Employment Court of New Zealand

Menzies v Corrigan [2025] NZEmpC 186 (22 August 2025)

Last Updated: 27 August 2025

IN THE EMPLOYMENT COURT OF NEW ZEALAND AUCKLAND

I TE KŌTI TAKE MAHI O AOTEAROA TĀMAKI MAKAURAU

[2025] NZEmpC 186
EMPC 306/2024

IN THE MATTER OF	a challenge to a determination of the Employment Relations Authority
AND IN THE MATTER OF	an application by a non-party for costs against a representative
AND IN THE MATTER OF	an application for costs against a non-party
BETWEEN	LEVI KEVIN MENZIES Plaintiff
AND	NATHAN PATRICK CORRIGAN First Defendant
AND	PRIME FOCUS SECURITY LIMITED (IN LIQUIDATION) Second Defendant
AND	LAWRENCE ANDERSON Non-party
AND	CATHERINE STEWART BARRISTER Non-party

Hearing:	On the papers
Appearances:	L Anderson, non-party and advocate for plaintiff CW Stewart, non-party
Judgment:	22 August 2025

COSTS JUDGMENT (NO 2) OF JUDGE KATHRYN BECK

MENZIES v CORRIGAN [2025] NZEmpC 186 [22 August 2025]

Introduction

[1] This judgment resolves two applications for costs:

(a) an application by Catherine Stewart Barrister, a non-party, for costs against Mr Anderson, the plaintiff's representative, in respect of the plaintiff's application for non-party discovery against her personally; and
(b) an application by Mr Anderson for costs against Ms Stewart as a non- party.

[2] Ms Stewart seeks a total of $2,531.68 in scale costs and indemnity costs, as well as ancillary orders requiring the payment of interest by Mr Anderson in the event of late payment.

[3] Mr Anderson, in turn, seeks $1,500 in costs against Ms Stewart in respect of the application for non-party costs against him. However, this application would only need to be dealt with in the event she is unsuccessful in her application. I will

return to this later.

Background

[4] These applications arise from a challenge by the plaintiff, Mr Menzies, to two determinations of the Employment Relations Authority.1 Mr Anderson acted as the plaintiff's representative in the challenge until proceedings were withdrawn on 11 April 2025.

[5] On 21 February 2025, while proceedings were still live, the plaintiff sought leave to file interlocutory applications relevant to disclosure and discovery. Specifically, he indicated he would challenge an objection to disclosure by the first defendant and make an application for non-party discovery against the first defendant's former lawyer, Ms Stewart.

1. *Corrigan v Prime Focus Security Ltd (in liq)* [2024] NZERA 448 [*Corrigan No 1*]; and *Corrigan v Prime Focus Security Ltd (in liq)* [2024] NZERA 556 [*Corrigan No 2*].

[6] On 19 March 2025, the Court granted the unopposed application for leave. However, it advised the plaintiff to consider less costly alternatives to obtaining the documents sought. It noted that the plaintiff could obtain the relevant communications from the Authority and that the application for non-party discovery was likely to be unsuccessful due to solicitor-client privilege.2 It suggested that efforts in relation to company documents would be better focused on the liquidator. Regarding the draft challenge to objection to disclosure, the Court noted that it was unusual for a challenge to an objection to be filed where it appeared that no objection had been made, and that the proper application would be a verification order.

[7] On 20 March 2025, Mr Anderson, as the plaintiff's representative, filed a memorandum in response to the Court's minute, maintaining the necessity of the applications. In the memorandum he stated, among other things:

The writer read somewhere, in caselaw, a few years ago, involving application for challenge to objection to disclosure that, currently yet to find it and hope to not have to spend time looking, that a party failing to respond to a Notice Requiring Disclosure amounts to an objection; or at least that it is one [and] the same.

[8] In a footnote attached to the paragraph quoted above, Mr Anderson said: "The writer trusts that the writer will not be put to the task of spending time trying to find this in the legal databases."

[9] On the same day, he also filed an application for non-party discovery against Ms Stewart and what appeared to be a challenge to an objection to disclosure. Mr Anderson filed an affidavit in support of both applications with himself as the deponent.

[10] On 25 March 2025, Mr Anderson filed a further application which appeared to be a separate challenge to an objection to disclosure. It was titled as an amended version of the application for non-party disclosure. Mistakenly no filing fee was paid and there was no evidence of service on the first defendant.

2 *Barbara v Turnbull* (1999) 13 PRNZ 166 (HC).

[11] On 7 April 2025, Ms Stewart filed a notice of opposition to the application for non-party discovery, together with an affidavit. The notice of opposition stated that the materials sought by Mr Anderson were not relevant and if they were, an order for disclosure against a non-party was unnecessary to obtain them. In addition, the documents sought by him were covered by privilege. Ms Stewart also indicated that she was contemplating seeking costs against Mr Anderson personally in response to the application.

[12] In a minute dated 10 April 2025, the Court recorded its concerns regarding the applications filed and gave Mr Anderson an opportunity to reconsider these before costs were incurred and court resources were utilised. It reiterated the views contained in the 19 March 2025 minute that the appropriate applications were verification or compliance orders. It noted that if he wished to proceed, he should file and serve a fresh and correctly titled application accompanied by the appropriate filing fee.

[13] In relation to the affidavit, the Court noted that Mr Anderson, as the plaintiff's representative, would be barred from acting in the proceedings if his affidavit contained contentious evidence.3 To avoid this issue, the plaintiff was given leave to file a replacement affidavit with himself as deponent.

[14] In relation to the application for non-party discovery, the Court noted that Ms Stewart's notice of opposition raised issues of privilege, confidentiality and relevance. The plaintiff was reminded of the possibility of costs being ordered against him under the High Court Rules 2016,4 even if the application for non-party discovery was successful. It also clarified that Mr Anderson's view that he was unable to seek documents from the Authority was mistaken. Again, Mr Anderson was advised and encouraged to consider alternatives for obtaining the relevant information as soon as

practicable. Timetabling directions were made in the event that he pursued the application and he was directed to provide a copy of the Court's minute to the plaintiff, Mr Menzies, and confirm to the registry that he had done so.

3. See Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care Rules) 2008, r 13.5; *Shaw v Bay of Plenty District Health Board* [2020] NZEmpC 150 at [22]; and *Wall v Works Civil Construction Ltd* EmpC Christchurch CEC 2/01, 23 October 2001 at [13].

4 High Court Rules 2016, r 8.22.

[15] The following day, 11 April 2025, the plaintiff filed a notice of discontinuance and the proceeding was withdrawn.

[16] On 2 May 2025, Ms Stewart filed an application for costs against Mr Anderson personally in respect of the application for non-party discovery against her.

[17] On 15 May 2025, Mr Anderson filed submissions and supporting affidavits in response to the application for costs. He raised the issue that there was no formal application to join him as a party.

[18] On 20 May 2025, Ms Stewart filed a memorandum in response, addressing the issue of joinder and seeking leave to file a reply. Leave was also sought to file an affidavit in response to claims Mr Anderson made about a third party in his 15 May 2025 affidavit.

[19] By minute dated 21 May 2025, the Court addressed the application for costs against Mr Anderson. It determined that there was no necessity for a fresh or separate application for joinder. It noted that he was on notice of the applications for costs and joinder and therefore, had a full opportunity to be heard. Timetabling directions were made and a decision was to be made on the papers.

[20] On 28 May 2025, the third party filed and served an affidavit in reply denying the allegations made by Mr Anderson.

[21] On the same day, Mr Anderson filed his own application for costs and accompanying affidavit against Ms Stewart in respect of her application for costs against him.

[22] On 3 June 2025, Ms Stewart filed a notice of opposition to Mr Anderson's application for costs and, on 4 June 2025, filed an accompanying affidavit. It stated that Mr Anderson's application was pre-emptively filed, vexatious, an abuse of process and retaliation against its own application.

[23] As I have already noted above, such application would only fall to be considered in the event that Ms Stewart was unsuccessful in her application.

[24] On 9 June 2025, Ms Stewart filed a reply to Mr Anderson's 28 May 2025 submissions and supporting affidavits.

[25] On 10 June 2025, Mr Anderson filed a memorandum in response to Ms Stewart's submissions.

[26] The matter was then referred to me to be determined on the papers.

Legal principles

[27] The Court has a broad discretion as to costs.5 Although the power to award costs under the Employment Relations Act 2000 (the Act) is confined to parties to the proceedings, there may be circumstances in which it is appropriate to join a non-party, such as a representative, for the purposes of awarding costs.

Costs awards against non-party representatives

[28] For costs to be awarded against a non-party, there must be recourse to s 221 of the Act to first join them to the proceedings. This states:6

221 Joinder, waiver, and extension of time

In order to enable the court or the Authority, as the case may be, to more effectually dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order,—

(a) direct parties to be joined or struck out; and
(b) amend or waive any error or defect in the proceedings; and
(c) subject to section 114(4), extend the time within which anything is to or may be done; and
(d) generally give such directions as are necessary or expedient in the circumstances.

[29] It is settled that the broad and untechnical language of s 221 grants this Court the jurisdiction to join a non-party for costs purposes.7 An order for joinder will only be made if an award of costs is also to be made against the non-party.8

5 Employment Relations Act 2000, sch 3 cl 19.

6 Section 221.

7 *Kidd v Equity Realty (1995) Ltd* [2010] NZCA 452.

8 *Aarts v Barnardos* [2013] NZEmpC 145 at [20].

[30] In this respect, the Court's jurisdiction is distinct from that of the High Court, which has the power to award costs against non-parties generally, including lawyers. This power forms part of the High Court's inherent jurisdiction and its broad discretion derived under the High Court Rules 2016.9

[31] Costs awards against non-parties are exceptional in the sense that they do not arise in most ordinary cases where the litigation is pursued or defended by the parties for their own benefit and at their own expense.10 Where exceptional circumstances arise, costs awards against non-parties are determined in accordance with relevant principles.11

[32] Costs awards against lawyers are both compensatory and punitive. They can be made in relatively exceptional cases as part of the High Court's supervisory function which ensures that as officers of the Court, lawyers maintain an appropriate level of competence and do not abuse the Court's processes. The Privy Council in *Harley v McDonald*12 confirmed this inherent power, noting that the Court's supervisory duty is founded upon the public interest – namely, that the procedures of the Court are conducted by its officers as economically and efficiently as possible.13

[33] This Court's jurisdiction to order non-party costs, specifically against representatives, was discussed in *Aarts v Barnardos*.14 Two key distinctions between this Court and the High Court were highlighted: first, the absence of inherent powers enabling this Court, without more, to award costs against persons who are not parties to litigation; and second, the absence of a supervisory role, whether it be over the parties' representatives or practising lawyers, which further precludes this Court from carrying out the punitive function underlying costs against practitioners.15

9 High Court Rules 2016, r 14.1.

10 David Bullock and Tim Mullins *The Law of Costs in New Zealand* (LexisNexis, Wellington, 2022) at [2.32].

11 The principles relevant to the exercise of this power have been discussed extensively in *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2)* [2004] UKPC 39, [2005] 1 NZLR 145. See also *Nisha v LSG Sky Chefs New Zealand Ltd (No 20)* [2016] NZEmpC 77, [2016] ERNZ 568 at [36].

12 *Harley v McDonald* [2001] UKPC 18, [2002] 1 NZLR 1 (PC).

13 At [45].

14 *Aarts,* above n 8.

15 At [31].

[34] Notwithstanding the limits of the Court's power over the conduct of representatives, it is not beyond scrutiny or control. As observed in *Joyce v Ultimate Siteworks Ltd*, s 236 of the Act permits a party to be represented by another person as an extension of the parties' right to appear, rather than the conferral of a right of appearance on the representative.16

[35] While representatives are not lawyers and remain unregulated by any professional body, when their conduct comes into question "the Court is not obliged to sit still and see its own processes abused".17 Their conduct may also lead to increased costs for clients and although that is generally borne by the client themselves, it may be more appropriately borne by the representative.

[36] In *Aarts,* the Court elaborated on the circumstances and threshold in respect of which a representative might be personally liable for increased costs, stating:18

For a representative to be added as a party to a proceeding solely for the purpose of an award of costs against that representative, there must be some extraordinary feature of the litigation which elevates the representative's role beyond that which is played by an effective, even passionate, advocate for a party.

[37] The Court went on to say that this may amount to circumstances where the representative has, in effect, taken the case as their own.

[38] Further, the Court will need to be satisfied that the representative's representation contributed independently to an increase in those costs in circumstances where proper and dispassionate advocacy would not have.19

[39] This requirement has also been discussed as a sufficient connection between the conduct of the representative and the party they represent, so that it would be just to make that party responsible for the conduct through a costs order.20

16 *Joyce v Ultimate Siteworks Ltd* [2024] NZEmpC 204 at [27] citing *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2022] NZEnvC 92 at [10], in which Chief Judge Kirkpatrick of the Environment Court was referring to s 275 of the Resource Management Act 1991, which is similar in effect to s 236 of the Employment Relations Act.

17 *Joyce*, above n 16, at [27].

18 *Aarts*, above n 8, at [40].

19 At [40].

20 *Shaw v Bay of Plenty District Health Board* [2022] NZEmpC 112 at [30].

[40] Taking account of the principles and factors to be considered, the test for whether a non-party representative may be joined for the purposes of awarding costs can be summarised as follows:

(a) whether there is an extraordinary feature of the litigation that elevates the representative's role beyond that of an effective advocate; and
(b) whether the extraordinary feature contributed independently to an increase in costs incurred.

[41] An extraordinary feature of the litigation necessarily connotes a high threshold. Cases which have awarded or contemplated costs against non-parties are instructive on this point.

[42] In *McKean v Board of Trustees of Wakaaranga School*, 21 the Court indicated that the plaintiff's former counsel would have very likely faced a substantial order made against him personally had he been joined for the purposes of costs. The advocate's conduct involved misrepresentations (including toward his own client) and disregard for procedure which led the Court to conclude:22

... although the plaintiff must ultimately be responsible for the conduct of his case vis-à-vis the defendant, I was left with the abiding impression that many of the causes of these delays and substantial additional hearing time were attributable to Mr McKean's counsel's undiscriminating, albeit thorough, conduct of the case.

[43] Representatives are not necessarily expected to adhere to the same standards applicable to qualified and experienced lawyers.23 However, cases where costs have been ordered against counsel also usefully illustrate the degree of egregious conduct that may warrant an order for costs against a party's representative, if joined for that purpose.24

21 *McKean v Board of Trustees of Wakaaranga School* AC38/08 24 September 2008 (Auckland).

22 At [12].

23. The conduct of lawyers is subject to regulation. See generally Lawyers and Conveyancers Act (Lawyers: Conduct and Client Care) Rules 2008.

24 *Aarts,* above n 8, at [33].

[44] In *Dominion Finance Group Ltd (in rec and liq) v Sade Developments Ltd*,25 the High Court elaborated that serious derelictions of duty are akin to gross negligence or gross inaccuracy. Determining costs against practitioners must be capable of summary disposal and as such, the facts related to the impugned conduct must be easily verifiable. A hopeless case by itself is not a circumstance that can be said to attract a wasted costs order.26

[45] The Privy Council in *Harley* also clarified that simple mistakes, oversights or mere errors of judgement are not sufficient to fall into the category of serious dereliction. Instead:27

Failures to appear, conduct which leads to an otherwise avoidable step in the proceedings or the prolongation of a hearing by gross repetition or extreme slowness in the presentation of evidence or argument are typical examples. The factual basis for the exercise of the jurisdiction in such circumstances is likely to be found in facts which are within judicial knowledge because the relevant events took place in court or are facts that can easily be verified. Wasting the time of the court or an abuse of its processes which results in excessive or unnecessary cost to litigants can thus be dealt with summarily on agreed facts or after a brief inquiry if the facts are not all agreed.

[46] That said, in *Aarts* this Court found that it would also be unjust to penalise in costs those who exercise a statutory right of indiscriminate representation of litigants, even where the standard of their advocacy is poor, and the litigation is dealt with by others at a greater cost.28 However, it is notable that in *Aarts* the representative was an inexperienced agent

for the defendant in question, not a professional advocate.

Costs in relation to applications for non-party disclosure

[47] The Act does not address the issue of costs in the event of non-party discovery.

[48] However, r 8.22 of the High Court Rules applies by virtue of the Employment Court Regulations 2000.29

25. *Dominion Finance Group Ltd (in rec and liq) v Sade Developments Ltd* HC Auckland CIV-2009- 419-1556, 6 October 2011.

26 At [32].

27 *Harley* above n 12, at [50].

28 *Aarts*, above n 8, at [41].

29 Employment Court Regulations 2000, reg 6.

[49] Under r 8.22, the Court may order a party to meet the costs of another party's discovery if it is manifestly unjust for that party to meet its own costs. Where orders for discovery against non-parties are made under r 8.21, then r 8.22(3) applies:

8.22 Costs of discovery

(1) If it is manifestly unjust for a party to have to meet the costs of complying with an order made under this subpart, a Judge may order that another party meet those costs, either in whole or in part, in advance or after the party has complied.
(2) Despite subclause (1), the court may subsequently discharge or vary an order made under that subclause if satisfied that a different allocation of those costs would be just.
(3) If an order is made under rule 8.20(2) or 8.21(2), the Judge may, if the Judge thinks it just, order the applicant to pay to the person from whom discovery is sought the whole or part of that person's expenses (including solicitor and client costs) incurred in relation to the application and in complying with any order made on the application.

[50] The usual principle is that the party who applies for non-party discovery should pay the non-party's costs. This reflects the principle that non-parties have no stake or interest in the proceeding and should not be put to unnecessary expense assisting those who have an interest in the outcome.30

Joinder and costs

Should Mr Anderson be joined as a party?

[51] Mr Anderson submits that no separate joinder application has been filed, and determining the issue of joinder for awarding costs requires affording the representative an opportunity for an oral hearing to test the evidence in support of the application.

[52] However, as stated above, Mr Anderson was sufficiently put on notice of the application for costs against him via Ms Stewart's application which was served on him and in the 21 May 2025 minute which determined that there was no necessity for a separate application for joinder.

30 *Cayman Spectrum (NZ) Co v Spark New Zealand Trading Ltd* [2023] NZHC 754 at [10].

[53] As explained above, an order for joinder will only be made if an award of costs is also to be made against the non-party.31

[54] Accordingly, whether Mr Anderson is joined will depend on whether the Court makes a costs award against him. I deal with that below.

Is Ms Stewart entitled to costs?

[55] Ms Stewart submits that the application for non-party discovery against her has been disruptive, costly, time-consuming, and has detracted from regular billable work. In addition, she claims that there has been a substantial opportunity cost as the application was abandoned by the plaintiff after the costs of responding were incurred.

[56] She relies on r 8.22 as a starting point for claiming indemnity costs. In addition, she seeks scale costs based on the Court's Guideline Scale on a category 2 band B basis.32 Her revised costs relief in respect of the non-party discovery

application is as follows:

(a) indemnity costs of $1,406.25 for attendances relating to the disposal of the application for non-party discovery itself; and
(b) affidavit courier of $11.50 (including GST).

[57] In respect of costs in relation to the application for costs:

(a) schedule costs of $800 in respect of an interlocutory application calculated on a category 2 band B basis.

[58] In respect of Mr Anderson's application for costs:

31 See above at [28–29].

32 Employment Court of New Zealand "Practice Directions" (1 September 2024)

<www.employmentcourt.govt.nz> at No 18.

(a) schedule costs calculated as $300 calculated on a category 2 band B basis; and

(b) affidavit courier disbursement of $13.93 (including GST).

[59] Ms Stewart submits that the relief sought is modest compared to the actual time and costs incurred, and sets out the personal impact Mr Anderson's behaviour has had on her and her staff.

[60] I agree that the amount sought in relation to the non-party discovery application is modest and appropriate.

[61] Ms Stewart is entitled to an award of costs in relation to the application for discovery against it and the costs application itself. The question is who should pay it.

[62] Ms Stewart also seeks an ancillary order requiring the payment of interest by Mr Anderson in the event of late payment of any sums payable. I do not consider this to be appropriate at this stage. Such an application is more appropriately dealt with in the context of compliance.

[63] The costs sought in relation to Mr Anderson's application for costs will depend on the outcome of that application. I deal with that below.

Should Mr Anderson pay costs personally?

The arguments

[64] Ms Stewart submits that the application for non-party discovery should not have been brought and, therefore, costs should not have been incurred. She argues that Mr Anderson knew or ought to have known that the application was vexatious and frivolous, particularly given the Court's minute advising against it.

[65] She claims that an award of indemnity costs against Mr Anderson personally, as opposed to the plaintiff, would be in the overall interests of justice. In support of this submission, Ms Stewart applies *Aarts* as a two-stage objective test:

(a) whether the representative's representation independently caused or contributed to an increase in costs; and if so
(b) whether, in all the circumstances, a proper and dispassionate representative would have conducted themselves in that manner.

[66] Ms Stewart's central submission is that Mr Anderson has taken the plaintiff's case as his own, including for ulterior motives. She says he has acted in a manner in which no proper and dispassionate representative would have acted and has single- handedly caused or contributed to an increase in costs.

[67] She argues that unlike in *Aarts*, the criticism of Mr Anderson relates squarely to his conduct rather than the plaintiff's case. Further, Ms Stewart submits that he is not a one-off agent but holds himself out as a paid expert, having appeared in court since 2019.33

[68] In support of her submissions, she provides numerous examples of Mr Anderson's conduct and statements in this proceeding. In particular, she says Mr Anderson's actions in filing his own affidavit for efficiency instead of the plaintiff, without apparent authority or instruction, combined with the plaintiff's abrupt withdrawal of proceedings, shows on balance that the application for non-party discovery was of Mr Anderson's own making.

[69] A substantial part of Ms Stewart's submissions concern Mr Anderson's conduct both within and outside the Court. She refers to *Joyce,* where the defendant was personally reprimanded by the Court for "unprofessional" and "abusive" conduct,34 and urged to seek professional mentoring. She also refers to the observations made in this proceeding concerning Mr Anderson's conduct.35 For the purposes of this

33 *Surplus Brokers Ltd v Armstrong* [2019] NZEmpC 76.

34 At [11]–[28].

35 *Menzies v Corrigan* [2025] NZEmpC 22 at [31].

analysis, I have only had regard to Mr Anderson's conduct in these proceedings and, in particular, in relation to the non-party disclosure.

[70] The examples Ms Stewart has provided which are relevant to these proceedings include:

(a) the inappropriate and abusive conduct towards Mr Church, which has already been the subject of admonishment by the Court; and
(b) an email dated 26 February 2025 sent by Mr Anderson to a third party, a professional associate of Ms Stewart, which was later forwarded to her, regarding these proceedings, and in which he made the following comments:

Thank you for recognising the stupidity of the Authority Member, and that is now in the process of being adopted by the Employment Court. And to make vague allegations about alleged behaviour against me as well. It is bullshit.

...

EMA and NZBA I have asked if they want to pull finger out their asses and to intervene. They need to act NOW and are messing around ...

The LinkedIn community and most of the names of people that like and comment, they are all dumbarses and most of them I have dealt with in employment disputes. Reading, writing, comprehension, it is all out of the window with all of them.

Catherine Stewart Lawyers took advantage of Nathan Corrigan, they exploited him, and have now dropkicked him. **There is currently an application that my client seeks disclosure from them as non-party, which on application they entirely ignored. I am really looking forward to it coming out** their unethical conduct to vulnerable employees in their pursuit of trying to get paid tens of thousands of dollars for their business.

...

I would really like some feedback and help for this important issue about shareholder and director liability. As I have said, the EMA and NZBA are messing around and not understanding this and probably do not know how to write up an intervening application.

Please don't subscribe to those idiots.

[71] Mr Anderson considered that the third party forwarding the email to Ms Stewart amounted to a breach of confidence. The third party was concerned by this allegation and so filed an affidavit in reply. In their affidavit, the third party noted that this email was unsolicited and denied any relationship of confidence.36

[72] Ms Stewart says the allegations made about her in the email are baseless, and I record that there is no evidence before the court that would support such claims.

[73] She claims that Mr Anderson's conduct constitutes sustained harassment and is evidence that the application was his creation and a deliberate abuse of process. She suggests that it was intended as a fishing exercise in personal retaliation against her and court decisions disfavouring him.

[74] She submits that there has been significant effort involved in determining how to respond to Mr Anderson's behaviour. This has directly impacted costs attributable to his application, including his attempt to improperly effect service at her firm.

[75] She argues that on balance, Mr Anderson has taken the case as his own and has independently contributed to the costs incurred. He has acted in a manner in which no proper and dispassionate representative would act and therefore, it would be unjust for the plaintiff to be responsible for costs, given the application was of Mr Anderson's own making.

[76] Ms Stewart also says that a costs order against Mr Anderson personally would be the only means of regulating his conduct, which she fears will continue in the absence of tangible outcomes such as adverse costs awards. She maintains that such an award is not punitive but intended to incentivise competence and efficiency.

[77] Mr Anderson, on the other hand, submits that the application for non-party discovery was pursued in good faith and

for good reason, and that there is no egregious behaviour that would warrant indemnity costs. He maintains that the application for non-party discovery was necessary because:

36. I do not consider that forwarding the email was a breach of confidence. The email was unsolicited and did not purport to be sent in confidence; nor was it confidential in nature.

(a) Ms Stewart repeatedly sought a jail sentence against the plaintiff and made various suggestions that the plaintiff's liquidation was a sham to avoid liability;

(b) he could not obtain the information elsewhere as the liquidator had her licence revoked and did not hold office, and because the plaintiff's company was liquidated, he could not request information from the Authority personally; it was therefore reasonable to seek documents from Ms Stewart directly "...based on the contemporaneous email exchanges between counsel and the liquidator that the documents sought for discovery would be held by the office of Mr Corrigan's former counsel"; and

(c) he was acting on the instruction of the plaintiff, who himself was motivated to apply for non-party discovery for several reasons, including his belief that accusations had been made against him by counsel for Mr Corrigan.

[78] Mr Anderson filed an affidavit by the plaintiff in support of the claim that the application was pursued on instructions.

[79] He reiterates the basis for the non-party discovery application, being that the information was relevant, reasonable, not covered by privilege and not possible to obtain elsewhere. He further argues that Ms Stewart had an obligation to provide disclosure to him.

[80] Mr Anderson claims that Ms Stewart's submissions constitute a reputational attack and are improperly pursued. He says this is evidenced by several factors including procedural errors made by counsel, suggestions that they were seeking a jail sentence against his client, and the fact that Ms Stewart shares an office with a lawyer with whom Mr Anderson has an interpersonal conflict.

[81] He claims that Ms Stewart's staff have been rude and have made comments designed to hurt him, to the extent that their behaviour prompted him to make a complaint to the New Zealand Law Society.

[82] Regarding allegations levelled against his own conduct, Mr Anderson categorises these as intemperate communications and says many fall outside of the Court and cannot be considered for the purposes of the costs application. Some comments he denies, such as the suggestion that he referred to Mr Church as a "clown". He clarifies this was in fact aimed at his former client.

[83] He expresses regret for some comments and provides further context for others. He says the conduct complained of should be taken in jest – for example, his comment that lawyers who work in the employment jurisdiction "are incapable of dealing with matters that require the use of the human brain." In any case, he notes he has already been admonished for the comments.

[84] Mr Anderson also goes on to explain any intemperate language by him is the result of the deficiencies of counsel when they "fail to follow practice and procedure which is not difficult to read, learn and follow."

[85] In any event, he submits that the statements made by him are insufficient to establish a connection that creates liability against him.

[86] Mr Anderson challenges the quantum sought by Ms Stewart. However, as I have already noted above, the amount sought is modest and reasonable.

[87] Ms Stewart has filed a reply to Mr Anderson's submissions and supporting affidavits. She rebuts his claims and categorises them as irrelevant, improper and potentially in breach of client confidentiality. She argues that they are further evidence that Mr Anderson has used these proceedings as a vehicle for personal antagonism.

[88] She alleges that Mr Anderson's submissions indirectly confirm that the non- party discovery was his own creation. She notes that the plaintiff's affidavit does not provide documentary evidence to support the claim that the application was pursued

on instructions. A combination of the esoteric nature of non-party discovery, the legalistic language of the affidavit, and the substantial similarities with Mr Anderson's own submissions demonstrates that the application was pursued without any real impetus from the plaintiff.

[89] Ms Stewart submits that Mr Anderson continues to assert misguided beliefs despite evidence to the contrary – for example, his understanding of privilege and disclosure and his insistence that counsel had sought a jail sentence, an allegation she maintains is false.37

[90] She argues that despite Mr Anderson's expressed regret about his comments, the documentation filed by him continues to contain disparaging and unprofessional comments. In response to Mr Anderson's claim that his comments fall outside of the Court and are thus irrelevant, Ms Stewart notes that they are illustrative of his personal antagonism towards her personally.

[91] She submits his reliance on *Harley* is misplaced. She argues that it supports her proposition that the non-party discovery application was an avoidable step in the proceeding that increased costs.

[92] She confirms that Ms Stewart's staff made apologies and corrections relating to comments that upset Mr Anderson; however, she also provided a copy of the decision of the New Zealand Law Society which investigated his complaint. The outcome stated:

The Committee noted that by Judge Beck's account, your behaviour also fell short of the standards of respect and courtesy required by these Rules, should similar Rules have applied in relation to your conduct as an employment advocate.

37 Ms Stewart notes that the Authority has no jurisdiction to impose a jail sentence, and what was sought on behalf of her client was a direction from the Authority under s 140(6) of the Act, in the event of non-compliance, which would include seeking a sentence of imprisonment.

Analysis

[93] There is some background to this situation.

[94] In an earlier judgment in these proceedings, Mr Anderson was warned:38

Material filed in these proceedings indicates that Mr Anderson has engaged in an unprofessional and abusive manner towards Mr Corrigan's former counsel. Mr Anderson has previously been warned that such conduct is not tolerated by the Court. I repeat those warnings and strongly recommend that Mr Anderson obtain mentoring support if he has not already done so.

[95] Following the plaintiff's withdrawal in that proceeding, the first defendant, Mr Corrigan, sought scale costs which were awarded. In addition, he sought an uplift for the way in which Mr Anderson conducted himself. An uplift of 10 per cent was appropriate given that Mr Anderson's conduct increased his costs.39

[96] However, what Ms Stewart seeks goes a significant step further than an uplift in costs.

[97] Mr Anderson challenges both the quantum sought by Ms Stewart and the substantive justifications for the costs application. As already noted above, the quantum sought is moderate and reasonable. Ms Stewart is entitled to costs in the circumstances.

[98] As already noted above, the question is who should bear the liability for such costs.

[99] It is apparent from Ms Stewart's evidence that Mr Anderson's conduct has, in this case, independently caused or contributed to Ms Stewart's costs. The application for discovery against Ms Stewart, on behalf of Mr Menzies, sought:

List of documents

1. All written correspondence between the First Respondent, its representatives, the office of Catherine Stewart Barrister, Kelera NAYACAKALOU and the office of Liquidations Solution Limited.

38 *Menzies v Corrigan*, above n 35, at [31].

39 *Menzies v Corrigan* [2025] NZEmpC 107 at [3].

2. All documents exchanged between the First Respondent, its representatives, the office of Catherine Stewart Barrister, Kelera NAYACAKALOU and the office of Liquidations Solution Limited.
3. All written correspondence between the First Respondent, its representatives, the office of Catherine Stewart Barrister, and the Employment Relations Authority that involves any notices, if they exist, that are addressed to the Plaintiff to attend the Employment Relations Authority Investigation meeting(s) and/or to participate in the Employment Relations Authority Investigation processes for file numbers 3176367 (determinations [2023] NZERA 125 and [2023] NZERA 253).

Relevance of documents required for disclosure

4. Daniel CHURCH and the office of Catherine Stewart Barrister had correspondence with Kelera NAYACAKALOU and the office of Liquidations Solution Limited on or around June 2024.
5. It followed that documents were provided by Ms NAYACAKALOU to Mr CHURCH. However, the Plaintiff wishes to clarify if there are any other documents that were provided and to view the written requests and responses for documents.
6. The Plaintiff wishes to clarify whether or not the Employment Relations Authority had issued any notices to the Plaintiff to personally attend to any matters pertaining to the Employment Relations Authority Investigation processes for file numbers 3176367 (determinations [2023] NZERA 125 and [2023] NZERA 253) even though the Plaintiff did not receive any notices in terms of the Plaintiff's personal capacity as an entity that is separate to the Second Defendant.

[100] Mr Menzies was a director and shareholder of the second defendant and was also named as a party in the Authority's determination.40 There can be no dispute that had Mr Anderson sought information directly from the Authority on behalf of Mr Menzies, he would have been entitled to it. There is no evidence that Mr Anderson ever attempted to obtain the documents from the Authority. His assertion that he could not have done so because the company was in liquidation is unsustainable and inexplicable.

[101] The same can be said of the documents relating to the liquidator.

[102] Issues have been raised subsequently about the liquidator and her conduct but there is no evidence before the Court of any effort by Mr Menzies, or Mr Anderson on his behalf, to obtain documentation from her in the first instance.

40 *Corrigan [No 1],* above n 1.

[103] Mr Anderson's repeated references to the first defendant seeking imprisonment, which is denied by Ms Stewart, as justification for the application is also difficult to understand. Even if true, its relevance to the basis for a non-party discovery application is unclear.

[104] Applying to a non-party for disclosure is rare; applying to former counsel for the opposing party for disclosure is extraordinary. Ms Stewart's office was not the best or in any way an appropriate source of the information sought. Setting aside the overlay of solicitor-client privilege, there were clearly a number of other primary sources from which inquiries could have been made, including the Authority, the liquidator and even the defendant Mr Corrigan, as opposed to his previous lawyers.

[105] The application was an extraordinary feature of the litigation.41

[106] Ms Stewart's suggestion that other factors motivated the application therefore has some merit. The affidavit evidence filed, including correspondence with third parties,42 indicates a level of animosity towards Ms Stewart and her staff and a desire to expose it in some way. Even if that were not the case, however, the application itself was fatally ill-founded.

[107] On reviewing the evidence before the Court, I find that a proper and dispassionate representative would not conduct themselves in this manner.

[108] Mr Anderson says that he was acting on the instructions of Mr Menzies and Mr Menzies has provided an affidavit in support of that assertion. In it he says he instructed Mr Anderson to make the application. Mr Menzies' stated reasons for the application are identical to those put forward by Mr Anderson, which are fatally flawed. There is no evidence that Mr Anderson provided him with a copy of the Court's minute dated 19 March 2025 or that it was discussed with him before the application was made. There is also no reference at all to the concerns raised about the application in the court's minute dated 10 April 2025.

41 *Aarts*, above n 8, at [40].

42 See above at [70(b)].

[109] It is not an answer or defence that Mr Anderson was acting on instructions. There is no evidence that he was not. However, Mr Anderson was acting as a representative for Mr Menzies and being paid to do so.

[110] When the application for non-party discovery was first contemplated, Mr Anderson was informed of its weak legal and factual basis. It is unnecessary to determine whether he is or was sincere in his conviction that the application was warranted; the vexatiousness lies in his refusal to accept decisions and advice with which he disagrees. Even now he persists in maintaining that the application had a proper basis and was necessary.

[111] I consider Mr Anderson's conduct to be most improper and indicative of someone who has entered the arena in their own right, as opposed to that of their client. This is entirely unacceptable.

[112] This is a case where it is appropriate to join a representative for the purposes of making a costs order against them.

[113] I find Mr Anderson should be personally liable for the costs relating to the application for non-party discovery.

[114] It follows that Mr Anderson's application for costs fails, there being no basis for such an application.

[115] Given the level of work involved in this application, which has been entirely successful, Ms Stewart's application for costs on this costs application is also successful. The amount sought is reasonable and proportionate.

Outcome

[116] Ms Stewart's application for costs against Mr Anderson personally is successful. I make the following orders:

(a) Mr Anderson is joined to the proceeding as a party purely for the purposes of costs.

(b) Within 14 days of the date of this judgment, Mr Anderson is ordered to pay Ms Stewart the sums of:
(i) $1,417.75 on the application for non-party discovery;
(ii) $313.93 on Mr Anderson's application; and
(iii) $800.00 on this application.

(c) Mr Anderson's application for costs is declined.

[117] Ms Stewart's application for an ancillary order requiring the payment of interest by Mr Anderson in the event of late payment is declined. In the event of non- compliance by Mr Anderson, Ms Stewart may take steps to enforce the judgment.

Kathryn Beck Judge

Judgment signed at 4.45 pm on 22 August 2025
