

SUPREME COURT OF SOUTH AUSTRALIA

(Court of Appeal: Civil)

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JAMIL v SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL & ANOR (No 2)

[2026] SASCA 88

Decision of the Honourable Acting Chief Justice Livesey

31 July 2026

APPEAL AND NEW TRIAL - PROCEDURE - SOUTH AUSTRALIA - SECURITY FOR COSTS

PROCEDURE - CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS - SECURITY FOR COSTS - FACTORS RELEVANT TO EXERCISE OF DISCRETION

This is an application by the Medical Board of Australia for security for costs of an appeal which has been listed for hearing before the Court of Appeal on 11 December 2026.

The applicant requires leave to appeal the dismissal of his originating application seeking judicial review of the Tribunal's decision of professional misconduct. Last month I refused an application for an expedited hearing and determination of this matter.

Broadly, the applicant's case is concerned with his claim that he has discovered that the Tribunal's decision was tainted by perjury and fraud, and he has prepared a 28-page draft submission which explains the case which, he says, was not properly addressed by the judge who dismissed the application for judicial review.

Held, granting the application for security of costs:

1. Balancing all relevant considerations, particularly the absence of assets within the jurisdiction, suggests that this is a proper case in which to order security for costs.
2. It is in the interests of justice that the applicant provide security for the Board's costs in an amount of \$15,000 pursuant to r 215.3 of the *Uniform Civil Rules 2020* (SA).

On Appeal from SUPREME COURT OF SOUTH AUSTRALIA (JUSTICE BAMPTON) CIV-26-006993

Appellant: SHAMYAL HAROON JAMIL In Person

**First Respondent: SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE TRIBUNAL No Attendance -
Solicitor: CROWN SOLICITOR'S OFFICE (SA)**

**Second Respondent: MEDICAL BOARD OF AUSTRALIA
MINTER ELLISON**

Counsel: MS H LUU - Solicitor:

Hearing Date/s: 31/07/2026

File No/s: CIV-26-007122

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3. If that sum is not paid into Court on or before 4.00 pm on Friday, 28 August 2026 these appeal proceedings will be stayed and the listing of the hearing in December will be vacated.

Uniform Civil Rules 2020 (SA) rr 215.3, 256.3(1), referred to.

Australian Dream Homes Pty Ltd v Stojanovski [2016] VSCA 38; *Blaikie v Chelliah* [2023] SASCA 143; *Cowell v Taylor* (1885) 31 Ch D 34; *Diakos v Mason* [2010] SASC 108; *H, AW v K, S (No 2)* [2022] SASCA 88; *Hall v Carney* [2025] SASCA 23; *Hall v City of Burnside* (2006) 102 SASR 298; *Jamil v South Australian Civil and Administrative Tribunal & Anor* [2026] SASCA 75; *Lesses v Maras* [2016] SASC 117; *Meyers v Medical Board of Australia* [2025] VSC 363; *Nanosecond Corporation Pty Ltd v Glen Carron Pty Ltd* [2019] SASC 124; *NV Sumatra Tobacco Trading Company v British American Tobacco Australia Services Ltd* [2008] FCA 1542 [2008] FCA 1542; *Park v CNH Industrial Capital Europe* [2021] EWCA Civ 1766; *PS Chellaram & Co Ltd v China Ocean Shipping Co* (1991) 102 ALR 321; *Sands v State of South Australia* [2013] SASC 105; *SZSXT v Minister for Immigration and Border Protection* (2014) 222 FCR 73; *The Break Surf Park Investments Pty Ltd v Tate & Ors* [2025] SASCA 63; *Thompson v Robinson* [2005] QCA 253, considered.

**JAMIL v SOUTH AUSTRALIAN CIVIL AND ADMINISTRATIVE
TRIBUNAL & ANOR (No 2)
[2026] SASCA 88**

Court of Appeal – Civil – Application

LIVESEY ACJ:

Introduction

1 This is an application by the Medical Board of Australia for security for the costs for an appeal which has been listed for hearing before the Court of Appeal on 11 December 2026.

2 The applicant requires leave to appeal the dismissal of his originating application for judicial review of the Tribunal’s finding of professional misconduct.¹ The applicant required an extension of time in which to commence his application for judicial review because the six-month period prescribed by r 256.3(1) of the *Uniform Civil Rules 2020* (SA) expired in June 2024.

3 Broadly, the applicant’s case is that he has discovered that the Tribunal’s decision was tainted by perjury and fraud. The applicant is not legally represented. He has prepared a 28-page draft submission which explains the case which, he says, was not properly addressed by the primary judge who dismissed his application.

4 The parties argued this application earlier today, but it was necessary to reserve my decision to consider some of the authorities to which they referred.

The disposition of the application

5 In my opinion, it is in the interests of justice that the applicant be ordered pursuant to r 215.3 of the *Uniform Civil Rules 2020* (SA) to provide security for the Board’s costs in an amount of \$15,000.

6 If that sum is not paid into Court on or before 4.00 pm on Friday, 28 August 2026 these appeal proceedings will be stayed and the listing of the hearing in December will be vacated.

The application for security for costs of the appeal

7 This Court has a broad, unfettered discretion when determining whether to order security for the costs of an appeal, though that discretion must be exercised judicially having regard to established principles.²

¹ Last month, I refused an application for an expedited hearing and determination of this matter: *Jamil v South Australian Civil and Administrative Tribunal & Anor* [2026] SASCA 75.

² See, for example, *H, AW v K, S (No 2)* [2022] SASCA 88, [6] (Bleby JA); *Nanosecond Corporation Pty Ltd v Glen Carron Pty Ltd* [2019] SASC 124, [31]-[62] (Peek J); *Australian Dream Homes Pty Ltd v Stojanovski* [2016] VSCA 38, [40] (Santamaria and McLeish JJA).

8 An order that an appellant provide security for costs recognises that the respondent may be put to the expense of defending an appeal even though there is an unacceptable risk that the appellant will be unable or unwilling to meet an adverse order for costs. Indeed, that risk may be regarded as unacceptable where the respondent will face undue delay and expense associated with the enforcement of an adverse costs order.³

9 Usually, the Court will more readily consider ordering security on an appeal because the appellant has already had the benefit of a judicial determination of the issues.⁴

10 In this case, that consideration is subject to qualification. The applicant's contention is that the primary judge effectively determined the matter summarily. He says that there has not yet been proper judicial consideration of the issues he wants to raise on judicial review. As against that, the Board contends that the applicant is arguing the same issues previously addressed, only that he is now using the label of fraud.

11 When the Court determines an application for security for the costs of an appeal, it will usually consider:

1. Whether the appellant is impecunious, which includes the appellant's capacity or willingness to meet an adverse costs order without putting the respondent to undue delay and expense;
2. Whether the appellant has demonstrated that an order for security will stultify the appeal;
3. The likely prospects of success or failure on appeal;
4. Whether the appeal concerns a matter of public importance or has implications beyond the interests of the parties before the Court; and
5. Whether the appellant resides within the jurisdiction, including whether the appellant has assets within the jurisdiction which are available to a respondent enforcing an adverse costs order.

12 Whilst matters such as these are usually considered, they represent convenient reference points. They assist when framing the exercise of a broad and unfettered discretion, where no one consideration is necessarily decisive.⁵ Not all of them may be relevant and, in some cases, others may be relevant. The weight

³ *H, AW v K, S (No 2)* [2022] SASCA 88, [7], [34] (Bleby JA); *Blaikie v Chelliah* [2023] SASCA 143, [50] (S Doyle JA).

⁴ *Cowell v Taylor* (1885) 31 Ch D 34, 38 (Bowen LJ); *Thompson v Robinson* [2005] QCA 253, [6] (Keane JA); *Diakos v Mason* [2010] SASC 108, [10] (Kourakis J); *Sands v State of South Australia* [2013] SASC 105, [32] (White J); *Lesses v Maras* [2016] SASC 117, [7] (S Doyle J).

⁵ *Meyers v Medical Board of Australia* [2025] VSC 363 (Quigley J), where the appellant was ordered to provide \$60,000 by way of security for the Board's costs in connection with an appeal that was described as having no real prospect of success.

accorded to the relevant considerations will necessarily vary with the circumstances of the particular case before the Court.

13 In this case, that the applicant is not legally represented is a further relevant consideration. Whilst he acknowledges that the credit of AB was challenged before the Tribunal, and that he had an opportunity to put the 2020 transcript of the interview of AB before the Court last year (though his application was dismissed and that was upheld on appeal), he maintains that he did not understand the significance of a case based on perjury and fraud.

14 Accordingly, the applicant maintains that this is not a matter where he has deliberately refrained from earlier investigating or raising fraud.⁶

The determination of the application for security

15 For the purposes of this ruling, I need not repeat the procedural history or the appeal grounds set out in my previous ruling.⁷

16 The applicant resides interstate and the evidence establishes that he has no significant income or assets with which to meet an adverse costs order, whether in this jurisdiction or elsewhere.

17 Although the applicant has some financial support from his family, the extent of that support is not clear. He is already facing a large adverse costs burden which he cannot meet.

18 There is a real prospect that an order for security will stultify the prosecution of the appeal. That weighs against the making of an order. Nevertheless, it is necessary to balance that against the applicant's inability to satisfy an adverse costs order, the absence of assets within the jurisdiction, and the apparent prospects of success on appeal.

19 The 2020 transcript and the 2026 letter on which the applicant relies in his judicial review application said, in substance, that AB no longer has access to messaging and screenshots of messaging with the applicant. The applicant says that the timing of the statement made in the 2020 transcript, in particular, is significant.

20 The applicant contends that a proper evaluation of these materials and other evidence requires the conclusion that AB's evidence before the Tribunal in 2023 was perjured and its decision is therefore tainted by fraud.

21 AB's evidence before the Tribunal was that she no longer had access to messaging and screenshots of messaging with the applicant. In her statement

⁶ *Park v CNH Industrial Capital Europe* [2021] EWCA Civ 1766, [53]-[65], albeit a case concerning abuse of process. See also *SZSXT v Minister for Immigration and Border Protection* (2014) 222 FCR 73.

⁷ *Jamil v South Australian Civil and Administrative Tribunal & Anor* [2026] SASCA 75, [7]-[18] (Livesey P).

signed the day after the transcript was taken in 2020, she said these had disappeared. Expert evidence called before the Tribunal showed that messaging and screenshots could not disappear, though deletion might occur accidentally.

22 A sustained challenge was made to AB's credibility before the Tribunal, including on the basis that she had deliberately and dishonestly doctored or deleted messaging before her phone was provided for expert examination. The Tribunal did not accept these challenges, and though its finding on credibility was favourable it was not unqualified.

23 The applicant says that his challenge by way of judicial review is not the same as was mounted before the Tribunal, and he did not understand that he could make an allegation of fraud, or its effect, until after he read the solicitor's letter earlier this year.

24 As against these matters, it is the Board's contention that the 2020 transcript and the 2026 letter do not significantly alter the nature of the challenge made to the evidence of AB before the Tribunal during 2023. The Board says that the judicial review proceedings represent just another attempt to relitigate that which was before the Tribunal and determined by it. The Board points to the fact that the transcript was addressed in the unsuccessful application before Stanley JA to lead further evidence, as well as in appeals before the Court of Appeal last year. The Board would, no doubt, also say that judicial review is not available where the applicant had rights of appeal which he pursued unsuccessfully,⁸ including before the High Court.⁹

25 I do not doubt that the appellant is genuinely prosecuting these proceedings. His anxiety about his loss of professional standing and inability to practise medicine is understandable. I do not doubt that the appellant believes that he has a good claim based on perjury and fraud, and that this occurred to him when he reviewed the correspondence from AB's solicitors earlier this year. That caused him to review the 2020 transcript and the proceedings before the Tribunal. I accept that he now sees these matters in a new light.

26 However, the applicant faces very formidable obstacles on appeal. These include the need to demonstrate that he should have an extension of time to commence judicial review proceedings,¹⁰ and that he should be granted leave to appeal,¹¹ before the merits of his appeal can be determined. As to the merits, I am not prepared to rule on the competing contentions. It is inappropriate to do so on

⁸ *R v Marshall* (2023) 144 SASR 1, [176]-[177] (Livesey P, David JA and Kimber AJA). Namely, the applicant should be confined to his appeal remedy, cf *Avaria Niles v Judicial and Legal Service Commission and Anor* [2026] UKPC 15.

⁹ *Jamil v South Australian Civil and Administrative Tribunal & Anor* [2026] SASCA 75, [8]-[10] (Livesey P).

¹⁰ *Hall v City of Burnside* (2006) 102 SASR 298, [47]-[51] (Doyle CJ, with whom Duggan J agreed); *The Break Surf Park Investments Pty Ltd v Tate & Ors* [2025] SASCA 63, [22]-[26] (Livesey P and Bleby JA).

¹¹ *Hall v Carney* [2025] SASCA 23, [11] (Livesey P and S Doyle JA).

an application such as this. Having said that, it cannot be said that the prospects on appeal are particularly strong, though it is necessary to recognise that the applicant has not yet had the opportunity to put his full argument. In the circumstances of this case, it is not necessary to go further.

27 In my view, balancing all relevant considerations, particularly the absence of assets within the jurisdiction,¹² suggests that this is a proper case in which to order security for the costs of the appeal.

28 Having heard from the applicant about the quantum of an order, as well as about the terms of an order given his personal circumstances, I am prepared to order security in the amount of \$15,000. I will direct that should it not be paid on or before 4.00 pm on Friday, 28 August 2026 these proceedings will be stayed and the present December appeal listing vacated.

29 The effect is to allow the applicant somewhat longer than would ordinarily be allowed to raise security, in an amount which is somewhat lower than might ordinarily be required.

Conclusion

30 The applicant must provide security for the Board's costs of the appeal.

31 The applicant must pay the Board's costs of this application. The parties have liberty to apply.

¹² *PS Chellaram & Co Ltd v China Ocean Shipping Co* (1991) 102 ALR 321, 323 (McHugh J); *NV Sumatra Tobacco Trading Company v British American Tobacco Australia Services Ltd* [2008] FCA 1542, [15] (Greenwood J).