SUPREME COURT OF NEW SOUTH WALES

CASE NO. 2025/00221675

MARIE JOSSANE ODTOJAN (Plaintiff) V

THE LAW SOCIETY OF NEW SOUTH WALES (First Defendant) AND

THE COUNCIL OF THE LAW SOCIETY OF NEW SOUTH WALES (Second Defendant)

PLAINTIFF'S OUTLINE OF REPLY SUBMISSIONS

A. Overview of Reply

1. These Reply Submissions respond to the Defendants' submissions filed 17 November 2025 (**DS**).
2. As set out in the Plaintiff's submissions filed 4 November 2025 (**PS**), these proceedings are judicial reviews of two interrelated decisions of the refusal of the Plaintiff's 2024/25 practising certificate under s 45 of the *Legal Profession **Uniform Law** (NSW)*, on the opinion that the Plaintiff was "not a fit and proper person" (**unfitness**), (**Decision 1**) and the consequential appointment of a manager to the Plaintiff's legal practice (Decision 2).
3. In determining the grounds of review in the Amended Summons, the Court is to consider, whether:
   a. the Defendants impermissibly relied on untested "conduct" allegations[1] which fall within Chapter 5, while purporting to proceed solely under Chapter 3, s 45;
   b. the true decision-maker was the Council as recorded on the face of the record, or the Director of Professional Standards, Ms Griswold, whose own evidence shows that she and/or PSD drafted, framed and sought "resolutions" for the Plaintiff's unfitness and manager appointment before the purported Council meeting of 29 May 2025;
   c. material relevant considerations (referral orders, evidence and the Chapter 5 process) were ignored, and irrelevant matters (untested judicial commentary) were relied upon;
   d. the decision-making process was affected by predetermination, apprehended bias, improper purpose and legal unreasonableness; and
   e. The lawfulness of the earlier actions undertaken between May 2024 and May 2025 affecting the Plaintiff's rights and interests including placing the Plaintiff "in force" on a prior practising certificate (r 17 *Legal Profession **Uniform General Rules***), altering/removing solicitor and firm data, and varying membership status, which formed part of the overall decision-making process leading to the s 45 and manager decisions.
4. These issues go directly to jurisdictional boundaries, the lawful exercise of statutory power, and procedural fairness under the Uniform Law. They do not require, and do not permit, the Court to accept or adopt NSWCA judicial commentary, or NCAT commentary in other practitioners' cases, as if they were factual findings about the Plaintiff.

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[1] A Schedule 3 Table of Allegations Summary will be handed up for reference. PS [4a]-[4d], 8-10.

5. The Defendants' contention DS [22]-[25] that merits review under ss 100 and 358 provide an "equally convenient alternate remedy"[2] misconceives the nature of the relief sought. A merits appeal or review cannot determine questions of jurisdiction, statutory power or the legality of an entire process alleged to have proceeded outside Chapter 5. The Court's supervisory jurisdiction under s 69 is not excluded or supplanted by the existence of a merits appeal/review pathway, its jurisdiction is constitutionally entrenched and cannot be excluded or supplanted by the Uniform Law (PS [17]-[18]). Judicial review is the only appropriate avenue.

B. Defendants' Statutory Scheme Submissions

6. The statutory summary at DS [8]–[16] is incomplete and should be rejected to the extent it suggests that s 45 may be exercised in isolation from Chapter 5 in the circumstances of this case.
7. The Defendants' assertion that "nothing else is required" beyond s 45 is being advanced for the first time in these proceedings. It was never disclosed to the Plaintiff despite repeated requests from August 2024 onwards for clarification of the applicable process[3], including whether Chapter 5 and NCAT were engaged. That position is inconsistent with:
   a. the structure of the Uniform Law, which distinguishes disciplinary matters (Chapter 5) from administrative renewal decisions (Chapter 3, Part 3.3);
   b. the Defendants' own conduct: raising "conduct issues", "prior misconduct", alleged non-disclosure of "findings and orders", alleged misleading/incorrect information and false declaration; issuing three substantive letters of accusations, relying on NSWCA referrals explicitly about "conduct", and invoking disciplinary authorities[4] in their decision; and
   c. representations by the Attorney-General's office that the Law Society had spoken of "alleged prior misconduct" and "alleged prior conduct",[5] consistent only with a disciplinary frame.
8. Sections 262, 265, 270 and 270–283 of the Uniform Law make clear that conduct allegations against a legal practitioner fall within Chapter 5 unless expressly excluded by s 262(5). No such exclusion is engaged here.
9. The Defendants' submission at DS [13], that *"there are no legislative provisions establishing that professional misconduct is a precondition"* to a s 45 decision misconceives the Plaintiff's case. The Plaintiff does not contend that professional misconduct (**PM**) is a universal prerequisite to every unfitness opinion. Rather, where the matters relied upon are conduct allegations, the Uniform Law mandates the disciplinary pathway in Chapter 5, not s 45 alone.

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[2] Defendant's Response filed 28 July 2025 [3.6].
[3] Affidavit MJO [18],[28], [35], [36].
[4] *Council of the Law Society of New South Wales v **Jaruwan Tangsilsat*** [2018] NSWCATOD 138; *Council of the Law Society of New South Wales v **Tangsilsat (No 2)*** [2020] NSWCATOD 88; *Council of the Law Society of New South Wales v **Sideris*** [2024] NSWCATOD 3; *Council of the Law Society of New South Wales v **Sideris (No 2)*** [2024] NSWCATOD 121; *Council of the Law Society of New South Wales v **Buckley*** [2025] NSWCATOD 98.
[5] Affidavit MJO[18f].

10. Section 262 requires all conduct matters to be dealt with under Chapter 5 unless expressly excluded. No exclusion applies. Section 297(1)(b) provides that conduct which, *"if established,"* would justify a finding that a lawyer is not fit and proper must first be established, that is, determined through the statutory Chapter 5 process, which includes investigation, particulars, evidence, and (if pursued) NCAT determination.
11. The Defendant's reliance on *Picos*[6] (DS [14]) is not applicable. That case involved objective medical evidence capable of grounding an evaluative judgment under s 45. In this case, there is no comparable evidentiary foundation, only untested judicial commentary from a leave application which itself resulted in a referral for possible conduct issues, not in findings.
12. DS [17]–[21] similarly proceeded on the premise that the Council validly met and exercised the power. The only "evidence" of a Council meeting is a bare statement in Ms Griswold's affidavit, expressed on information and belief. There are no minutes, agendas, attendance records, quorum records, or contemporaneous resolutions in evidence, nor is there any evidence that the full NSWCA referral papers were ever placed before or considered by Council. In substance, the decisions were drafted, framed and predetermined within PSD, then attributed to "Council" on the face of the record on the s 45 and the manager decisions.

C. Response to DS [26]–[39] (Grounds 1–12)

13. DS [26]–[39] proceeded on the incorrect premise that this matter concerned only an administrative renewal assessment. That premise is contrary to the Defendants' own correspondence, their decisions, actions and the NSWCA orders of referral for conduct issues.

Grounds 1, 3 and 12 (DS [27]–[29])

14. The Defendants reply to Grounds 1, 3 and 12 by asserting that s 45 operates "independently" of Chapter 5 and that UPC and/or PM findings are not required, does not acknowledge the factual matrix of the Plaintiff's case where misconduct allegations were raised. The Defendants raised and relied upon substantive conduct allegations which mandatorily enlivened Chapter 5. Having done so, they could not bypass that scheme and convert untested allegations into an unfitness opinion under s 45. This constitutes jurisdictional error and improper purpose. Grounds 1, 3 and 12 are made out.
15. *Tangsilsat* and *Sideris* cited in the Defendant's decisions, not relied upon in their submissions, provide established misconduct determined by NCAT under Chapter 5 procedures, none of which occurred here.

Ground 2 and related Grounds 4, 6, 8 (DS [30]–[36])

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[6] *Picos v Council of the Law Society (NSW)* [2022] FCA 755

16. In relation to Ground 2, the Defendants characterise the Plaintiff as having had "opportunities" to respond. Those opportunities were illusory. The Plaintiff was never given particulars of the alleged "findings and orders" she was said to have failed to disclose, never given the documents said to underlie the conduct accusations, and never told that Chapter 5 would not be followed. Repeated written requests for clarification of the process went unanswered. Reliance on material not disclosed, and particulars of allegations never provided, amounts to a denial of procedural fairness. Ground 2 is made out.
17. DS [34]–[36] similarly mischaracterise Grounds 4, 6 and 8. The Defendants' choice to ignore Chapter 5 after an express NSWCA conduct referral, and to use leave-judgment commentary as if it were findings, squarely engages "administration of justice" concerns (Ground 4). Bias and predetermination (Ground 6) arise from the PSD-driven process in which the outcome was effectively predetermined before any Council meeting. Ground 8 is not answered by saying there are "no mandatory considerations" under s 45, the statutory context, r 13(1) and the protective nature of unfitness determinations required careful engagement with the Plaintiff's unblemished record, absence of any UPC and PM, and the gravity of the consequences. This did not occur. Grounds 4, 6 and 8 are made out.

Grounds 5, 7, 9 and 10 (DS [37]–[39])

18. DS [37]–[39] should be rejected. The Defendants do not engage with the factual matrix that establishes improper purpose, predetermination and legal unreasonableness, including:
    a. their refusal to act on the NSWCA referrals under the mandatory Chapter 5 pathway;
    b. selective extraction of adverse judicial remarks that are not findings of fact;
    c. raising conduct accusations for over a year without any lawful process;
    d. pre-drafting the unfitness and manager decisions before the purported Council meeting; and
    e. undocumented alterations to the Plaintiff's practising status, data, and membership
19. The Defendants' reliance on *Odtojan v Ford* [2023] NSWCA 277 is misconceived and should be rejected. The Court of Appeal made no factual findings and did not determine any conduct issue. There was a referral for possible conduct issues, a referral which, under s 262 of the Uniform Law, mandatorily enlivened Chapter 5, not an adverse conclusion about the Plaintiff.
20. The Defendants ignored the referral orders,and bypassed the entire Chapter 5 framework. It is therefore legally impermissible, to weaponise judicial remarks incapable of amounting to "findings" or "proof" to ground an adverse unfitness determination under s 45.
21. The Plaintiff has been perpetually accused without any lawful process, deprived of the ability to present exculpatory evidence, correct the record, or obtain an independent determination through NCAT. If the Defendants believed the allegations were serious, the Uniform Law required them to proceed through Chapter 5 and, where relevant, to consider their s 465 obligations concerning suspected offences. They did neither.

22. The apprehension of bias arises from the Defendants' process: predetermination, selective reliance on untested allegations, exclusion of exculpatory material, and the conversion of a NSWCA referral into a disciplinary outcome the Defendants had no power to impose. Combined with altered solicitor data, and a year of accusations without process. These matters collectively demonstrate legal unreasonableness, predetermination and improper purpose. Ground 5 (and Grounds 7, 9 and 10) are established.

D. Notice of Motion, Jones v Dunkel and s 163 Evidence Act

23. The Plaintiff has notified the Defendants that the Notice of Motion to strike out the Response is no longer pressed, where the Registrar's order consolidates that motion with the substantive proceedings. Each party should bear its own costs of that motion, which was never heard and involved no substantial evidence or prejudice.
24. DS [40]–[41] should nonetheless be treated with caution. The Plaintiff does not rely on *Jones v Dunkel*[7] to require the calling of the decision-maker. Rather, the point is evidentiary: there is no primary evidence of any validly constituted Council meeting, quorum, agenda, minutes or resolutions supporting the s 45 and manager decisions. The only statement of a meeting is in an affidavit made on information and belief. In circumstances where Council records must exist but have not been produced, s 163 of the *Evidence Act 1995* (NSW) permits the Court to give little weight to that secondary hearsay assertion and to conclude that the Defendants have not discharged their evidentiary burden of proving that Council in fact exercised the power lawfully. This goes directly to the question of who the true decision-maker was and supports the Plaintiff's grounds of review raising the issue of the true decision maker whether they had exercised lawful authority and jurisdiction.

Marie Odtojan
Plaintiff
Date: 26 November 2025

[7] (1959) 101 CLR 298