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(Lawyers Weekly, 2006)

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The end of NZ barristerial immunity

09 October 2006 • By Lawyers Weekly

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THE NEW ZEALAND Supreme Court's abolition of barristerial immunity for both civil and criminal proceedings has eradicated "an unjustifiable anachronism" according to Justice...

THE NEW ZEALAND Supreme Court's abolition of barristerial immunity for both civil and criminal proceedings has eradicated "an unjustifiable anachronism" according to Justice Thomas.

The Court held last month that the absence of immunity will create "a more flexible legal system with a greater capacity to deliver justice in the individual case".

Unanimous in their decision to dismiss the appeal in *Chamberlains v Lai*, the Court upheld the Court of Appeal judgment striking out the defence of immunity, but decided against leaving immunity for criminal proceedings for another day.

In the principal judgment delivered by the Court, it was held: "A distinction for the purposes of immunity between advocates conducting criminal proceedings and advocates conducting civil proceedings would be invidious for the reasons given in [*Arthur J S Hall v Simons*]. And the incongruity would be exacerbated by the difficulties of classification of proceedings as civil or criminal".

The Court concluded that the reasons traditionally given for immunity are no longer justified.

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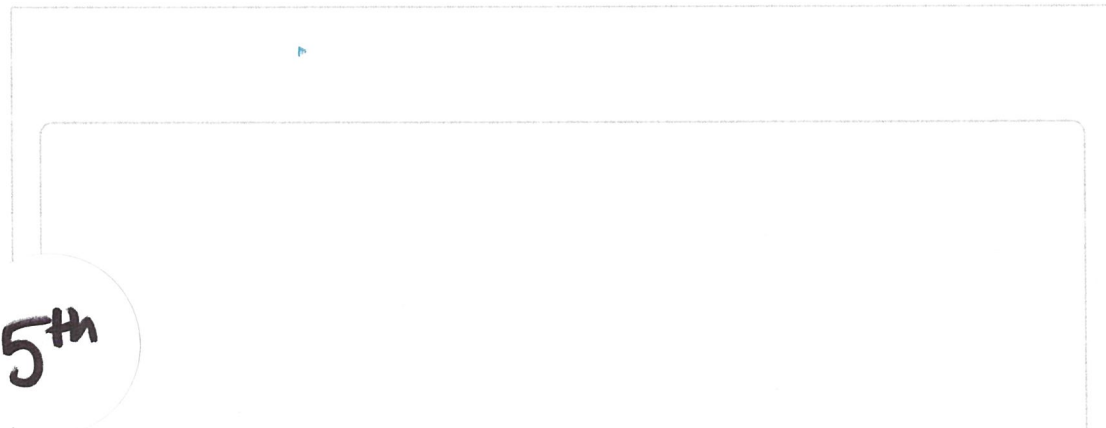
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"The former principal justifications for the immunity no longer persuade, if they ever did," the judgment said.

It was also argued: "Although consistency with Australian law may have been a more important consideration if the matter had been evenly balanced, we consider that the answer as a matter of New Zealand law is clear-cut".

The Court did not agree that any reconsideration of immunity should be left to Parliament. "The immunity was a creation of the common law. Its reception into New Zealand law did not alter its character."



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