misconduct allegations to justify its actions, but reveals the extent to which those actions were undertaken outside any lawful or recognised process.

4. **Conflict with Authorities Relied Upon**

Your client's position conflicts with its own reliance on NCAT authorities, including *New South Wales v Sideris (No 2) [2024] NSWCATOD 121* and *Council of the Law Society of New South Wales v Jaruwan Tangsilsat [2018] NSWCATOD 138*, *Tangsilsat v Council of the Law Society*

of New South Wales [2019] NSWCA 144, all of which involved formal Chapter 5 proceedings with independent tribunal oversight. Your client now seeks to adopt the language and findings of those cases while denying me any corresponding tribunal process. That is untenable.

5. Failure to Address Repeated Requests for Clarification

Your client has ignored my correspondences dated 13 August 2024, 15 August 2024, 12 February 2025, and 15 May 2025, each raising serious procedural concerns and requesting particulars of the allegations, the process and jurisdiction. These were sent to the Professional Standards Department (**PSD**), copied or provided to the Council of the Law Society, and to the Office of the Legal Services Commissioner (**OLSC**).

Notably, the urgent email sent on 12 February 2025 to Ms Nadya Haddad, Head of Registry, concerning the disappearance of my and my partner's, Mr Bryl, solicitors' data, our non-renewal of paid Law Society memberships, restricted portal access, and no records under our respective names in the OLSC Register of Disciplinary Action was never acknowledged. No substantive response was ever provided to any of these correspondences.

6. Mischaracterisation of Origin and Omission of Referral Context

Your client's Response fails to disclose the true procedural origin of this matter, namely, that it arose from a referral by the NSW Court of Appeal to the Office of the Legal Services Commissioner, which was then referred, under delegated statutory powers, to the Law Society of NSW.

Despite this referral process, your client never engaged with the actual court record, evidence, or documents from the three proceedings in question. Instead, your client relied exclusively on selective judicial commentary, which was never the subject of any adverse finding or outcome, nor was it tested through a disciplinary process.

To now reframe the matter as a simple administrative exercise under Section 45, without disclosing the delegated pathway or the selective reliance on commentary in the absence of findings, is misleading and mischaracterises the origin, scope, and seriousness of the matter.

7. Undisclosed and Unappealable Adverse Actions

Your client has failed to explain how it undertook undocumented actions prior to 30 May 2025, including interference with practising certificates, deletion of solicitor's data, denial of Law Society membership renewal, and obstruction of professional scheme access, all without formal notice, without identifying the decision-maker, and without providing appeal rights under Section 464 of the Uniform Law.

8. Cumulative Failure and Misrepresentation

These omissions, contradictions, and failures of due process render the Response both inadequate and misleading. Such conduct falls short of the obligations expected of a statutory regulator and model litigant, and I intend to rely on these failures in support of my application to strike it out.

C. Model Litigant Obligations

Your client is not a private litigant, but a statutory regulator vested with delegated powers under the Uniform Law. As such, it is accountable to Parliament and bound by the highest standards of integrity, transparency, and procedural fairness. These obligations include adherence to the published disciplinary framework and the proper exercise of regulatory powers in accordance with law.

None of the assertions made in your client's Response are supported by any lawful process under that framework. The omission of material facts, including documented allegations of procedural misconduct, false judicial records, and the involvement of specific officers with delegated authority, is a serious failure that undermines your client's statutory responsibilities.

As legal representatives, you are reminded of your paramount duty to the Court, including the duty of candour and the obligation not to assist a client in misleading the Court. Selective disclosure, concealment of procedural history, and the invention of a purported "process" unsupported by the Uniform Law or any rule constitutes a breach of those duties.

Your client and its officers, particularly those who exercised or directed statutory powers, are reminded of their continuing obligation to disclose all material facts. This includes any prior or concurrent conduct that intersects with this proceeding, gives rise to apprehended bias, or directly informs the factual or legal grounds now advanced. A failure to do so may constitute intentional concealment and will be raised in support of my strikeout application.

D. Identity of the Respondent

I note your attempt to redefine the Respondent as exclusively "the Council."

However, the proper respondent is arguably the Law Society of New South Wales. While your client now seeks to isolate liability to "the Council," this does not reflect the true sequence of events.

The actions that irreversibly affected my practising certificate, solicitor data, and professional status occurred prior to the issuance of the Section 45 decision and were carried out by multiple officers and departments operating under the Law Society of NSW. These included the Professional Standards Department and the Registry Office all of whom exercised regulatory control and engaged with me directly.

At no point was I formally advised that these decisions and actions made prior to the section 45 Decision on 30 May 2025 were made by "the Council," nor was I issued with lawful notices, records of decision, or review rights as required under the Uniform Law. It is not open to your client to now retrospectively restructure its position to avoid scrutiny and accountability.

E. Exceptional Case, Irregular and Undocumented Decisions Preceding Section 45

This is an exceptional and untested case involving irregular, undocumented, and adverse regulatory decisions carried out under the banner of the Law Society of NSW, entirely outside the scope of Chapter 5 of the Uniform Law. Your client has now expressly admitted in its Response that it was not required to engage any part of the Chapter 5 disciplinary framework, nor to rely on any finding of unsatisfactory professional conduct or professional misconduct.

These actions included, without limitation, interference with my practising certificate in May 2024; placing me and my partner on “in force” status under the prior 2023/24 certificate; deletion of our solicitors’ registration data from the public registry; non-renewal of our paid memberships; and denial of access to the Professional Standards Scheme. None of these actions were accompanied by lawful notice, decision-making records, or review rights, as required under Section 464 of the Uniform Law.

At no point were we advised who made these decisions. However, it is clear they were made within the structure of the Law Society, specifically by officers in its Registry and Professional Standards Department, well before the formal issuance of the Section 45 decision dated 30 May 2025.

This irregular and deformed process renders the Law Society of NSW, not merely the Council, the proper respondent to these proceedings. This matter did not arise from a conventional NCAT proceeding. As recorded in the Summons, no NCAT case or determination exists. When prompted to state the title of the proceeding being reviewed, none could be identified, because no tribunal process ever commenced.

This is a test case in every legal and institutional sense. The decision-making pathway invoked here is unprecedented, opaque, and contrary to law and well-established legal principles. No legal practitioner should ever be subjected to such unchecked regulatory power without process, reason, or remedy.

F. Misconceived Assertions Regarding Merits Review

Your attempt to reframe these proceedings as a “merits appeal” under Section 100 of the Uniform Law is not only inconsistent with your own conduct, but appears designed to confuse the issues and delay proper adjudication.

This matter concerns the absence of any lawful process, the denial of procedural fairness, and the fact that no independent decision-maker ever determined the issues. Section 100(2) contemplates judicial review in cases involving jurisdictional error or serious procedural defects, applicable in this case.

At no time during either the first directions hearing in my matter did your client’s advocate raise any objection to the proceedings as a judicial review. On the contrary, your client’s advocate stood before the Court, accepted the timetable under UCPR Rule 59.6, and made no indication he contested the nature of the proceedings.

There was no hearing, no notice of allegations, no opportunity to be heard, and no independent forum to test the facts. Your client acted as both accuser and decision-maker, without any lawful framework. To now suggest that due process was afforded is demonstrably false and compounds the injustice.

As officers of the Court and statutory regulators, your client and your firm know or ought to know that the process described does not meet the standards of legality, fairness, or transparency required by the Uniform Law or general principles of lawful administrative decision-making.

To continue to defend this process as fair may amount to an abuse of process and interference with the administration of justice. Your ongoing advancement of this position, despite full notice of the legal defects involved, raises serious concerns that your firm is now actively assisting in the concealment of your client’s unlawful conduct.

G. First Court Listing on 3 July 2025

At the first directions hearing, your client's advocate, Mr Clifford Flax, initially represented to me that he was independent of the Law Society of NSW. A basic search confirmed he is in fact a Senior Litigation

Solicitor at the Law Society. This omission, however minor, reflects a broader pattern of conduct by your client and its officers, where even the most basic courtesy of honesty has not been afforded to me throughout their dealings with me.

Mr Flax stated he had instructions not to agree to any timetable for your client to respond to the summons, but only for me to file evidence. I told him, "This is my livelihood. This is my partner's livelihood. This is my law practice. The Law Society has been playing games with us for a year.

This is not a game. I need a timetable. Give me the rules you are relying upon." He refused to engage. Two proposed timetables were handed to him in good faith and rejected without justification. His conduct obstructed the progress of the matter, forcing me to wait half the day for the matter to be called.

Before the Court, Mr Flax claimed confusion, stating he "thought this was about a notice of motion." Only after intervention from the Registrar did he agree to a timetable under Rule 59.6 of the UCPR. This conduct reflects the same pattern now evident in your client's Response, procedural obstruction, denial of known facts, and refusal to engage with the seriousness of the matter. It constitutes a breach of duty and an abuse of process.

H. Requests and Timeline

Please confirm by **5:00pm on 1 August 2025** whether your client intends to amend its filed Response to the Summons.

Given that my evidence is due by 7 August 2025, I request that any amended Response (should your client elect to file one) be filed and served no later than 5:00pm on 5 August 2025.

In light of the matters raised herein and the ongoing prejudice caused by your client's deficient and late Response, please also confirm whether your client consents to a short variation of the current timetable to allow me additional time to file evidence, pending resolution of these procedural matters.

I propose a short extension of my evidence deadline to Monday 11 August 2025. Please confirm by 5:00pm on 1 August 2025 whether your client consents to this variation.

If consent is not provided, or no written confirmation is received by the above timeframe, I will proceed to file an application seeking appropriate interlocutory relief, including a Notice of Motion to strike out the Response pursuant to UCPR Rules 13.4 and/or 14.28, as well as orders for costs, timetable variation to mitigate prejudice, and further or alternative relief, without further notice.

This letter will be relied upon in support of any application to strike out the Response and/or in connection with other relevant interlocutory relief.

Marie Odtojan

Regards,
Applicant