

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2004-404-003311

BETWEEN	WINSTON RAYMOND PETERS Plaintiff
AND	TELEVISION NEW ZEALAND First Defendant
AND	RADIO NEW ZEALAND Second Defendant
AND	YVONNE TERESA DOSSETTER Third Defendant
AND	DAVID CARTER Fourth Defendant
AND	KENNETH SHIRLEY Fifth Defendant

Hearing: (on papers)

Appearances: B P Henry for Plaintiff
W Akel for First Defendant
C A McVeigh QC for Fourth Defendant

Judgment: 18 March 2008

**JUDGMENT OF WOODHOUSE J
(costs)**

*This judgment was delivered by me on 18 March 2008 at 10:00 a.m.
pursuant to r540(4) of the High Court Rules 1985.*

Registrar/Deputy Registrar

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Solicitors/Counsel:
Mr B P Henry, Barrister, Auckland
Mr W Akel, Simpson Grierson, Solicitors, Auckland
Mr C A McVeigh QC, Barrister, Christchurch

[1] The first and fourth defendant seeks costs following my judgment of 20 December 2007 dismissing the plaintiff's application for review of striking out orders.

[2] The application for costs by the first defendant is not opposed by the plaintiff. Accordingly, there is an order that the plaintiff pay the first defendant's costs in the sum of \$4,280 and disbursements of \$600 as specified.

[3] In the memorandum for the fourth defendant there is reference to costs on a 2B basis, being the basis for the award in favour of the first defendant of \$4,280. The fourth defendant's memorandum also has costs calculated on a 3C basis, a total of \$9,657.75. The fourth defendant seeks increased costs. It is put this way in the memorandum:

[T]he fourth defendant is seeking an increased award of costs under Rule 48C of the High Court Rules on the basis that the Plaintiff's conduct from the time that these proceedings were filed has been dilatory and he has breached timetabling orders set by the Court on a number of occasions.

[4] This combines two generally distinct questions relating to costs – the appropriate scale (daily rate and time band) and whether there should be an increase above the appropriate scale applying r 48C.

[5] The starting point is the appropriate scale. The matters referred to in the memorandum as justifying increased costs are not ones relevant to fixing the daily rate and time band. I understand that the daily rate in this proceeding has been category 2 and no grounds are advanced to vary that. I also understand that the time band has been B for various steps in the proceeding. Paterson J in his judgment awarded costs on a 2B basis. The appropriate scale is 2B.

[6] The matters referred to in the fourth defendant's memorandum also do not justify increased costs above the 2B scale. It is said that the plaintiff has been dilatory in taking various steps in the proceeding since it was filed in June 2004. However, the question before me is costs on the application for review, commencing with the filing of the application for review. No submission is made that there has

been conduct of this nature by the plaintiff on the application for review which might warrant an order for increased costs under r 48C.

[7] The fourth defendant also submits that there should be increased costs because the plaintiff has pursued arguments that lacked merit. As a basis for increased costs I disagree. The central point was reasonably arguable. This is given emphasis by the judgment of Paterson J on the earlier strike out application.

[8] The plaintiff does not oppose an award of costs to the fourth defendant on a 2B basis and has not challenged the calculation of those costs. The plaintiff opposes increased costs essentially for the reasons I have already discussed.

[9] There is an order that the plaintiff pay the fourth defendant's costs on a 2B basis in the sum of \$4,280.

[10] To avoid any uncertainty I note that this judgment deals solely with costs on the application to review the judgment of 3 August 2006 of Associate Judge Christiansen.

Result

[11] The plaintiff shall pay the first defendant's \$4,280 for costs and \$600 for disbursements.

[12] The plaintiff shall pay the fourth defendant \$4,280 for costs together with all reasonable and necessary disbursements.

Peter Woodhouse J