Employment Court of New Zealand

Cronin-Lampe v Minister of Education [2024] NZEmpC 125 (10 July 2024)

Last Updated: 24 July 2024

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKAURAU
[2024] NZEmpC 125
ARC 55/2013 ARC 79/2013 ARC 48/2014
ARC 25/2014

IN THE MATTER OF	challenges to determinations of the Employment Relations Authority
AND IN THE MATTER OF	proceedings removed from the Employment Relations Authority
AND IN THE MATTER OF	an application for costs
BETWEEN	KATHLEEN CRONIN-LAMPE First Plaintiff
AND	RONALD CRONIN-LAMPE Second Plaintiff
AND	MINISTER OF EDUCATION (IN RESPECT OF THE MINISTRY OF EDUCATION) Defendant
AND	ACCIDENT COMPENSATION CORPORATION Intervener

Hearing:	On the papers
Appearances:	T Braun, counsel for plaintiffs B Heenan and L Jenkins, counsel for defendant
Judgment:	10 July 2024

COSTS JUDGMENT OF JUDGE B A CORKILL

KATHLEEN CRONIN-LAMPE v MINISTER OF EDUCATION (IN RESPECT OF THE MINISTRY OF EDUCATION) [2024] NZEmpC 125 [10 July 2024]

Introduction

[1] Mr and Mrs Cronin-Lampe have applied for costs following the successful outcome of their claims against Melville High School (MHS)1 in two substantive judgments.2 They also seek costs with regard to an investigation meeting of the Employment Relations Authority in light of the outcome in the Court.3 The Minister of Education on behalf of the Ministry of Education (the Ministry) does not dispute liability for costs in the Court, although issues are raised as to the amount sought. The Ministry also says the Authority's conclusion, that costs of its investigation should lie where they fall, remains appropriate.

[2] Reference should be made to the Authority's determination and to the Court's substantive judgments for context. In summary, the Authority dismissed Mr and Mrs Cronin-Lampe's personal grievance claims. In the first of its two substantive judgments, the Court granted leave to Mr and Mrs Cronin-Lampe to raise their disadvantage grievances as from 2 December 2010, there being exceptional circumstances occasioning the delay which occurred in raising those grievances.4 In the second substantive judgment, substantial awards for damages were awarded in favour of Mrs and Mrs Cronin-Lampe, arising from significant health and safety contractual breaches on the part of MHS which had subsisted over several years.5 Findings as to the remedies for their established disadvantage grievances were also made.

1. On 27 February 2024 the Board of Trustees of Melville High School was substituted by the Minister of Education (in respect of the Ministry of Education): *Cronin-Lampe v Minister of Education (in respect of the Ministry of Education) (Interlocutory Judgment No 4)* [2024] NZEmpC 39 at [6]–[10]. I refer to the defendant herein as the Ministry.

2. *Cronin-Lampe v The Board of Trustees of Melville High School* [2023] NZEmpC 144 [*Cronin- Lampe (No 1)*]; and *Cronin-Lampe v The Board of Trustees of Melville High School (No 2)* [2023] NZEmpC 221 [*Cronin-Lampe (No 2)*].
3. *Cronin-Lampe v Board of Trustees of Melville High School* [2013] NZERA 249 (Member Crichton) [*Authority determination*].

4 *Cronin-Lampe (No 1)*, above n 2, at [533].

5 Damages totalling $829,355 were awarded in favour of Mrs Cronin-Lampe; damages totalling

$967,094 were awarded in favour of Mr Cronin-Lampe. See *Cronin-Lampe (No 2)*, above n 2, at [456]–[457].

History

[3] The litigation has a complex history. It is necessary to summarise the key events.

[4] Statements of problem were originally filed in the Authority in January 2013.6 In April 2014, Mr and Mrs Cronin-Lampe filed further statements of problem which raised contractual and tortious causes of action in the Authority which were removed to the Court.7

[5] As a result of discussions between Judge Perkins and counsel, Mr and Mrs Cronin-Lampe subsequently filed a statement of problem in the Authority seeking leave to raise their personal grievances after the expiry of the statutory period for doing so on the grounds that exceptional circumstances existed. This proceeding was also removed to the Court.8 By April 2015, four proceedings had been filed.

[6] A series of directions conferences were then held to discuss the adequacy of the pleaded particulars of the plaintiffs' claims. This issue was not able to be fully resolved between counsel. MHS applied for orders requiring further particulars of the plaintiffs' claims, which was heard on 21 April 2015 with the judgment being issued on 6 August 2015 in which the application was granted.9

[7] The next interlocutory step related to time limitation issues as raised by MHS in its pleadings, which led to applications being filed so as to advance these problems on an interlocutory basis. The applications were dealt with on a series of dates in late 2016, with judgment being issued on 26 April 2017.10

6. *Cronin-Lampe v Board of Trustees of Melville High School* [2013] NZERA 446 (Member Crichton) [*Authority costs determination*].
7. *Cronin-Lampe v Board of Trustees of Melville High School* [2014] NZERA 146 (Member Crichton).
8. *Cronin-Lampe v Board of Trustees of Melville High School* [2014] NZERA 223 (Member Crichton).
9. *Cronin-Lampe v The Board of Trustees of Melville High School* [2015] NZEmpC 136 [*Further particulars judgment*].
10. *Cronin-Lampe v The Board of Trustees of Melville High School* [2017] NZEmpC 41, [2017] ERNZ 191 [*Limitation judgment*].

[8] In 2016, Mr and Mrs Cronin-Lampe made applications to the Accident Compensation Corporation (ACC) for cover under the Accident Compensation Act 2001 (the AC Act) for work-related mental injury. In August 2017, the Court was advised that by that time, the ACC claims had been lodged and there were parallel proceedings in the High Court due to a concern that there were jurisdictional limitations under the Employment Relations Act 2000.11 The ACC process ran its course until February 2020. As noted previously, for approximately two and a half years whilst Mr and Mrs Cronin-Lampe were seeking ACC cover their claims were not actively pursued in this Court.12

[9] Then, a preliminary ACC point was dealt with by this Court.13 MHS brought a subsequent appeal in the Court of Appeal which was dismissed. That Court confirmed that s 133(5) of the AC Act did not bar Mr and Mrs Cronin-Lampe's claims in this Court being heard.14

[10] Once these issues were dealt with, the matter was timetabled for hearing, which spanned various dates between 20 February 2023 and 20 July 2023. The Court's first judgment was issued on 30 August 2023, and its second judgment on 5 December 2023.

Costs in the Court

[11] It is convenient to first deal with costs relating to the present proceedings, and then to turn to the costs issues arising from the Authority's investigation meeting.

[12] With regard to costs in the Court, counsel for Mr and Mrs Cronin-Lampe, Mr Braun, filed a schedule under the Court's guideline scale as to costs, based on category 3 as to complexity. In respect of time allocations, reliance was placed on band B in the main, although it was submitted band C was appropriate for some items. Mr Braun submitted that having regard to a range of factors, there should then be an uplift of 50

11 *Cronin-Lampe (No 2)*, above n 2, at [239]–[240].

12 At [242].

13. *Cronin-Lampe v The Board of Trustees of Melville High School* [2021] NZEmpC 201, [2021] ERNZ 1188.
14. *The Board of Trustees of Melville High School v Cronin-Lampe* [2022] NZCA 407, [2022] ERNZ 751.

per cent. The total initially sought for the plaintiffs' claims, on the basis of a 50 per cent uplift, was $469,975.50; later, it was submitted GST liabilities should also be reflected in the uplift. Disbursements totalling $59,581.54 were claimed. In addition, costs in the Authority of $8,500 were sought.

[13] For the Ministry, Ms Heenan submitted that category 2 was, for the most part, appropriate although, in relation to some aspects of preparation for and attendances at the substantive hearing, it was accepted category 3 should apply. Ms Heenan relied primarily on band B for time allocations, but for some items relating to the hearing she accepted that band C was appropriate. It was not agreed that an uplift was appropriate. Ms Heenan submitted in summary that an appropriate award of costs in the Court would total $233,105.90, together with most of the disbursements claimed by Mr and Mrs Cronin-Lampe, all of which amounted to $288,202.44. She said that costs in the Authority should lie where they fall.

[14] In their submissions, both sides referred to their actual costs as incurred during the litigation. The information initially provided on that point was only briefly summarised. I indicated that in the circumstances, considerably more detail would be required if I were to conclude that actual costs were a relevant consideration. As a result, affidavits were filed by both parties providing details.

Issues as to costs in the Court

[15] From the full submissions which counsel have helpfully provided, I distil these issues for resolution by the Court:

(a) Which is the correct category – category 2 or category 3?
(b) What are the correct time allocations, and should any of the cost claims be modified (either by reducing the time allocation or completely disallowing the claim)?
(c) Should there be an uplift on the scale assessment made by the Court?
(d) Are the claimed disbursements reasonable?

Legal principles

[16] The starting point for the assessment of costs is sch 3 cl 19 of the Act. It confers a broad discretion as to costs.

[17] The discretion to award costs must be exercised judicially and in accordance with other well-established principles. One of those is that costs generally follow the event.15

[18] Under reg 68 of the Employment Court Regulations 2000, when exercising its discretion, the Court may have regard to any conduct of the parties tending to increase or contain costs.

[19] The Court's guideline scale as to costs is intended to support, as far as possible, the policy objective that the determination of costs be predictable, expeditious and consistent. The guideline scale, however, is not intended to replace the Court's ultimate discretion under the statute. It is a factor in the exercise of the Court's discretion.16

[20] The scale first requires the proceeding to be assigned a category of complexity. Secondly, a determination of time band is required so as to fix a reasonable time for undertaking particular steps taken in the proceeding.

[21] Categories 2 and 3 fall for consideration here. Category 2 proceedings are those of average complexity, requiring a representative of skill and experience considered average in the Employment Court. Category 3 concerns proceedings that, because of their complexity or significance, require a representative to have special skill or experience in the Employment Court.

[22] I note that the Court was not requested to fix cost classifications at any pre- hearing stage.

15 *Victoria University of Wellington v Alton-Lee* [2001] NZCA 313; [2001] ERNZ 305 (CA) at [48].

16. "Employment Court of New Zealand Practice Directions" <www.employmentcourt.govt.nz> at No 18; and *Xtreme Dining v Dewar* [2017] NZEmpC 10, [2017] ERNZ 26 at [25].

[23] The parties proceeded on the basis that the Court's guideline scale as to costs should apply for attendances as from 14 June 2012. In fact, the Court's guideline scale applied from January 2016.17 From time to time, prior to that date, the Court did have recourse to the scale as applied in the High Court, generally by way of a cross-check.18 Since there is no controversy between the parties as to a scale-based approach, including as to the applicable daily rate, I proceed on the basis that the guideline scale may be referred to by analogy in respect of the attendances that took place prior to 2016. The Court's guideline scale adopts the daily rates established under sch 2 of the High Court Rules 2016; prior to that date recourse may be had to the daily rates in the previous rules which governed the position in the High Court.

[24] I record that, for the purposes of their submissions, both counsel invited the Court to consider costs as incurred in the three periods where differing daily rates applied in the High Court.

(a) Part one: 14 June 2012 to 30 June 2015.19
(b) Part two: 1 July 2015 to 31 July 2019.20
(c) Part three: 1 August 2019 to now.21

Submissions as to correct category

[25] Mr Braun submitted that category 3 was appropriate for the entirety of the proceedings. He said they were of sufficient complexity and significance as to warrant such a conclusion. Four extensive proceedings were ultimately consolidated. The

17 See, for example, *Xtreme Dining Ltd t/a Think Steel v Dewar*, above n 16, at [25]. Initially, the guideline scale was introduced as a pilot scheme designed to run for one year, but this was later extended.

18 See, for example, *Merchant v Chief Executive of the Department of Corrections* [2009] ERNZ 108 (EmpC); and *New Zealand Professional Firefighters Union v New Zealand Fire Service Commission* EMC Wellington WC9A/08, 3 October 2008. Compare *Health Waikato Ltd v Elmsly* [2004] NZCA 35; [2004] 1 ERNZ 172 (CA) at [49]–[51].

19 Category 1 $1,320; Category 2 $1,990; Category 3 $2,940: Judicature Act 1908, sch 2. Replaced on 14 June 2012 by High Court Amendment Rules 2012, r 4.

20 Category 1 $1,480; Category 2 $2,230; Category 3 $3,300: Judicature Act 1908, sch 2. Replaced on 1 July 2015 by High Court Amendment Rules 2015, r 19. See too High Court Rules 2016, sch 2 (reprint as at 30 April 2016).

21 Category 1 $1,590; Category 2 $2,390; Category 3 $3,530: High Court Rules 2016, sch 2. Replaced on 1 August 2019 by High Court Amendment Rules 2019, r 11.

total period for the litigation spanned some 12 years. The case was complex in nature and canvassed a significant array of issues. Mr Braun submitted that those issues included the following factors:

> (a) The final version of the amended statement of claim was extensive due to the long period of time it covered, and the significant number of factual allegations relied on.
>
> (b) The pleading covered two employees with numerous causes of action and a wide range of legal issues including breaches of contract (written and implied), negligence (although this was not ultimately pursued), and breaches arising out of obligations codified in the Act and the Health and Safety in Employment Act 1992.
>
> (c) There was a significant preliminary matter as to whether exceptional circumstances existed for time limitation purposes. In addition, MHS's affirmative defence in respect of the ACC statutory bar led to an important judgment in the Supreme Court,22 and required consideration in this Court's second judgment.23 These matters were not straightforward.
>
> (d) The case was far larger than the vast majority of cases heard by the Employment Court. Significant attendances by several lawyers were required to:
>
> > (i) assist 19 witnesses with the preparation of their evidence;
> > (ii) prepare cross-examination of the defendant's witnesses, which included expert medical opinions on the causation of post-traumatic stress disorder (PTSD) as suffered by the plaintiffs;

22 *The Board of Trustees of Melville High School v Cronin-Lampe*, above n 14.

23 *Cronin-Lampe (No 2)*, above n 2.

> > (iii) prepare and deliver extensive legal submissions that relied heavily on the evidence and required extensive cross- referencing to the bundles of documents and notes of evidence; and
> >
> > (iv) prepare and deliver supplementary submissions on the application of relevant ACC provisions in a rapidly developing and niche area of case law.
>
> (e) The size and scope of Mr and Mrs Cronin-Lampe's claims were significant. The hearing time was lengthy, and it required a detailed knowledge of the evidence (particularly the expert medical and financial evidence) and management of a large volume of documents. Extensive legal argument had to be prepared.

[26] For the Ministry, Ms Heenan submitted that for the part one period – the first three years of the proceeding – there was nothing significantly complex about anything that occurred. Moreover, she said there were "numerous delays" on the part of the plaintiffs that frustrated the advancement of the proceeding and increased costs for both parties.24 I understood that point to be made in relation to the plaintiffs' application for an uplift.

> [27] With regard to the part two period – from 2015 to 2019 – Ms Heenan said the steps taken were not sufficiently complex to warrant a category 3 classification. Neither party briefed senior counsel, unlike the first period, and there were no remarkable features in that period.
>
> [28] With regard to the part three period – from August 2019 onwards – Ms Heenan accepted that some steps, from the preparation for the hearing onwards, warranted a category 3 finding. This was justified by the greatly enlarged scope of the evidence that was filed, particularly in reply, which further complicated the substantive hearing.

24 Reference was made to a series of memoranda filed by the defendant from February 2014 to October 2014 and to a minute of the Court from October 2014, recording a delay in progressing the claims on the part of the plaintiffs: *Cronin-Lampe v The Board of Trustees of Melville High School* ARC 25/14, ARC 48/14, ARC 55/13, 21 October 2014.

Other points were raised with regard to time allocations with which I will deal later. She said that category 2, however, should apply to attendances that preceded the preparation that occurred for the substantive hearing because they did not involve complexity that would justify a category 3 finding.

Discussion as to correct category

[29] In response to the submission made for the Ministry that Mr and Mrs Cronin- Lampe's case was the subject of delays during part one, I have reviewed both the memoranda filed for the parties at the time, and the minutes of the Court in response. I note that in his minute of 28 March 2014, Judge Perkins referred to the concerns as to delay which had been raised by the defendant. This was because a fresh cause of action was to be filed in the Authority, along with an application for removal. The concerns were dealt with by an agreed timetable so that those steps would take place in a timely way.

[30] It is plain from subsequent minutes in that year that senior counsel on both sides were engaged in attempting to resolve the extent of details that needed to be pleaded, and as to how and when time limitation issues that had been raised for MHS would be dealt with.

[31] In Judge Perkins's minute of 21 October 2014, a further reference was made to a concern about delay, but the Judge did not consider it necessary to consider, for example, a timetabling order couched in terms of being an "unless" order.25 While the delay was referred to as being "no longer satisfactory" and it was said that the filing of pleadings should have already been attended to, it was also acknowledged that the plaintiffs had experienced difficulties in formalising evidence in support of the limitation applications.

[32] I also acknowledge the point made by Mr Braun in his submissions in reply that at times delays were also caused by MHS's position, for instance, on the ACC preliminary point which extended the duration of the proceeding.

25 At [3] of the minute.

[33] To be clear, I do not think there are conduct issues on either side that should affect the assessment of costs. Having said that, the matters referred to above do suggest that the proceedings became increasingly complex as they progressed.

[34] There have been relatively few judgments of this Court where category 3 has been considered appropriate.26 However, I am satisfied that this is such a case for each of the three periods counsel have identified.

[35] I accept the submissions made for Mr and Mrs Cronin-Lampe on this issue, and make the following additional points.

[36] With regard to the part one period, it is to be noted that both parties retained senior counsel to assist them. That was plainly due to the complexity and significance of the proceeding.

[37] During the part two period, the parties continued to deal with the framing of the plaintiffs' case. Ultimately, an amended statement of claim was filed which I described in the first judgment as being "compendious".27 In my view, the claims were, by that time, unusual, detailed and complex. They spanned some 16 years of employment during which many complicated events occurred.

[38] In the same period, there were necessary attendances with regard to the time limitation issues which resulted in Judge Perkins's judgment of April 2017. In that decision he granted leave to Mr and Mrs Cronin-Lampe to bring their action in respect of alleged causes of action for bodily injury which accrued within the six-year period preceding 4 April 2014, the date on which the applicable statement of problem had been filed in the Authority.28 That order was made under s 4(7) of the Limitation Act 1950. At the same time, Judge Perkins heard a second application under ss 114 and 115 of the Act, where leave had been sought to raise personal grievances out of time. He ruled this issue should be resolved at the trial, there being a significant potential

26 Examples, however, are *Noble v Ballooning Canterbury.com Ltd* [2020] NZEmpC 167; and *The 20 District Health Boards v New Zealand Nurses Organisation* [2021] NZEmpC 163, [2021] ERNZ 842.

27 *Cronin-Lampe (No 1)*, above 2, at [18].

28 *Limitation judgment*, above n 10, at [42].

risk of prejudicing a major part of the challenge and its defence, particularly as to jurisdiction which meant pre-hearing findings on the issue were inappropriate.29 The issues that were traversed were complex when considered in the relevant context.

[39] I note that, by this stage, both sides no longer retained senior counsel for the purposes of the time limitation argument, no doubt due to the extent of ongoing costs when dealing with these issues.

[40] Standing back, I am persuaded that the attendances in the part two period also warrant a category 3 finding.

[41] Turning to the part three period, the Ministry has properly conceded that preparation and attendances for the hearing justify a category 3 finding. However, as I have noted, it was not accepted that earlier attendances, in period three, should be so classified.

[42] I have already referred to the hiatus that occurred for part of this period due to a focus on the ACC claims.30 Once Mr and Mrs Cronin-Lampe continued to pursue their claims in this Court in 2020, very extensive discovery occurred as was evidenced by the contents of the 14 bundles of documents which had to be considered by the Court.31 A second amended statement of claim was filed during this period. Attendances were also required in respect of the preliminary legal point raised by MHS, which carried on to the Court of Appeal. I am satisfied that the totality of such attendances was complex and significant. Indeed, it would be artificial to conclude otherwise when all other aspects of the proceeding are classified as falling within category 3.

[43] I also observe the substantive judgments confirm the complexity and significance of the cases that the parties prepared for the consideration of the Court.

29 At [43]–[45].

30 See [8] above; and *Cronin-Lampe (No 2)*, above n 2, at [241].

31 See *Cronin-Lampe (No 1)*, above n 2, at [44].

Time allocations and contested cost items

[44] I now turn to the time allocations. As explained earlier, apart from some isolated examples, the parties largely agree that band B should apply, despite different positions as to the correct category which I have just resolved. They also agree that in respect of attendances relating to preparation for and appearances at the hearing, band C is appropriate.

[45] The differences are identified in a schedule which both parties annotated.

[46] As to time allocations, the distinction between band B and band C is whether a normal (band B), or a comparatively large (band C), amount of time is considered reasonable for the particular step.32 It is well established that what is reasonable involves an objective assessment of the circumstances relating to the particular step.

[47] For each of the items in the schedule that the Ministry says that a different award should be made, it has been necessary to consider whether the contested claims are reasonable.

[48] The first disputed claim which requires discussion relates to the defendant's successful application for further particulars in the part one period. The timing issues I referred to previously were compounded by MHS applying for further particulars because these had not been provided voluntarily. As that application was successful, the Ministry submits that costs on that application should be awarded to it and be offset against other costs awarded to the plaintiffs.

[49] The application for further particulars resulted in a judgment issued on 6 August 2015. The defendant's application was granted.33 In that judgment, Judge Perkins reserved costs.34 I accept Mr Braun's submission that reserving costs in those circumstances reflects an intention for costs on the application to be revisited in light of each party's overall success on the substantive matters. I also accept that the initial deficiencies in the pleadings were likely to have been, at least in part, a consequence

32 "Employment Court of New Zealand Practice Directions", above n 16, at No 18, sch 1.

33 *Further particulars judgment*, above n 9, at [32].

34 At [33].

of the plaintiffs' concerns as to maintaining confidentiality and respecting the privacy of the individuals were going to be referred to.35 I agree that the plaintiffs should not be penalised by an adverse costs award in the circumstances, and in light of their overall success on the substantive matters. As a result, costs should lie where they fall in respect of that application.

[50] Next, I consider the relevance of the parties' actual costs as that featured in the submissions for both parties. Ms Heenan relied upon *Nathan v Broadspectrum (New Zealand) Ltd* to submit that the actual costs incurred by the plaintiffs are irrelevant to determining the categorisation or banding under the guideline scale.36 For his part, Mr Braun submitted that actual costs are relevant since they can usefully demonstrate the time spent on each step; that said, he accepted that they should not be determinative.

[51] In *Xtreme Dining Ltd v Dewar,* a full Court held that there may be cases where it is important to know what the actual costs were, for example in determining whether the guideline scale assessment should be abandoned altogether and an approach based on actual costs adopted.37

[52] However, in the present case both parties, in their submissions, adopted an assessment based on the guideline scale. Accordingly, I proceed upon that basis, which means that the actual costs are not relevant at this stage of the assessment.38 They may be relevant at the final stage when the Court considers whether an uplift is justified.

[53] Attached to this judgment is the schedule which was annotated by the parties, either as to time allocations or claims contested on some other basis. Where there was a difference in approach, I have recorded my rulings.

35 Also referred to in the *Further particulars judgment*, above n 9, at [15].

36 *Nathan v Broadspectrum (New Zealand) Ltd* [2017] NZEmpC 118, [2017] ERNZ 714 at [26]. Also citing *Nomoi Holdings Ltd v Elders Pastoral Holdings Ltd* (2001) 15 PRNZ 115 (HC); as cited with approval in *McGuire v Secretary for Justice* [2018] NZSC 116, [2019] 1 NZLR 335 at [66].

37 *Xtreme Dining Ltd v Dewar*, above n 16, at [26] and [32].

38 See too *Judea Tavern Ltd v Jesson* [2017] NZEmpC 120, [2017] ERNZ 726 at [10]; and *Edminston v Stanford Ltd* [2018] NZEmpC 37 at [65].

Should there be an uplift?

[54] Mr Braun submitted that the circumstances of the case warrant an uplift of the amount fixed according to scale. Initially, he sought an uplift of 50 per cent. He said this is for two main reasons. The first ground was that MHS should be criticised for advancing

an application to stay the proceedings pending exhaustion of ACC review and appeal rights. The second ground related to the extent of costs actually incurred.

[55] Developing the first ground, Mr Braun said the applications for stay caused 18 months of delay, increased costs and were never likely to succeed.

[56] Related to this submission was an assertion that MHS took a combative and consistently aggressive approach to defending the plaintiffs' claims. The effect of that approach, Mr Braun submitted, was to greatly increase the stress and pressure Mr and Mrs Cronin-Lampe had to manage.

[57] Mr Braun went on to submit that the plaintiffs' PTSD conditions had created challenges for counsel, and for Mr and Mrs Cronin-Lampe themselves, such as:

(a) The plaintiffs had to struggle with the inflexibility of the legal process, which arguably was not designed to accommodate those who are suffering from serious mental trauma.
(b) At times, making decisions and providing instructions had been difficult for the plaintiffs. They required a significant amount of support from counsel and others as to explanations of process, advice, potential outcomes and associated risks. They also required considerable time to digest and process that information.
(c) At times, the plaintiffs found themselves unable to make decisions; the stress of the litigation exacerbated their PTSD symptoms to nearly debilitating levels.
(d) The combined effect of these factors was that costs inevitably increased.

[58] Turning to the second ground, Mr Braun submitted that Mr and Mrs Cronin- Lampe's actual costs far exceeded the sum fixed under the scale assessment. As mentioned, for the purposes of this submission I requested affidavit evidence, which I will summarise and discuss shortly.

[59] Turning to the defendant's response to these points, Ms Heenan submitted there was no basis for an uplift. She said MHS had not failed to comply with the rules and directions of the Court, and had not failed without reasonable justification to admit facts, evidence or documents, or accept a legal argument. As mentioned, reference was also made to the "numerous delays" caused by the plaintiffs in the part one period to suggest that an uplift from the scale in their favour would be inappropriate.

[60] It was not accepted that MHS had taken a combative and consistently aggressive approach. Ms Heenan says she is advised that MHS did not take issue with many of the facts in evidence presented by the plaintiffs, particularly relating to historical events. It is also submitted that the fact that Mr and Mrs Cronin-Lampe suffered from PTSD was also never contested. Ms Heenan also emphasised that a constructive approach was taken to the exchange of documents.

[61] Counsel submitted that the ACC issues as to the effect of s 133(5) of the AC Act were appropriately raised. Ms Heenan also referred to the fact that the Supreme Court decision in *Roper v Taylor* had to be addressed by the Court following the substantive hearing. The issues which then fell for consideration by this Court meant this aspect of the proceeding should be regarded as a test case which should not lead to an uplift in the plaintiffs' costs.39

[62] Finally, Ms Heenan submitted that the amount claimed to have been actually incurred by the plaintiffs, in excess of $1 million, was unreasonably high. Ms Heenan said she understood from counsel who had represented MHS at trial that this figure was approximately double what MHS had spent on the matter through the entirety of the claim, including the Authority investigation and the Court proceeding. I understood the suggestion to be that the costs incurred by the plaintiffs were not

39. *Roper v Taylor* [2023] NZSC 49, [2023] 1 NZLR 1. The case and its implications were discussed in *Cronin-Lampe (No 2)*, above n 2, at [136]–[221].

reasonable so that an uplift was not appropriate. My direction for affidavit evidence also related to the defendant's position, so that this submission could be better understood.

The parties' evidence as to actual legal fees

[63] Mr and Mrs Cronin-Lampe were represented in the early stages of the litigation, until approximately April 2015, by Beattie Rickman Legal, who briefed Mr Katz KC.

[64] Mr Thoms of Beattie Rickman Legal said the work his firm undertook has yet to be costed but that he will likely invoice no less than 50 per cent of work in progress. This would produce a figure of $80,500 (including GST). In the absence of an apportionment of work in the Authority on the one hand, and work in the Court on the other, I fix 50 per cent of this amount as being an appropriate figure for work in the Court; that is, $40,250.

[65] When it comes to Mr Katz's fees, it is to some extent possible to distinguish between work in the Authority and work in the Court. His fees from July 2013 to April 2015 (I infer in relation to work in the Court) amounted to $40,558 (including GST).

[66] The firm of Braun Bond and Lomas acted for the plaintiffs from approximately August 2015, and this has continued to be the case from then until now. Costs invoiced by that firm total $944,720 (including GST), which excludes attendances relating to the High Court proceeding, the ACC reviews, and in respect of the appeal taken to the Court of Appeal. A notional total of fees incurred by the plaintiffs for the proceedings in this Court is therefore approximately $1 million.

[67] MHS was insured. Counsel retained by the insurers, Mr White, charged a total of $83,335 (including GST) for work in the

Authority, and $336,215 (including GST) for work in the Court. This figure included what Mr White described as a "minimal" amount of work in the High Court, but also work dealing with the ACC review hearings and the Court of Appeal hearing. Mr Waalkens KC was briefed for a period during the early stages of the proceedings; his fees are unknown as they were rendered

directly to the insurer. Also unknown is the cost of work undertaken by Mr White's instructing solicitors, McElroys.

[68] Mr White said that total costs went "slightly" over a limit of $500,000 which was available under the MHS policy.

[69] These figures must be treated with caution since neither party's evidence as to the extent of costs in the Court is fully particularised. That said, it is apparent the plaintiffs' costs significantly exceeded the defendant's costs.

[70] The difficulties referred to by Mr Braun earlier40 go some way to explaining why a differential is unsurprising. Given these circumstances, I do not regard the defendant's actual costs as being a relevant consideration when assessing the plaintiffs' cost award.

Uplift - Analysis

[71] As I have mentioned, it is well established that the guideline scale is only one factor in the Court's discretion, and that discretion is also to be exercised in accordance with recognised principle, in particular those applying to awards of increased and indemnity costs.41 The Court has a discretion to award increased costs.42 I have accepted as a starting point the guideline scale figure of $284,841.50.43 I now turn to consider whether an uplift to that figure is appropriate.

[72] Although the case may be regarded as significant for many reasons, it should not be regarded as a test case for cost uplift purposes, in whole or in part. While I accept that the some of the issues, particularly those arising from *Roper v Taylor*, may be considered novel, many of the applicable findings were highly fact-dependant, as reflected in the lengthy factual backgrounds given in both judgments.44

40 See above at [57].

41. *Xtreme Dining Ltd v Dewar*, above n 16, at [22] and [25]. See too "Employment Court of New Zealand Practice Directions", above n 16, at No 18.
42. Employment Court Regulations 2000, reg 68(1). See too *Xtreme Dining Ltd v Dewar*, above n 16, at [23]; citing *Binnie v Pacific Health Ltd* [2003] NZCA 69; [2002] 1 ERNZ 438 (CA) at [14].

43 Final page of Appendix A.

44 Compare *Blue Water Hotel Ltd v VBS* [2019] NZEmpC 24, [2019] ERNZ 40 at [35] and [38].

[73] Turning to the first factor relied upon by the plaintiffs, an uplift is sought based on the defendant's conduct of the case. It is apparent Mr and Mrs Cronin-Lampe were put to proof by MHS on a great deal of detail that resulted in a long and difficult hearing, even though during the hearing a number of the factual issues subsequently became uncontested.

[74] I do not accept the assertion that MHS never contested that the plaintiffs were suffering from PTSD. If that were the case, the level of detail required in the expert evidence would have reduced significantly and it would have been unnecessary to then summarise and resolve the conflicting issues, as I did in my first judgment.45 MHS was of course entitled to defend the claims by putting the plaintiffs to proof as it did, but doing so now has cost implications.

[75] Taking into account the difficulties outlined by Mr Braun in preparing a very significant case involving not only the challenges presented by Mr and Mrs Cronin- Lampe's mental health, but having to deal with multiple witnesses and experts as well as a range of very difficult legal issues, I have concluded that an uplift on the scale assessment is warranted.

[76] The second ground relied upon in relation to uplift was that the plaintiffs incurred significant actual costs. I understood Mr Braun to submit that the principle from *Binnie v Pacific Health Ltd*, requiring the Court to consider what would be a reasonable level of contribution to actual costs, is a relevant consideration.46 He supported that submission by pointing to the fact that the Court has continued to apply *Binnie* principles subsequent to the adoption of the guideline scale.

[77] The guideline scale is designed to reflect the normal starting point for the approach to costs prior to its adoption, being a 66 per cent contribution to what are usually considered reasonable costs.47 A scale calculation is not based on actual costs.

45 See *Cronin-Lampe (No 1)*, above n 2, at [399]–[327] and [448]–[453].

46 *Binnie v Pacific Health Ltd*, above n 42.

47 *Xtreme Dining Ltd v Dewar*, above n 16, at [32].

[78] The Court of Appeal has held that a court may consider actual costs incurred by the successful party in exercising the discretion to direct an uplift; it observed that in doing so, it may take into account the costs actually incurred by the successful party.48 Accordingly, I accept that actual costs are relevant for the purposes of an uplift assessment, but for the avoidance of doubt, I do not do so by adding a proportion of actual costs.

[79] I also take into account the fact that if an uplift is not provided, a significant proportion of the damages awarded to the plaintiffs will be eroded by their actual costs. That consideration also points towards an uplift.

[80] To this point, I am persuaded a 50 per cent uplift on the amount fixed under the scale figure is appropriate, even although an uplift of that magnitude is unusual.49

[81] Another consideration under actual costs is the relevance of GST. The evidence provided as to actual costs confirmed that the plaintiffs have, or will be required to, make significant GST payments.

[82] In response to a question from the Court, Mr Braun provided information as to the plaintiffs' GST status, and submitted the uplift should take this consideration into account. He confirmed Mrs Cronin-Lampe was not and is not registered for GST. Mr Cronin-Lampe became registered for GST in June 2022. GST is not reflected in an award fixed in reliance on the scale. Relying on Court of Appeal authority, the Court has held that if a party is unable to recover GST, it is appropriate to take this into account for uplift purposes.50 Since Mr and Mrs Cronin-Lampe are unable to recover GST for the relevant periods, it is appropriate to allow a further uplift to reflect that. I consider a further 15 per cent uplift is appropriate, resulting in a total uplift of 65 per cent.

48 *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC* [2016] NZCA 282, (2016) 23 PRNZ 260 at [11]–[12]; as cited in *Judea Tavern Ltd v Jesson*, above n 38, at [11].

49 *ACF v IEN* [2023] NZEmpC 200 at [5]. For an example of such an uplift, however, see *Halse v Hamilton City Council* [2023] NZEmpC 152 at [16]. For an example of an uplift of 100 per cent on certain steps in a proceeding, see *Johns v Wu* [2019] NZHC 392, decided under the High Court Rules 2016.

50 *Judea Tavern Ltd v Jesson*, above n 38, at [12], relying on *New Zealand Venue and Event Management Ltd v Worldwide NZ LLC*, above n 48, at [11]–[12]. See too *Xtreme Dining Ltd v Dewar*, above n 16, at [42]–[45]; *Stormont v Peddle Thorp Aitken Ltd* [2017] NZEmpC 159 at [37]; and *Johnson v Chief of the New Zealand Defence Force* [2020] NZEmpC 59.

[83] Starting with the scale figure of $284,841.50, such an uplift would result in an award of $469,988.48.

[84] A cross-check may be undertaken by comparing the amounts I have fixed for each of the three periods, with actual costs for each of those periods.

[85] These approximate figures are summarised in the following table:

Period	Scale figure	Plus uplift of 65 per cent	Actual
I	48,951.00	80,769.15	80,808.00
II	31,680.00	52,272.00	107,253.00
III	204,210.50	336.947.33	837.447.00

[86] This cross-check suggests that the amounts I have fixed, even with the uplift, are less than the actual costs rendered for each period, and significantly less for the third period.51

[87] As I have indicated, the overarching consideration is what is a fair and reasonable contribution to the plaintiffs' costs, irrespective of what the defendant's costs might have been.

[88] I have, in reaching this conclusion, been mindful that the purpose of a costs order is not to punish an unsuccessful party.

[89] In the end, I consider the circumstances of the case were sufficiently unusual as to warrant a significant uplift. The analysis I have undertaken takes account of the attendances involved in preparing the plaintiffs' case, including the particular challenges that arose. The outcome is realistic, particularly for the third period when

51. The information provided as to actual costs for period one has not been accurately apportioned, so limited weight can be placed on this aspect of the comparison.

actual costs became very significant. Finally, the resulting figure is consistent with the Court's equity and good conscience jurisdiction in the particular circumstances.52

Disbursements

[90] Mr and Mrs Cronin-Lampe seek disbursements of $59,581.54. Only one of the amounts included in this figure is in dispute. That relates to a claim for an expert who was not in fact called in the Court, amounting to $4,485. However, the reports of the health practitioner involved, Dr Deane, were placed before the Authority and again before the Court, where they were referred to by other experts. Ultimately the Court also referred to that information. I allow this claim, noting that it will not be taken into account when considering costs in the Authority.

Costs in the Authority

[91] In my second substantive judgment, I noted that it could be necessary for the Court to resolve issues of costs incurred in the Authority, first because Mr and Mrs Cronin-Lampe had successfully established their challenge to one of the Authority's determinations, and secondly because MHS had brought a challenge to the Authority's costs determination.53

[92] Mr and Mrs Cronin-Lampe take the position that they have brought a successful challenge against the second of the Authority's determinations,54 and accordingly seek tariff costs for 2.5 days of investigation time at the applicable rate of

$3,500 per day in the Authority.

[93] For the Ministry it is submitted that each party should bear their own costs in relation to the Authority's investigation, and that it would not be pursuing the costs challenge that was filed previously.

[94] In support of this submission, it is argued that the Authority investigated Mr and Mrs Cronin-Lampe's claims on a completely different basis than the claims made

52 Employment Relations Act 2000, s 189.

53 *Cronin-Lampe (No 2)*, above n 2, at [460].

54 At [454].

in the Court. It was noted that the Authority had also dealt with an issue concerning Mr Cronin-Lampe's medical retirement that had resulted in a first determination in favour of MHS.

[95] To deal with these matters, it is necessary to trace the steps taken in the Authority in more detail.

[96] In a preliminary determination of 2 May 2013, the Authority recorded that it had agreed to hear "similar fact claims" against MHS brought by Mr and Mrs Cronin- Lampe together, and that the subject matter from the four hearing days would be considered in two determinations.55

[97] As the Authority explained, the first determination was concerned only with the single aspect of Mr Cronin-Lampe's claim against MHS relating to his medical retirement. By contrast, the second determination dealt with the balance of the employment relationship problems that had been raised by both Mr and Mrs Cronin-

Lampe to the effect they had suffered an unjustified disadvantage.56

[98] Subsequently, the Authority issued a costs determination which traversed various issues relating to the two determinations, including discussion as to certain Calderbank offers which had been made by MHS and not accepted by Mr and Mrs Cronin-Lampe. Their ability to pay was also considered.57

[99] Although MHS had sought a contribution to its costs of $26,776, being an award of $15,000 based on the notional daily rate, and indemnity costs of $11,776 from the date of a more substantial Calderbank offer, the Authority concluded that in the particular circumstances costs should lie where they fall. Thus Mr and Mrs Cronin- Lampe were not required to make any contribution to MHS's costs in resisting the various claims.58

55. *Cronin-Lampe v Board of Trustees of Melville High School* [2013] NZERA 162 (Member Crichton) at [1].

56 *Authority determination,* above n 3, at [1]–[2].

57 *Authority costs determination*, above n 6.

58 At [36].

[100] The Court must start from the position that the challenge in relation to the second determination, dealing with the balance of the employment relationship problems, has been allowed. As noted earlier, the presumption is that costs should follow the event.59 That is a long-standing principle and should not be departed from except for very good reason.

[101] It is correct to submit that in this instance, the manner in which the case was put to the Authority for the purposes of the second determination was very different from the basis on which the Court considered Mr and Mrs Cronin-Lampe's claims. But an enhanced framing of an employment relationship problem alone is not normally a reason for a departure. I am not persuaded that the enhancement is a disqualifying factor here, and conclude that Mr and Mrs Cronin-Lampe are entitled to costs in the Authority.

[102] However, there is obviously an issue as to quantum, given that part of the investigation time which was common to the two determinations related to a claim brought by Mr Cronin-Lampe only, and resulted in a separate determination relating to the medical retirement issue which was not before the Court.

[103] Mr Braun said the Authority investigation was initially scheduled for five days, an estimate which was then reduced to four days, and the hearing in fact took only 2.5 days.60

[104] Since the investigation meeting concerned matters that related to two determinations, only one of which was challenged, I conclude that two days should be allowed for, to be quantified at the then tariff rate of $3,500 per day. Mr and Mrs Cronin-Lampe are accordingly entitled to an award of $7,000.

59 *Victoria University of Wellington v Alton-Lee*, above n 15, at [48].

60 Mr Braun's memorandum of costs in reply, dated 8 April 2024.

Result

[105] In respect of costs in the Court, the Ministry is to pay Mr and Mrs Cronin- Lampe the sum of $469,988.48 for costs, and the sum of $59,581.54 for disbursements, totalling $529,590.02.

[106] In respect of costs in the Authority, since the challenge to the second determination has succeeded, the Authority's costs determination is set aside.61 The Ministry is to pay Mr and Mrs Cronin-Lampe the sum of $7,000 for costs in the Authority.

[107] The foregoing sums should be paid within 28 days of the date of this judgment, unless the Ministry confirms within that period that it seeks a stay of their payment. For the avoidance of doubt, payment thereafter will attract interest from the date costs are due under this judgment until the date of payment, calculated under the Interest on Money Claims Act 2016. Any application for stay of the costs orders pending resolution of the defendant's application for leave to appeal will need to be advanced promptly so as to avoid any unfair prolonging of these proceedings.

[108] I have received no submissions with regard to costs arising from the post judgment steps – that is the application for partial stay dealt with in my judgment of 7 March 2024,62 for the attendances giving rise to this costs judgment, and in relation to any future judgment(s) dealing with stay issues. Any costs claims for these matters will need to be dealt with subsequently.

[109] The Registrar is now to schedule a directions conference with counsel as soon as possible at which the arrangements for resolving the balance of the issues in these proceedings will be discussed.

Judgment signed at 2.45 pm on 10 July 2024

B A Corkill Judge

61 *Authority costs determination*, above n 6.

62. *Cronin-Lampe v Minister of Education (in respect of the Ministry of Education) (Interlocutory Judgment No 4)*, above n 1. Costs were reserved at [45].

APPENDIX A

Schedule – Costs and disbursements for the Employment Court proceedings

Part One – from 14 June 2012 to 30 June 2015								
No.	**Scale Item (as claimed)**	**Steps (3B unless noted otherwise)**	**File Reference(s)**	**Time Allocation at 3B**	**Time Allocation at 2B**	**MOE Explanation of Position**	**Court Ruling**	**Reasons for Court Ruling**
1	1	Commencement of proceedings by Cronin- Lampe	ARC55/13	2	2		2.0	
2	2	Defence of Cronin-Lampe to MHS counterclaim	ARC55/13	1.5	1.5		1.5	
3	12	Memorandum DC - Cronin- Lampe extension to file defence	ARC55/13	0.4	0	No memorandum was ever filed, an extension was agreed between counsel	0.4	Memorandum was filed, with consent order being made on 11 November 2013.
4	2	Commencement of defence by Cronin-Lampe	ARC79/13	1.5	0	The defence is claimed above, no separate defence was filed	1.5	On 19 November 2013 plaintiffs filed a statement of defence in response to defendant's statement of claim of 9 October 2013, in ARC79/13, which ultimately was discontinued by MoE.
5	11	Preparation for first directions conference (DC)	ARC55/13 ARC79/13	0.4	0	The initial DC scheduled for 13 December 2013 never occurred and no memoranda were filed	0.4	Directions conference proceeded on 13 December 2013, with a minute being issued that day. On 3 February 2013 the plaintiffs filed a

								memorandum as directed which resulted in a telephone directions conference scheduled for 7 February 2014 being adjourned.
6	12	Memorandum first directions conference	ARC55/13 ARC79/13	0.4	0	The initial DC scheduled for 13 December 2013 never occurred and no memoranda were filed	0.4	As for 5.
7	13	Appearance first directions conference	ARC55/13 ARC79/13	0.2	0	The initial DC scheduled for 13 December 2013 never occurred	0.2	As for 5.
8	12	Memorandum pre-DC	ARC55/13	0.4	0.4		0.4	
9	12	Memorandum pre-DC	ARC79/13 ARC55/13	0.4	0	Only one memorandum was filed for three proceedings on 27 April 2014	0.4	Only one memorandum is currently claimed, referred to in the Court's minute of 28 April 2014 at paragraph [2].
10	13	Appearance at DC	ARC79/13 ARC55/13	0.2	0.2		0.2	
11	14	Preparation for CMC	ARC79/13 ARC55/13 ARC25/14	0.4	0.4	Was a directions conference	0.4	
12	15	Filing memo for CMC	ARC55/13 ARC79/13 ARC25/14	0.4	0.4	Was a directions conference	0.4	
13	16	Appearance at CMC	ARC55/13 ARC79/13 ARC25/14	0.25	0.2	Was a directions conference	0.2	Should be treated as a subsequent directions conference, under Item 13 of the scale.
14	28	Application leave s 4(7) Limitation Act	ARC25/14	0.6	0.6		0.6	
15	15	Memorandum – CMC timetabling orders	ARC55/13 ARC79/13 ARC25/14	0.4	0.4		0.4	
16	14	Preparation CMC	ARC55/13 ARC79/13 ARC25/14	0.4	0.4		0.4	
17	13	Appearance at CMC	ARC55/13 ARC25/14 ARC48/14	0.25	0.25		0.25	
18	15	Memorandum – pleadings and evidence timetabling	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.4		0.4	
19	1	Statement of claim – Common law CoA	ARC25/14	3	2	Was a "challenge" so 2 days appropriate (step 1) and not an "other" proceeding	3.0	Although the plaintiffs have claimed under Item 1 of the scale, the time allocation claimed reflects Item 3 relating to "commencement of other proceeding". Given nature of cause of action, allowed as Item 3, i.e. 3 days.
20	28	Application to raise grievance out of time	ARC48/14	0.6	0.6		0.6	
21	15	Memorandum re interlocutory applications	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.4	4 February 2015	0.4	

22	11	Preparation DC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.4		0.4	
23	12	Memorandum DC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0	Only one memorandum filed as above on 4 February	0.0	Plaintiffs state a memorandum was filed on 4 March 2015. There is no evidence of this; on that date counsel appeared and the Court ruled further particulars were to be provided by 11 March 2015. Claim disallowed.
24	13	Appearance at DC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.2	0.2		0.2	
25	19	Answer to interrogatories – further particulars (first plf)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1	0.8	Admitting facts is better analogy than interrogatories (i.e. step 20)	0.8	Item 20 is more appropriate, not Item 19.
26	19	Answer to interrogatories – further particulars (second plf)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1	0.8	Admitting facts is better analogy than interrogatories (i.e. step 20)	0.8	As for 25.
Total Time							**16.65**	
Daily Rate							**$2,940.00**	
Costs Total – Part One							**$48,951.00**	
Costs associated with defendant's successful application for further particulars								
27	28	Application for orders requiring further particulars of claim	ARC25/14		0.6	20 March 2015	0	Costs should lie where they fall to reflect the plaintiffs' overall success.
28	30	Preparation of written submissions	ARC25/14		1	8 April 2015	0	As for 27
29	31	Preparation of bundle for hearing	ARC25/14		0.6		0	As for 27
30	32	Appearance at hearing of defended application	ARC25/14		1	21 April 2015	0	As for 27
Part Two – from 1 July 2015 to 31 July 2019								
No.	**Scale Item (as claimed)**	**Steps (3B unless noted otherwise)**	**File Reference(s)**	**Time Allocation at 3B**	**Time Allocation at 2B**	**MOE Explanation of Position**	**Court Ruling**	**Reasons for Court Ruling**
31	15	Joint memorandum seeking CMC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.4		0.4	
32		Amended statement of claim	ARC25/14	0	0		-	
33	10	Defence to counterclaims	ARC25/14	0.6	0.6		0.6	
34	19	Response to notice further particulars	ARC25/14	1	1		1.0	
35	12	Joint memorandum for DC (BBL prepared)	ARC25/14	0.4	0.4		0.4	
36	13	Appearance at DC	ARC25/14	0.2	0.2		0.2	
37		Amended application leave s 4(7) Limitation Act	ARC25/14	0	0		0	
38	30	Submissions application leave s 4(7) Limitation Act	ARC25/14 ARC48/14	1	1		1.0	

39	31	Preparation of bundle for hearing – authorities	ARC25/14 ARC48/14	0.6	0.6		0.6	
40	31	Preparation of bundle for hearing – pleadings and evidence	ARC25/14 ARC48/14	0.6	0.6		0.6	
41	30	Submissions – synopsis of argument by way of reply	ARC25/14 ARC48/14	1	0.5	Reduced on account of being a reply for which there is no step, and that the substance of the reply was increased due to the lack of thoroughness in initial submission	1.0	The synopsis of 23 August 2016 was appropriate, and was necessarily detailed involving review of a significant number of authorities. Claim of 1 day is approved.
42	32	Appearance hearing s 4(7) Limitation Act	ARC25/14 ARC48/14	1	1		1.0	
43	12	Memorandum DC – clarify evidence at hearing	ARC25/14 ARC48/14	0.4	0.4		0.4	
44	12	Memorandum DC – re updating affs	ARC25/14 ARC48/14	0.4	0.4		0.4	
45	12	Joint memorandum DC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.4		0.4	
46	15	Joint memorandum adjournment CMC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.1	Subsequent joint memoranda were pro forma following initial one, so nominal work	0.1	The preparation of the four joint memoranda are allowed for at 0.1.
47	15	Joint memorandum adjournment CMC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.1		0.1	As for 46.
48	15	Joint memorandum adjournment CMC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.1		0.1	As for 46.
49	15	Joint memorandum adjournment CMC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.1		0.1	As for 46.
50	15	Memorandum CMC timetabling	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0.4		0.4	
51	15	Memorandum CMC timetabling	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4	0	No allowance for short reply memorandum 14 March 2019 justifying plaintiff default	0.2	Plaintiffs were entitled to file short reply memoranda.
52		Amended statement of claim	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0	0		0	
53	10	Defence to counterclaims	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.6	0.6		0.6	
Total Time							**9.6**	
Daily Rate							**$3,300.00**	
Costs Total – Part Two							**$31,680.00**	

Part Three – from 1 August 2019 to current

No.	Scale Item (as claimed)	Steps (3B unless noted otherwise)	File Reference(s)	Time Allocation Band	MOE Time Allocation Category 2	MOE Time Allocation Category 3	MOE Explanation of Position	Court Ruling	Reasons for Court Ruling

54	10	Defence to counterclaims	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.6 (3B)	0.3 (2B)		Halved as this was third defence filed to claims that had not been changed	0.4	Defendant refers to a "third defence". The prior documents for which claims have been made are schedule no. 33 (reply and statement of defence of 12 February 2016) and schedule no. 53 (reply of 14 May 2019). The "third defence" is in the main a duplication of the reply of 14 May 2019, although with some modest amendments; it is not a duplication of the reply of 12 February 2016.
55	12	Joint memorandum DC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
56	12	Joint memorandum DC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
57	12	Joint memorandum DC (BBL prepared)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
58	12	Memorandum DC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
59	13	Appearance at DC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.2 (3B)	0.2 (2B)			0.2	
60	12	Memorandum re directions ACC memo	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
61	13	Appearance at directions conference	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.2 (3B)	0.2 (2B)			0.2	
62	30	Submissions preliminary issue ACC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1 (3B)	1 (2B)			1.0	
63	32	Appearance at hearing preliminary issue ACC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1 (3B)	0.5 (2B)		Took a half-day not full day	0.5	Court records confirm the hearing ran for a half-day.
64	12	Memorandum DC	ARC55/13 ARC79/13 ARC25/14	0.4 (3B)	0.4 (2B)			0.4	

			ARC48/14						
65	13	Appearance at DC	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.2 (3B)	0.2 (2B)			0.2	
66	35	Preparation briefs of evidence	ARC55/13 ARC79/13 ARC25/14 ARC48/14	4 (3C)	4 (2C)			4.0	
67	12	Memorandum DC – admit evidence Tocker	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
68	35	Reply briefs of evidence	ARC55/13 ARC79/13 ARC25/14 ARC48/14	4 (3C)	4 (2C)			4.0	
69	28	Application to reinstate pleadings	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.6 (3B)	0		Application was unsuccessful	0	Unsuccessful application to reinstate pleadings.
70	29	Notice of opposition to application to strikeout replies	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1 (3C)	0.6 (2B)			1.0	Allowed on a 3C basis.
71	36	Common bundle	ARC55/13 ARC79/13 ARC25/14 ARC48/14	4 (3C)	4 (2C)			4.0	
72	38	Preparation for hearing	ARC55/13 ARC79/13 ARC25/14 ARC48/14	4 (3C)		4 (3C)		4.0	
73	39	Appearance at trial	ARC55/13 ARC79/13 ARC25/14 ARC48/14	14 (3B/3C)		12.5 (3C)	8 March concluded at 12.16 pm and 10 March concluded at 11.24 am so reduced by 1.25 days	12.5	Court records confirm a total of 25 half-days of trial time: 12.5 days therefore allowed.
74	40	Appearance at trial – second counsel	ARC55/13 ARC79/13 ARC25/14 ARC48/14	7 (3B/3C)		6.38 (3C)	As for 73	6.25	Claim for second counsel allowed at 6.25 days.
75	38	Preparation – closing subs	ARC55/13 ARC79/13 ARC25/14 ARC48/14	4 (3C)		4 (3C)		4.0	
76	38	Preparation – supplementary subs	ARC55/13 ARC79/13 ARC25/14 ARC48/14	4 (3C)		1.5 (3C)	Use step 30	1.5	Claim allowed under step 30 for 1.5 days.
77	39	Appearance – closing subs (2 days)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	2 (3B/3C)		2 (3C)		2.0	
78	40	Appearance – second counsel closing subs (2 days)	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1 (3B/3C)		1 (3C)		1.0	
79	12	Memorandum DC re Roger v Taylor	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	
80	12	Memorandum DC re justiciable period	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.4 (3B)	0.4 (2B)			0.4	

81	35	Further affidavit evidence – guidelines	ARC55/13 ARC79/13 ARC25/14 ARC48/14	2 (3B)	2 (2B)			2.0	
82	38	Preparation – subs Roper v Taylor	ARC55/13 ARC79/13 ARC25/14 ARC48/14	2 (3B)		2 (3C)		2.0	
83	38	Preparation for hearing – Roper v Taylor	ARC55/13 ARC79/13 ARC25/14 ARC48/14	2 (3B)		2 (3C)		2.0	
84	39	Appearance – Roper v Taylor	ARC55/13 ARC79/13 ARC25/14 ARC48/14	1 (3B)		1 (3C)		1.0	
85	40	Appearance – second counsel Roper v Taylor	ARC55/13 ARC79/13 ARC25/14 ARC48/14	0.5 (3B)	0		Second counsel not necessary	0.5	Claim for second counsel is allowed.
Total Time								**57.85**	
Daily Rate								**$3,530.00**	
Costs Total – Part Three								**$204,210.50**	

Total Costs in the Court

Part One	$48,951.00
Part Two	$31,680.00
Part Three	$204,210.50
Subtotal	$284,841.50
65 per cent uplift	$185,146.98
Costs Total	**$469,988.48**
Disbursement	**Total (incl GST)**
Hearing fees	$500.88
Sealing fee	$50.00
Courier fees	$940.57
Photocopying and binding briefs of evidence and affidavit bundle	$468.45
CopierWorld – casebook photocopying and binding	$2,645.01
Photocopying and binding collective agreements bundle	$431.10
Photocopying hearing bundles/notes of evidence	$1,230.60
Photocopying and binding of bundle of authorities	$793.65
New Zealand Law Society – case retrieval	$69.00
Accommodation	$1,348.57
Travel/Mileage	$202.52
Expert Costs – Brendan Lyne	$43,253.69
Expert Costs – Dianne Farrell	$3,162.50
Expert Costs – Peter Deane	$4,485.00
Disbursements Total	**$59,581.54**
TOTAL: COSTS AND DISBURSEMENTS	**$529,570.02**

NZLII: Copyright Policy | Disclaimers | Privacy Policy | Feedback
URL: *http://www.nzlii.org/nz/cases/NZEmpC/2024/125.html*