IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2023-004-001621
[2026] NZDC 14574

UNDER	THE DEFAMATION ACT 1992
BETWEEN	JULIAN BATCHELOR Plaintiff
AND	SANJANA HATTOTUWA First Defendant
AND	TELEVISION NEW ZEALAND Second Defendant

Hearing:	29 May 2026
Appearances:	M Hague for the Plaintiff D Salmon KC and K Simcock for the First Defendant D Nilsson and K Havermann for the Second Defendant Mr Patterson for Non-Party (Mr Grenon)
Judgment:	3 July 2026

COSTS JUDGMENT OF JUDGE DAVID J CLARK

Introduction

[1] In a reserved judgment dated 24 March 2026, I dismissed the claim in defamation brought by Mr Batchelor against Dr Hattotuwa and Television New Zealand Limited (TVNZ).[1]

[2] I noted Mr Batchelor should pay costs, however, given the revelation during the hearing Mr Grenon had funded the legal costs of Mr Batchelor, I scheduled a telephone conference to make directions as to how costs would be determined.

[1] *Batchelor v Hattotuwa and Television New Zealand Limited* [2026] NZDC 489.

[3] That conference was held on 10 April. Mr Patterson appeared for Mr Grenon. I made timetabling directions which directed formal applications for costs were required if costs were being sought against Mr Grenon.

[4] I also confirmed a hearing would be scheduled, despite Mr Patterson's objections. In my view it was important to hold a hearing because of the potential complexities involved in the anticipated applications; that it was appropriate for the Court to be able to engage with counsel on any issues arising rather than leaving matters unanswered if submissions only were filed; and, that the proceedings had attracted significant public interest.

[5] On balance, I determined the principle of open justice required a hearing rather than being dealt with in chambers;[2] and finally, but perhaps most importantly, natural justice dictated Mr Grenon should be given an opportunity to be heard in open court, given the criticism he faced from the defendants about his involvement in the proceedings.[3]

[6] Formal costs applications for both defendants were filed. Both defendants seek costs on an indemnity basis, or in the alternative, costs on a 3B scale basis with an uplift of 50 per cent over this scale.

[7] Dr Hattotuwa's indemnity costs amount to $145,324.97. His 3B scale costs amount to $71,064. He also seeks disbursements of $541. An uplift of 50 per cent on the scale costs amounts to $106,596, making a total claimed sum of $107,137 (including disbursements).

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[2] See *Erceg v Erceg* [2016] NZSC 135, [2017] 1 NZLR 310 at [2]–[3]. See also Ngā Kōti o Aotearoa | Courts of New Zealand: Open justice and engagement — Courts of New Zealand

[3] Especially if he decided to give evidence and any party wished to cross-examine him. In saying that, I did give the parties an opportunity to agree to have the issue dealt with on the papers (see para [4] of my minute dated 10 April 2026) but only if the parties were able to agree. They were unable to agree. See also *Bassett-Burr v BPE Trustees (No.1) Limited* [2020] NZCA 457, where the Court of Appeal was critical of an application for non-party costs when no formal application was made (the "application" was by way of memorandum) and no opportunity was given to Mr Bassett-Burr to be properly heard.

[8] TVNZ's indemnity costs amount to $153,838.55 (excluding GST).[4] Its 3B scale costs amount to $75,717.00. It seeks disbursements of $12,243.15.[5] An uplift of 50 per cent on the scale costs amounts to $113,575.50 making a total claimed of $125,818.65 (including disbursements).

[9] Issues arose prior to the hearing. Mr Batchelor refused to make full disclosure of the funding arrangements between himself and Mr Grenon. I was required to determine the scope of what had to be disclosed and delivered a decision to this effect on 30 April.[6] At the point of the costs hearing, the defendants say full disclosure has still not been made in accordance with my orders but, in any event, elected to proceed with the hearing.

[10] I mention the above matters by way of background to illustrate, to some extent, why the behaviour of Mr Batchelor, and more recently, Mr Grenon, has been so heavily criticised by both Mr Salmon KC and Mr Nilsson. It is this behaviour and other examples of behaviour which I set out in this judgment as to why the defendants argue indemnity costs are appropriate.

[11] For the reasons set out in this judgment I have found Mr Batchelor and Mr Grenon must pay costs on an increased basis. I do so because I find their behaviour has met some, if not most, of the subclauses set out in r 14.6(3)(b) of the District Court Rules 2014 (DCR).

[12] In reaching this finding, I do not consider the behaviour of Mr Batchelor and Mr Grenon to be so egregious to meet the very high threshold of when indemnity costs should be awarded. Despite Mr Salmon's submission Mr Batchelor's behaviour is the worst he has ever seen in a civil proceeding, regrettably, this Court has observed considerably worst conduct which has not resulted in indemnity costs being awarded.

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[4] TVNZ is GST registered so it only claims on the GST exclusive sums.
[5] This includes Dr Wilson's fees as TVNZ's expert witness.
[6] *Batchelor v Hattotuwa* [2026] NZDC 8881.

The District Court Costs Regime

[13] The starting point on any costs award is always at the discretion of the Court. DCR 14.1 provides:

> **14.1 Costs at discretion of court**
>
> (1) All matters are at the discretion of the court if they relate to costs—
>
> (a) of a proceeding; or
>
> (b) incidental to a proceeding; or
>
> (c) of a step in a proceeding.
>
> (2) Rules 14.2 to 14.10 are subject to subclause (1).
>
> (3) The provisions of any Act override subclauses (1) and (2).

[14] The relevant principles for the determination of costs are:

> **14.2 Principles applying to determination of costs**
>
> (1) The following general principles apply to the determination of costs:
>
> (a) the party who fails with respect to a proceeding or an interlocutory application should pay costs to the party who succeeds:
>
> (b) an award of costs should reflect the complexity and significance of the proceeding:
>
> …
>
> (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable in relation to the proceeding or interlocutory application:
>
> …
>
> (g) so far as possible the determination of costs should be predictable and expeditious.

[15] Increased costs or indemnity costs can be ordered in accordance with DCR 14.6. The relevant parts of r 14.6 provide:

> **14.6 Increased costs and indemnity costs**
>
> (1) Despite rules 14.2 to 14.5, the court may make an order—

(a) increasing costs otherwise payable under those rules (increased costs); or

(b) that the costs payable are the actual costs, disbursements, and witness expenses reasonably incurred by a party (indemnity costs).

…

(3) The court may order a party to pay increased costs if—

(a) the nature of the proceeding or the step in the proceeding is such that the time required by the party claiming costs would substantially exceed the time allocated under band C; or

(b) the party opposing costs has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by—

(i) failing to comply with these rules or a direction of the court; or

(ii) taking or pursuing an unnecessary step or an argument that lacks merit; or

(iii) failing, without reasonable justification, to admit facts, evidence, or documents or accept a legal argument; or

(iv) failing, without reasonable justification, to comply with an order for discovery, a notice for further particulars, a notice for interrogatories, or any other similar requirement under these rules; or

(v) failing, without reasonable justification, to accept an offer of settlement, whether in the form of an offer under rule 14.10 or some other offer to settle or dispose of the proceeding; or

(c) …

(d) some other reason exists that justifies the court making an order for increased costs despite the principle that the determination of costs should be predictable and expeditious.

(3) The court may order a party to pay indemnity costs if—

(a) the party has acted vexatiously, frivolously, improperly, or unnecessarily in commencing, continuing, or defending a proceeding or a step in a proceeding; or

(b) the party has ignored or disobeyed an order or a direction of the court or breached an undertaking given to the court or another party to the proceeding; or

(c) costs are payable from a fund, the party claiming costs is a necessary party to the proceeding affecting the fund, and the party claiming costs has acted reasonably in the proceeding; or

(d) the person in whose favour the order of costs is made was not a party to the proceeding and has acted reasonably in relation to the proceeding; or

(e) the party claiming costs is entitled to indemnity costs under a contract or deed; or

(f) some other reason exists that justifies the court making an order for indemnity costs despite the principle that the determination of costs should be predictable and expeditious.

[16] The Court of Appeal in *Bradbury v Westpac Banking Corporation* explained the costs regime as follows:[7]

> [27] The distinction among our three broad approaches – standard scale costs, increased costs and indemnity costs – may be summarised broadly:
>
> (a) standard scale applies by default where cause is not shown to depart from it;
>
> (b) increased costs may be ordered where there is a failure by the paying party to act reasonably; and
>
> (c) indemnity costs may be ordered where that party has behaved either badly or very unreasonably.

The Issues

[17] All parties accept costs should be awarded against Mr Batchelor in favour of the defendants. In terms of the scale costs to be adopted, although it was initially disputed what the appropriate category should be, it was accepted during the costs hearing category 3 (not 2) had been agreed between counsel at an early case management conference.

[18] The defendants seek, as a starting point, that scale B costs be adopted for all steps undertaken. Mr Batchelor's initial position was 2B costs should be awarded. As noted, category 3 was agreed during the hearing and Mr Hague made no submissions on scale.

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[7] *Bradbury v Westpac Banking Corporation* [2009] 3 NZLR 400 (CA) at [27].

[19] Mr Patterson's written submissions also suggested 2B as the appropriate costs to be awarded. That position needed to change following the revelation agreement had previously been reached on the category. As to scale Mr Patterson submitted certain steps may attract a lower scale, given the volume of work which was needed for that step.

[20] I decline to do this. There is nothing before the Court which would support a different scale for a particular step. Counsel for those parties who were directly involved in the proceeding all agree scale B is appropriate.

[21] The starting point then is category 3B costs will be awarded against Mr Batchelor.

[22] The remaining issues which need to be determined are:

(a) Should two sets of 3B costs be awarded against Mr Batchelor in favour of both defendants?

(b) Should an uplift of costs or indemnity costs be awarded?

(c) Does this Court have jurisdiction to award non-party costs?

(d) If there is jurisdiction to award costs against a non-party, should this Court award costs against Mr Grenon and what should those costs be?

The Additional Round of Submissions

[23] Before I address the above issues, I mention at this juncture the further round of submissions which I received initially from Mr Patterson (on 11 June) and then from Mr Hague (on 12 June). As they were directed at TVNZ, Mr Nilsson filed submissions in response which were received by the Court on the morning of 15 June. Mr Salmon also filed submissions which I received on 15 June.

[24] The submissions have not altered the substantive determination of the judgment, but I indicated in a minute issued on 15 June that I would provide reasons

as to why I declined Mr Batchelor's and Mr Grenon's attempt to reopen what I consider to be substantive issues concerning discovery (or lack thereof) on the part of TVNZ. I do so separately from the balance of the judgment here because, in my view, there is no merit in what has been filed and they do not impact on the substantive outcomes which I have made.

[25] The balance of this costs judgment is set out from paragraph [37] below.

[26] Mr Patterson's submissions refer to a letter attached to his submissions, which was sent to Mr Nilsson's firm on 10 June 2026 by Mr Hague. Mr Hague's letter states TVNZ was (and remains) in significant breach of its disclosure requirements during the proceedings in that all "Video footage" and "Audio recordings" authored by TVNZ were not disclosed. It seeks full disclosure which extends to backup, archived and cached copies/versions of any relevant footage and recordings. It demands disclosure from all "servers, cloud storage, third-party storage infrastructure, or any other medium".

[27] The letter also demands:

(a) Disclosure of all of "Ms Hurihanganui's contemporaneous notepad or notes, or any parts of the same, made during or in preparation for the 5 August 2023 telephone interview with Mr Batchelor, to the extent any physical or digital copy or version of the same has survived";

(b) All internal TVNZ correspondence, communications, memoranda, or documents concerning or relating to four complaints received by TVNZ between 6 August and 22 August 2023; TVNZ's internal handling, assessment, or response to those complaints; and any decisions made in connection with those complaints, including any decision as to whether programme material should be retained;

(c) All documents, policies, procedures, or guidelines relating to TVNZ's data retention obligations when a formal complaint is received, including any "litigation hold" or equivalent policy; and

(d) All documents relating to TVNZ's ability to restore, retrieve, or recover data that has been automatically purged or deleted from its servers, including any system documentation or technical records describing TVNZ's backup, archiving, or data recovery capabilities as at August 2023.

[28] The purpose of the letter's demands is then explained as follows:

> 17. TVNZ's costs application relies, in part, on alleged conduct by Mr Batchelor that increased the time and cost of proceedings. The joint memorandum of counsel, which you filed, seeking disclosure dated 21 April 2026, it was submitted that "the plaintiff has already shown a lack of understanding of, or regard for, disclosure processes" and that "the defendants have already been put to significant unnecessary costs" as a result.
>
> 18. Those criticisms apply with equal force to TVNZ's own conduct. In addition to the Court's general discretion to reduce or refuse to make an order for costs in DCR 14.7(f), DCR 14.7(e)(iv) provides that the Court may refuse to make an order for costs, or reduce the costs otherwise payable, where if the party claiming costs "has contributed unnecessarily to the time or expense of the proceeding or step in the proceeding by... (iv) failing, without reasonable justification, to comply with an order for discovery." TVNZ has claimed indemnity and increased costs based on our client's alleged failure to comply with the discovery order by not disclosing documents concerning the funding of the proceedings. The same rule operates in reverse: the Court may decline to award costs to, or reduce costs awarded in favour of, a party that has itself failed to comply with its own discovery obligations.

[29] The letter concludes by demanding an undertaking by 4.00 pm on 12 June 2026, that the concerns raised by Mr Batchelor will be investigated, and that time is allowed for any responses to be made. If no undertaking is provided then Mr Batchelor reserved his right to file a memorandum with the Court seeking a stay of the issuing of this judgment, directions to be made on any further discovery to be made and, if appropriate, an order reducing the costs to be awarded against Mr Batchelor.

[30] Mr Patterson, then filed his submissions, concerned because he did not know whether an application for discovery would be made by Mr Batchelor. In the absence of such application, Mr Grenon, by way of memorandum, sought a stay of this judgment and orders for further and better discovery.

[31] Mr Patterson need not have worried. Mr Hague's memorandum of 12 June (filed before his own cut-off time of 4.00 pm) sought a stay and timetabling directions for argument to occur.

[32] As noted, Mr Nilsson and Mr Salmon filed submissions which I received on 15 June. I issued a minute rejecting the request for a stay and further argument on discovery issues. I indicated full reasons would be provided in this judgment.

[33] Those reasons are:

(a) By virtue of the delivery of the substantive judgment in this proceeding, the Court is now in a position where it is *functus officio* in relation to all matters raised in the proceeding. Once final judgment has been delivered, the general rule is that the Court's jurisdiction has been fully exercised and its authority in relation to the subject matter of the judgment has come to an end.[8] This is known as the finality principle, and it recognises the importance of certainty for the parties and a defined end point to litigation.[9]

(b) Substantive issues beyond procedural issues may be revisited in very exceptional cases and where natural justice demands, but that is extremely rare.[10] This is not one of those instances.

(c) The *functus officio* status does not impact on the determination of costs given I specifically reserved that issue. In assessing costs, a wide discretion is given to a Judge to assess the conduct of a party in terms of awarding costs including whether costs should be reduced or no costs ordered under DCR 14.7. However, it does not follow that in exercising this discretion a means is given to allow for further assessment of the

[8] *Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue* [2013] NZHC 2361.
[9] At [9].
[10] *Horowhenua County v Nash (No 2)* [1968] NZLR 632 (SC); and *Barton v R* [2020] NZSC 87 at [2] where the Supreme Court held "…The general rule is that a judgment, once delivered, must stand for better or worse. There are, however, three categories of cases where a judgment may be recalled: a legislative amendment or a new development in case law of "high authority"; a failure by counsel to draw attention to a relevant statutory provision or caselaw.

evidence or allow further argument when opportunities to do so were either available and not taken or, were taken, and then determined. To do so would defeat the finality principle.

(d) An example of an opportunity already taken concerns the current complaint about the destruction of Ms Hurihanganui's notepads and the raw footage. These issues were squarely raised during the hearing in relation to TVNZ's affirmative defence of "responsible communication" with both Ms Hurihanganui and Mr O'Sullivan being examined on the issue.[11]

(e) At paragraphs [248] and [249] of my judgment, I noted:[12]

> [248] Mr Hague did raise the issue of the destruction of the notebook and raw footage. Mr Nilsson's response was little more than a cursory dismissal of that concern.
>
> [249] In the end it is unnecessary for me to make a finding on whether the destruction of this material amounts to irresponsible communication given all of the other factors so heavily weigh in the favour of TVNZ. However, I do observe the preservation of all relevant documents is paramount when litigation is contemplated. Any news organisation, where such threats are made, will always be under the expectation relevant material is secured. In these circumstances, and based on the evidence I have heard, I see the destruction of the material as unfortunate rather than any deliberate act or conduct which is irresponsible.

(f) Although my finding in these paragraphs was in the context of whether the destruction of the material amounted to "irresponsible communication", in doing so, I also considered TVNZ's obligations in relation to discovery and the need for the preservation of relevant documentation. I concluded the destruction of the documents/footage was not deliberate but unfortunate. The issue of TVNZ's obligations to discover this material or provide credible explanations as to why it was not, has been determined. Nothing in the memoranda provided persuades me to reopen the issue. Indeed, I would not find any

[11] NOE (O'Sullivan), p 278, lines 22–35 and p 279, lines 1–6; and NOE (Hurihanganui) p 249, lines 6–29.
[12] *Batchelor v Hattouwa*, above n 1.

differently if the focus was just on the discovery obligations rather than responsible communications.

(g) As far as any other alleged (discovery) impropriety is concerned, again, I consider the matter does not justify further litigation and arguments on these issues.

(h) At no stage were any complaints made about the alleged lack of discovery by TVNZ and, in particular, in relation to complaints about broadcasting standards. Even if I was convinced such complaints would have relevance to any of the pleaded issues in the proceeding (which I am not), Mr Batchelor had plenty of opportunity to raise these concerns prior to the substantive hearing and/or during the hearing, and/or at the costs hearing. He did not and it is now too late to do so. Mr Grenon cannot seek to substitute in now and claim prejudice because Mr Batchelor failed to raise the issue. But in any event, he also had the opportunity to raise this issue at the costs hearing and did not (although there would be some query if he had standing to do so as a non-party in any event).

[34] The request for a stay and further argument on discovery issues are dismissed.

[35] TVNZ and Dr Hattotuwa seek costs in addition to the costs already sought. Both have incurred costs unnecessarily. I award costs to TVNZ on a 3B basis and to Dr Hattotuwa on a 2B basis. I do so recognising TVNZ needed to file more extensive submissions than Dr Hattotuwa. The costs are limited to the preparation and filing of memoranda.[13]

[36] I return to the issues which need to be determined in this application.

[13] District Court Rules 2014, Schedule 4, step 9.12

Should Two Sets of 3B Costs be Awarded Against Mr Batchelor in Favour of Both Defendants?

[37] Both Mr Hague and Mr Patterson submitted one set of costs should be awarded in favour of both defendants (i.e. the costs are shared).[14] They say many of the defences relied on, including the affirmative defences, were duplicated and in some cases repetitive, such where many of the same topics were cross-examined on. They say both defendants' interests were "entirely aligned" and Mr Batchelor should not be penalised because the defendants "elected to double up on their legal representation".[15]

Discussion

[38] The argument has little merit. Mr Batchelor chose who he was going to sue. Dr Hattotuwa has nothing to do with TVNZ other than agreeing to be interviewed by TVNZ on Mr Batchelor's pamphlet. Conceivably cross-claims could have issued by each defendant against each other. Their interests then were not aligned but instead were in conflict. It would be totally inappropriate if they had agreed to "double up" on their legal representation.

[39] I do agree both defendants denied the statements made were defamatory and relied on some of the same affirmative defences. However, the fact that common legal defences may be relied on does not mean their interests were aligned. For example, TVNZ's reliance on responsible communication and honest opinion necessarily turned on its own editorial process, publication decisions, and the conduct of its journalist(s); whereas Dr Hattotuwa's position turned on his separate role as an interviewee and the statements which he made based on his lived experiences and the qualifications he holds. Each position did not necessarily align which therefore required separate representation.

[40] Finally, as I expressed to all counsel at the end of the trial, I was grateful for the way the trial was conducted which condensed a significant amount of evidence into four days of hearing time when it could have gone on for much longer. This was

[14] Rule 14.14.
[15] Mr Hague's submissions dated 26 May 2026 at para 53.

achieved because Mr Salmon and Mr Nilsson had ensured where possible their cross-examination of Mr Batchelor and Mr Williams and their submissions did not overlap. While some overlap necessarily did occur, it did not impact on the trial duration.

[41] I dismiss then this ground and determine both Dr Hattotuwa and TVNZ are each entitled to their separate costs.

Should an Uplift of Costs or Indemnity Costs be Awarded?

[42] What conduct do the defendants point to which justify indemnity costs or an uplift? The grounds they rely on can be broadly summarised as follows:

(a) The proceedings were motivated by improper political purposes, funded and/or controlled by Mr Grenon whose presence was unknown until Mr Batchelor disclosed his involvement when he was required to answer the question of who was paying his legal bills.

(b) The claim was champertous and tortiously maintained, which amounts to an abuse of process.

(c) Whilst scale costs are recognised as a compensatory contribution towards actual costs incurred, indemnity costs fully compensate a party for defending a claim that should never have been brought. This is a case which should never have been brought given the findings made by this Court.

(d) Mr Batchelor's failure to disclose Mr Grenon's involvement was deliberate notwithstanding he was obligated to do so in accordance with the decision of *Waterhouse v Contractors Bonding Ltd.*[16] This conduct amounted to an abuse as it deprived the defendants from taking certain preventative measures to protect themselves against incurring costs or at least securing costs. Those steps included either seeking a stay; seeking interrogatories; seeking security for costs or, seeking to strike

[16] *Waterhouse v Contractors Bonding Ltd* [2014] 1 NZLR 91 (SC).

out the proceedings at an early stage. All steps could have otherwise avoided trial and post-trial costs.

(e) Mr Batchelor:

(i) Breached discovery obligations, in that he failed to disclose relevant documentation which revealed what the defendants say were further examples of racist rhetoric. Instead, he chose only to disclose documents which were relevant to his own narrow, pre-1970s understanding of racism or hate speech as he defined those terms rather than relevant to all of the pleaded issues such as truth (which was pleaded by Dr Hattotuwa).

(ii) Refused to answer relevant questions such as disclosing who funded the pamphlet.

(iii) Pursued false or untenable factual positions. Examples include his assertion he was never asked to comment on Dr Hattotuwa's statements by TVNZ or indeed contact by it/Ms Hurihanganui. This was despite independent records (text messages/telephone records) which confirmed communications between himself and Ms Hurihanganui.[17]

(f) The claim had a "chilling effect" on "responsible journalism" and public-interest speech. Mr Salmon submits there are two aspects to this submission. Firstly, effective journalism is important to any democracy, but it does mean media organisations can be vulnerable to abusive legal claims.[18] In this instance a tortiously maintained defamation claim deliberately targeted the reporting of a legitimate news item which held high public interest. The proceedings were intended to discourage responsible reporting by a broadcaster in circumstances where the proceedings were funded by a person who had no legitimate interest in

[17] See paras [95] to [100] of the judgment.
[18] See *Talley's Group Ltd v Television New Zealand* [2025] NZHC 576.

> the claim. Secondly, Dr Hattotuwa was sued even though he was expressing an opinion which the Court found was measured, honest, responsibly prepared, and published in the public interest. There is a reasonable inference Dr Hattotuwa was sued to silence him and the Disinformation Project.

[43] In determining the issue of increased or indemnity costs, I have separated out Mr Batchelor's conduct from the conduct of Mr Grenon. I do so because Mr Grenon's non-disclosure and then status as a funder should only be analysed in the context of whether non-party costs should be ordered. Mr Batchelor's conduct is assessed initially in terms of increased or indemnity costs, and then in relation to whether non-party costs should be awarded.

Discovery

[44] I start with discovery or lack thereof. An obvious example is the chapter in Mr Batchelor's unfinished book titled "The Maori Agenda for New Zealand". This chapter was produced only because the defendants found it. It contained, as I have referred to in the judgment, many examples of racist rhetoric. It was clearly relevant to the affirmative defences of truth and honest opinion. It should have been discovered.

[45] Other publications made by Mr Batchelor were also not discovered. Mr Salmon cross-examined Mr Batchelor at length[19] about posts he had made on websites[20] he had not discovered. Mr Batchelor throughout his cross-examination maintained they were not discovered because they were not relevant. Relevancy was assessed following discussions between himself and Mr Hague or was based on decisions he made himself.[21] The test of relevancy was based on a pre-1970's dictionary definition of "hate speech" and "racism".[22]

[46] Mr Hague submits Mr Batchelor did treat his discovery obligations seriously. He relies on a further affidavit filed for the purposes of the costs hearing where

[19] NOE, pp 35–39.
[20] Mr Batchelor had discovered the "stopcogovernance.kiwi" website and his YouTube channels.
[21] NOE, p 36.
[22] NOE, pp 38–39.

Mr Batchelor deposes, he spent a "considerable amount of time searching for relevant documents and engaged in extensive correspondence and telephone calls with his legal counsel". Mr Hague submits the late production of the chapter of the book did not cause any prejudice and rather the failure to discover it or any other documentation is more about a "lay party's misunderstanding of the legal parameters of relevance, particularly when dealing with highly subjective and contested terminology".[23]

[47] There is a significant difference between a party who inadvertently overlooks discovery obligations and one who recklessly or deliberately ignores his/her obligations. I agree with Mr Hague that genuine mistakes and oversights do not result in increased costs awards.[24] However, this was not a mistake. Mr Batchelor's own evidence records he considered the material and then deliberately chose not to disclose it because he considered it was not relevant. On any level, all of this material was relevant. The pleadings were well defined at an early stage. The material potentially harmed his case because it demonstrated he uses racist rhetoric, the point made by Dr Hattotuwa in the interview. Whether he determined the relevancy issue himself or with Mr Hague, he does not get excused from not disclosing it just because he was a lay person who did not understand his obligations.

[48] I am satisfied he knew what his obligations were but chose to ignore them. I consider the failure to discovery this material then is a clear breach of DCR 14.6(3)(b)(iv).

Pursuing an argument without merit/failure to admit facts/failure to answer questions

[49] I deal with these issues together. They are the pursuance of an argument which lacks merit; the failure to admit facts, evidence, or documents without reasonable justification; and the refusal to answer questions.[25] The issues concern the claim Mr Batchelor was not interviewed by TVNZ and/or was not given a chance to respond to Dr Hattotuwa's comments. It also addresses his refusal to disclose the identity of the funders of the pamphlet.

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[23] Mr Hague's submissions dated 26 May 2026 at para 37.
[24] See *Zhao v Zheng* [2025] NZHC 498; and *Brodbeck v New Zealand Trustee Services Ltd* [2024] NZHC 954.
[25] DCR, r 14.6(3)(b)(ii) and (iii).

[50] It is unnecessary for me to repeat my findings on whether Mr Batchelor's claim he was never interviewed and/or asked to comment on Dr Hattotuwa's comments about him,[26] other than to note I found Mr Batchelor's evidence in many respects to be inconsistent and unconvincing. Faced with the obvious evidence he was contacted through the texts and telephone records from Ms Hurihanganui and TVNZ which were discovered, Mr Batchelor's denial he was never contacted to comment held no credibility.[27] However, his denial led to one of the primary reasons why Mr Williams gave his evidence claiming TVNZ had been irresponsible because Mr Batchelor was not given a chance to respond. Had Mr Batchelor accepted he had been interviewed, it would have led to considerable savings in time spent during the trial and therefore associated costs.

[51] As to the failure to answer questions about who funded the pamphlet, I dealt with the issue during the trial – finding the failure to do so was not contempt but reserving the right to deal with this failure by way of costs.

[52] It is now clear from the recently filed affidavits, Mr Grenon provided funding for the pamphlet in the sum of $15,000.[28] Mr Batchelor's refusal to answer the question was because he claimed he was the subject of a confidentiality agreement with two of the funders.[29] In response to a question from me, Mr Batchelor advised the Court that neither of these funders were prepared to have their identities revealed and that he could not give that information.[30]

[53] Whether one of those funders was Mr Grenon or not remains unknown. Neither Mr Batchelor nor Mr Grenon commented specifically on this in their recent affidavits. I find this surprising. The non-disclosure issue is a specific ground relied on by the defendants in pursuing increased/indemnity costs (based on abuse grounds) and one which Mr Nilsson sought an inference to draw a connection between the non-

[26] See paras [95]–[104] of the judgment.
[27] Mr Batchelor did change this position to say he was interviewed during cross-examination, but this only led me to the conclusion his evidence on this issue could not be believed.
[28] Email exchanges between Mr Grenon and Mr Batchelor dated 21 August 2023.
[29] NOE, p 142
[30] NOE, p 142, line 12.

disclosure of the funder of the pamphlet and the non-disclosure of Mr Grenon's funding of Mr Batchelor's costs.[31]

[54] I deal with Mr Batchelor's refusal to reveal Mr Grenon's identity below but for the purposes of failing to answer questions, Mr Batchelor needed to answer the question as who the two funders were. It was a legitimate question given Dr Hattotuwa's comments were based on the wording in the pamphlet and other publications. Whether all of the comments in the pamphlet could solely be attributed to Mr Batchelor or were influenced by who funded it were relevant to an assessment of the defences of truth and honest opinion and the overall credibility of his claim. His refusal to answer a plainly relevant question impeded the defendants' ability to test this position and led to my comment in the judgment Mr Batchelor appeared only to want to answer questions which supported his own narrative.

[55] I find then Mr Batchelor is in breach of DCR 14.6(3)(b)(ii) and (iii) on these issues.

Abuse of Process

[56] I turn to the issue of whether Mr Batchelor was required to disclose he had a funder. In doing so I consider whether the claim was effectively assigned and therefore was champertous and tortiously maintained which amounted to an abuse of process and/or whether the failure to disclose itself amounted to an abuse of process.

[57] Counsel are in agreement as to the legal principles.

[58] In New Zealand the torts of maintenance and champerty continue to survive notwithstanding their abolishment by legislation in other Commonwealth jurisdictions.[32] There is a general preference to assess the appropriateness of litigation

[31] The fact that neither Mr Batchelor nor Mr Grenon specifically addressed whether it was Mr Grenon's identity which was being protected did not stop Mr Hague from submitting it could not have been Mr Grenon given the pamphlets had been in circulation since February 2023 and Mr Grenon's donation occurred in August 2023.

[32] *PricewaterhouseCoopers v Walker* [2018] 1 NZLR 735 (SC) at [119]; referring *Waterhouse,* above n 16. Such as Australia, United Kingdom and Canada.

funding for any particular case through an abuse of process lens rather than through the mechanism of maintenance and champerty.[33]

[59] Maintenance is where a person, without lawful justification, assists a party in a civil action to bring or defend a claim and which causes damage to the other party.[34] Champerty is a form of maintenance. It arises where the person who provides the financial assistance, as a part of their reward, receives a share in the recovery.[35] These torts are designed to prevent persons who have no legitimate interest in a claim from using nominal plaintiffs to act as their vehicles to pursue their own objectives. The claims amount to an abuse of the function and processes of the Court because they expose defendants to significant costs which may not be otherwise recoverable.

[60] There are circumstances as to when pure funding of litigation does not amount to a tort. This was recognised by the Supreme Court in *Waterhouse* where the Court observed:[36]

> … We are not addressing the position of relatives or associated bodies who might fund litigation. Nor are we addressing conditional fee arrangements by solicitors or the position of those who fund litigation for no more than a commercial rate of return on the money lent, either because it is their business to do so or through altruistic motives. Finally, the appeal does not concern litigation funded by insurance.

[61] A claim in defamation is a tort committed by a tortfeasor against another person. Specifically, the defamatory words attack another person's reputation. It is therefore a personal tort and cannot generally be passed on or assigned to others. In *Waterhouse* the Supreme Court noted:[37]

> Assignments of bare causes of action in tort and other personal actions are, with certain exceptions, not permitted in New Zealand. The rule had its origins in the torts of maintenance and champerty but now seems to have an independent existence of its own. This leads to the conclusion that, if a funding arrangement amounts to an assignment of a cause of action to a third party funder in circumstances where this is not permissible, then this would be an abuse of process. In assessing whether litigation funding arrangements

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[33] *Actions and Litigation Funding* (NZLC IP45, December 2020) at [15.7]; and *Saunders v Houghton* [2009] NZCA 610, [2010] 3 NZLR 331 at [79].
[34] *Todd on Torts* (8th ed, Thompson Reuters, 2019) at [17.4.1].
[35] At [17.4.1].
[36] *Waterhouse,* above n 16, at [24]. The Court also noted at fn 25, "We leave open issues relating to conditional fee agreements involving non-lawyers as these have not been argued before us".
[37] At [57] (citations omitted).

> effectively amount to an assignment, the court should have regard to the funding arrangements as a whole, including the level of control able to be exercised by the funder and the profit share of the funder. The role of the lawyers acting may also be relevant.

[62] I find that I am not able to determine whether the claim was ultimately assigned. The substantive hearing did not focus on the issue because Mr Grenon's involvement was not revealed until Mr Batchelor told the Court of his presence. Although counsel for the defendants closed the hearing submitting the claim had been assigned, this was based on inferences and assumptions from the limited evidence which was available at the time.

[63] The evidence now is Mr Grenon accepts he did fund the litigation albeit for altruistic reasons. He deposes he did no more than support Mr Batchelor because of TVNZ's reckless "public characterisation" of Mr Batchelor[38] and had no financial interest in any outcome or control over the litigation process. In his affidavit, Mr Batchelor maintains it was he (not Mr Grenon) who wanted to bring the claim and although he was grateful for the financial support, the claim was his. Neither Mr Grenon nor Mr Batchelor were tested on this evidence.

[64] I accept Mr Batchelor was motivated to bring these proceedings. However, a costs hearing is not an ideal forum to determine whether a substantive hearing should have proceeded in the first place because it was brought for an improper purpose. These matters should have been determined at the commencement of the proceeding when the focus would have been solely on Mr Batchelor's and Mr Grenon's motivations for bringing the claim and the way in which the claim was being funded.

[65] That opportunity was missed because Mr Batchelor failed to disclose that his claim was being funded. The issue now is not whether the torts of maintenance and champerty occurred but rather, whether the funding arrangement affected the proceeding in a way that raised recognised concerns of abuse of process, an impermissible assignment of the claim (leading to stay or strike out), or whether an order for security for costs could or should have been made at the outset.

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[38] Mr Grenon's affidavit dated 18 May 2026, para 10.

[66] In determining this I return to *Waterhouse.* I set out the summary of the Supreme Court's findings in full:[39]

> [76] We summarise our conclusions as follows:
>
> (a) On the issuing of proceedings that are to be funded by a third party unrelated litigation funder who has no prior interest in the proceedings and whose remuneration is tied to the success of the proceedings and/or who has the ability to exercise some form of control over the conduct of the proceeding, the following details should be disclosed:
>
> (i) the identity and location of any such litigation funder; and
>
> (ii) its amenability to the jurisdiction of the New Zealand courts.
>
> (b) No litigation-sensitive material need be disclosed, including the terms on which funding may be withdrawn. There is no need to disclose details of the financial standing of the litigation funder.
>
> (c) Where an application for a stay on abuse of process grounds is made (or any other application where the terms of a funding agreement may be relevant), then the courts may order disclosure of the litigation funding agreement, subject to redactions relating to confidentiality, and litigation sensitive and privileged matters.
>
> (d) The existence and terms of a litigation funding agreement may be relevant to an application for security for costs and to an application for costs.
>
> (e) A stay on the grounds of abuse of process should only be granted where there has been a manifestation of an abuse of process on traditional grounds or where the funding arrangement effectively constitutes the assignment of a cause of action to a third party in circumstances where such an assignment is not permissible. In assessing whether there has been an assignment, the court will have regard to the funding arrangements as a whole, including the level of legal control able to be exercised by the funder, the profit share and the role of the lawyers acting.
>
> (f) It is not the role of the courts to act as general regulators of funding arrangements. Nor is it the courts' role to assess the fairness of any bargain between a funder and a plaintiff.

[39] At [76].

[67] The Supreme Court identified the circumstances in which disclosure of a funder must occur. That is "on the issuing of proceedings" where the proceeding is funded by a third-party litigation funder who has no prior interest in the proceeding and whose remuneration is tied to the success of the proceeding, or who has the ability to exercise some form of control over the proceedings conduct. In these circumstances, disclosure is required at the outset but is limited to the identity and location of the funder and whether the funder is amenable to the jurisdiction of the New Zealand courts.

[68] In practical terms it would be difficult, if not impossible, for a defendant and the Court to assess whether a potential funder is tied to the success of the proceedings or will exercise some form of control over the proceedings, unless the funder's existence and evidence addressing these matters is disclosed at an early stage. However, following disclosure, any concerns of the defendant can be addressed through an application to the Court for further (protective) orders, which may be granted if the grounds of abuse of process or impermissible assignment are established.

[69] Mr Hague submitted no disclosure was required because a self-assessment process had been undertaken, leading to the conclusion Mr Grenon's funding was altruistic, that he received no financial benefit, and that he was not controlling the proceeding.

[70] Mr Patterson supported this position but also submitted *Waterhouse* has no application and that this Court is not bound by it because of jurisdictional constraints which exist in the District Court.

[71] I have already determined this Court is bound by *Waterhouse* and no jurisdictional issues arise.[40] In saying that I again outline why below.

[72] Jurisdictional issues aside, the submissions of Mr Hague and Mr Patterson miss the point. It is not for a plaintiff alone to determine by self-assessment whether the presence of a funder should be disclosed. *Waterhouse* makes it clear the presence of

[40] *Batchelor v Hattotuwa*, above n 6, at [35].

a funder must be disclosed to determine whether the funder's presence amounts to an abuse on recognised grounds, to then allow a consideration of whether protective steps should be engaged. Importantly this can only occur after the defendant has had an opportunity to assess its own position.

[73] Accepting Mr Hague's submission at face value, a deliberate decision was made not to disclose Mr Grenon's presence to the Court and to the defendants. That was not a decision for Mr Batchelor or anyone else involved in that arrangement to make unilaterally.

[74] Furthermore, in reaching this finding I repeat my previous finding.[41] I reject the submission the interview with Mr Plunket somehow met the threshold of disclosure contemplated by *Waterhouse.* Mr Hague submitted:[42]

> 50. Even if the Court were minded to consider an uplift, the defendants' own conduct disentitles them to one. By April 2024 they knew the plaintiff was receiving external funding, yet for the next 20 months they took none of the steps available to them. They did not:
>
> 50.1 seek security for costs;
>
> 50.2 apply to strike out or stay the proceedings on the *Jameel* principle or for abuse of process;
>
> 50.3 issue interrogatories or seek specific disclosure of the funding arrangement (DCR 8.34); or
>
> 50.4 apply to enforce the standard discovery order or for further and better discovery in relation to funding;
>
> 50.5 amend their defences to plead abuse of process or maintenance/champerty.
>
> 51. Any prejudice the defendants now claim to have suffered from "late disclosure" or the conduct of the proceedings is entirely of their own making. A party that sits on information and elects not to take available interlocutory steps cannot later complain that the proceedings constituted an abuse of process or that costs were unnecessarily incurred, still less seek punitive costs on that basis. This conduct is inconsistent with the just, speedy, and inexpensive determination of proceedings required by DCR 1.3 and constitutes "some other reason" why increased or indemnity costs should be refused (or why any award should be reduced to scale).

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[41] *Batchelor v Hattotuwa*, above n 6, at [33].
[42] Mr Hague's submissions dated 26 May 2026 at para 50.

[75] Mr Hague's submission is premised on the assertion proper disclosure was made in accordance with *Waterhouse.* Following disclosure, the defendants failed to act by seeking a strike out order in accordance with *Jameel* principles.[43] My finding the interview with Mr Plunket did not meet the *Waterhouse* threshold was because disclosure was not made in accordance with what *Waterhouse* contemplated: the naming of the funder (Mr Grenon was not named in the interview);[44] disclosure to the Court and the defendants (not via a media interview); and disclosure needs to be at the commencement of the proceedings (the interview was in 2024 well after the proceedings were filed).

[76] More problematic for Mr Batchelor was his outright refusal to name Mr Grenon when he was asked in cross-examination. If there was no concern about disclosing a funder, then there should have been no issuing about naming Mr Grenon. His refusal was telling in this context.

[77] Somewhat ironically then, the steps which Mr Hague submits the defendants should have taken – seeking security for costs, applying for a stay or strike-out, seeking interrogatories or specific disclosure, enforcing discovery obligations, or pleading abuse of process or maintenance and champerty – were steps that necessitated proper disclosure occurring. But it did not. The defendants cannot be criticised for failing to take these steps in circumstances where they were deprived of the information they should have received through proper disclosure. The prejudice they suffered was not of their own making. It arose from the decision made by Mr Batchelor, and others involved in that decision, not to disclose Mr Grenon's involvement.

[78] I find then Mr Batchelor's deliberate failure to disclose Mr Grenon's involvement was not a mere procedural omission. The non-disclosure deprived the Court, and the defendants, of the opportunity to assess at an early stage whether the arrangement raised issues of abuse of process, impermissible assignment, a stay,

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[43] *Jameel v Dow Jones & Co Inc* [2005] QB 946. A Court may strike out a defamation claim as an abuse of process where it is found no or little reputational damage has occurred or the true intent of the proceeding is not for the legitimate purposes of protecting the plaintiff's reputation. See *Opai v Culpan* [2017] NZHC 1036, [2017] NZAR 1142 for an examination of the *Jameel* principles in the New Zealand context.

[44] A reference was made to a benefactor who was paying the legal costs.

security for costs, and non-party costs. In these circumstances I find the deliberate non-disclosure amounts to an abuse of the Court's process.

Summary of Mr Batchelor's conduct

[79] I have found Mr Batchelor:

(a) Failed to meet his discovery obligations.

(b) Failed to accept admit obvious facts and pursued unmeritorious arguments which led to additional time and cost in the trial.

(c) Refused to answer relevant questions.

(d) Deliberately failed to disclose the presence of Mr Grenon as a litigation funder.

[80] Each of these findings individually and/or collectively amount to a justification that costs above scale should be awarded. The question is whether they should be indemnity or increased costs.

Indemnity or increased costs?

[81] In my view the threshold for indemnity costs has not been met. Indemnity costs should only be awarded in exceptional circumstances where the party has acted "badly or very unreasonably".[45]

[82] Mr Batchelor's behaviour has been unacceptable. It does however need to be seen in context. Rightly or wrongly, he felt aggrieved by what was said about him. What was said was broadcast on national television. He was exposed then to a very wide audience. He was entitled to consider his options, which he did. As I have determined, his motivation to rectify the perceived wrong is accepted. However, in making the decision to issue and then proceed with his claim, he needed to follow the

[45] *Bradbury v Westpac Banking Corporation,* above n 7, at [27(c)].

rules. He failed to do this. He failed because he was not prepared to allow a narrative that what was said about him may have been justified. Instead, he was only prepared to pursue his own narrative, to the point that anything which put that narrative at risk was either ignored or avoided.

[83] This behaviour is clearly unacceptable but is not exceptional. As I have previously noted, this Court often sees parties pursuing or defending claims at all costs and in doing so, ignoring the rules. The behaviour results in increased costs and only in a few cases indemnity costs. It is appropriate in this instance that increased costs should be awarded and not indemnity costs.

[84] The increased costs will be at 50 per cent of the scale costs to reflect the level of unreasonable (but not "very unreasonable") behaviour of Mr Batchelor.

Does this Court have Jurisdiction to Award Non-Party Costs?

[85] The issue concerns whether the District Court's inherent powers extend to an ability to award costs against a non-party.

[86] In my decision leading up to the costs hearing, I observed:[46]

> [35] In my view this Court is clearly bound by the decision of *Waterhouse.* I accept the Court was focused on the application of the High Court Rules and the inherent jurisdiction of the High Court. Mr Patterson is correct this Court does not have an inherent jurisdiction, but it does have inherent powers. Whilst limited when compared to the inherent jurisdiction of the Senior Courts, inherent powers nonetheless enable the Court to regulate its own procedures, to ensure fairness and to prevent abuse of its processes.[47] Such powers enable this Court, in these circumstances, to compel parties to make the disclosure anticipated by *Waterhouse* to ensure an abuse has not occurred. It would be quite wrong for this Court to be limited in any way which would restrict its ability to monitor abuse of its own processes.

[87] The focus of the decision was on whether this Court has inherent powers to force Mr Batchelor to disclose the funding arrangements between himself and Mr Grenon. Although the focus is now on whether the Court's inherent powers can

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[46] *Batchelor v Hattouwa,* above n 6, at [35].
[47] For a full discussion of inherent jurisdiction and inherent powers see Rosara Joseph "Inherent jurisdiction and inherent powers in New Zealand" [2005] CanterLawRw 10, (2005) 11 Canterbury Law Review 220.

be exercised to order costs against non-parties, the basis of it being able to do so stems from its ability to ensure the Court's processes are not abused.

[88] I briefly summarise Mr Patterson's submissions, some of which repeat arguments which I dealt with in my April decision.

[89] The District Court is a statutory court and, unlike the High Court, does not have an inherent jurisdiction. Accordingly, any ability to make orders stem from a statutory source of power such as the District Court Act 2016 or the District Court Rules 2014. The ability to make an order is derived only from what is expressly prescribed.

[90] Whilst the Court has a general civil jurisdiction and has some express powers concerning non-party disclosure, it does not have an express power to order a non-party to pay costs. Part 14 of the DCR speaks only to awards of costs against the parties to the proceedings. Mr Grenon is not a "party". It follows that unless there is an express provision authorising an order to award costs then no power exists to order costs against him. Mr Patterson submits it is significant there is no express provision provided.[48]

[91] Mr Patterson also submits this Court is not bound by *Waterhouse*. This is because *Waterhouse* was dealing with the inherent jurisdiction of the High Court and the High Court Rules and did not refer to the District Court.

[92] In terms of legal authority to support Mr Grenon's position, Mr Patterson relies on the decision of *Jin v Konishi* where the High Court held:[49]

> [51] The District Court does not have any inherent jurisdiction. It has no power to make any costs award other than those specifically authorised in the District Courts Rules or by statute. Rule 3.31 does not confer any such power. The law remains assess stated by Hammond J in *Hughes v Ratcliffe.* The District Court had no power to make an award of costs against Mr Lee personally. The award must accordingly be set aside.

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[48] Mr Patterson acknowledges the DCR's expressly provide for costs in the context of non-party disclosure, but only where a party may be ordered to pay costs incurred by the non-party.

[49] *Jin v Konishi* (2014) 22 PRNZ 133 (HC*)* at [51]. See also *Hughes v Ratcliffe* (2000) 14 PRNZ 690 (HC) at [12]; citing *Carborundum Abrasives Ltd v Bank of New Zealand* [1992] 3 NZLR 757 (HC) at [769]–[770] which discuss the effect of the District Court and Court of Appeal being courts created by statute and which do not have an inherent jurisdiction.

[93] In relying on *Jin*, Mr Patterson seeks to distinguish the decision of *Mark Winter Waikato Ltd v Tracey International New Zealand,* a case where the High Court held the District Court did have power to make a non-party costs order.[50] He says the case is distinguishable because it was decided under the former District Court Rules 1992 and the District Courts Act 1947 (the 1947 Act) which have since been replaced by the current District Court Act 2016 (the 2016 Act) and DCR.

[94] Furthermore, Mr Patterson submits *Mark Winter Waikato* was dealing with a non-party who was the sole director and guiding hand of an unsuccessful company which was the party. In contrast, Mr Grenon is a "complete stranger" to the proceeding, and not a director or alter ego of the true party, Mr Batchelor.

[95] Finally, Mr Patterson submits on public policy grounds any non-party costs award will have a serious impact on funders in District Court civil claims, creating access-to-justice concerns. He submits if Parliament intended people who gift or lend money to support a District Court litigant to then face possible costs liability, such an imposition should require legislative amendment to the 2016 Act and/or the DCR.

[96] The defendants submit firstly, the District Court does have implied powers, and secondly, those powers extend to the ability to award non-party costs. *Jin* was decided on facts specifically focused on the District Court's ability to award costs against solicitors involved in a proceeding. The High Court held the District Court cannot award costs in these circumstances given it does not have an inherent jurisdiction. The case did not refer to *Mark Winter Waikato* and the ability for the District Court to award costs against a non-party generally (other than against solicitors) was not disturbed.

Discussion

[97] I do not accept Mr Patterson's submission the inherent powers of the District Court are limited to the extent he suggests. To do so ignores what the Supreme Court observed in *Siemer v The Solicitor-General:*[51]

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[50] *Mark Winter Waikato Ltd v Tracey International Ltd* (1999) 13 PRNZ 259 (HC).
[51] *Siemer v The Solicitor-General* [2013] NZSC 68 (citations omitted).

> [113] All courts in New Zealand have inherent powers. While these powers have in the past sometimes been described as part of the "inherent jurisdiction" of the courts, we think that the term "inherent powers" more aptly describes them. "Jurisdiction" and "power" are two distinct concepts. The jurisdiction of a court is its substantive authority to hear and determine a matter. Jurisdiction may be inherent in a particular court or it may be conferred by statute. But every court has inherent powers which are incidental to or ancillary to its jurisdiction, whether that jurisdiction is inherent or statutory.
>
> [114] In *Mafart v Television New Zealand*, which did not involve contempt of court, the majority judgment of this Court referred to the ancillary powers of the courts as:
>
> > ... the authority of the judiciary to uphold, to protect, and to fulfil the judicial function of administering justice according to law in a regular orderly and effective manner.
>
> The courts' inherent powers include all, but only, *such powers as are necessary to enable a court to act effectively and uphold the administration of justice within its jurisdiction. Their scope extends to preventing abuse of the courts' processes* and protecting the fair trial rights of an accused.
>
> [emphasis added]

[98] In a more recent case, the Court of Appeal in *District Court at Christchurch v McDonald* confirmed all Courts, including the District Court, have powers which are auxiliary to its jurisdiction to develop procedures that facilitates its jurisdiction.[52] Where the court's substantive jurisdiction is statutory, these powers arise by implication. Importantly, the Court of Appeal recognised for the Court to regulate its functions, a statute would not, or could not express all of the powers which are needed for it to do so:[53]

> [30] In the case of statutory jurisdictions, such as the District Court, Parliament may be taken to have intended the court to be able to work effectively. Necessarily, the constituting statute cannot express all powers necessary for the court and its judges to work effectively. Some powers are implied (or inherent) in the statutory framework of the court. Of course, some powers that would otherwise be inherent may find statutory expression. That expression may also enlarge powers otherwise inherent. But the more important question here is whether statute has constrained powers otherwise inherent. As Professor Joseph has said, the general law — including statutes of general or specific application or rules of court made under statutory authority — may circumscribe inherent powers:

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[52] *District Court at Christchurch v McDonald* [2021] 3 NZLR 585 (CA) at [27].

[53] At [30]–[31]; quoting Philip A Joseph *Joseph on Constitutional and Administrative Law* (5th ed, Thomson Reuters, Wellington, 2021) at 904–905; referring *Taylor v Attorney-General* [1975] 2 NZLR 675 (CA) at 680.

> But a statute or rule must manifest a clear intention to oust an inherent power. The courts may exercise their inherent powers "even in respect of matters … regulated by statute or the rules of Court, providing, of course that the exercise of the power does not contravene any statutory provision". A statutory power or rule of court that overlaps the court's inherent power – if it does not specifically override or restrict it – may leave untouched the inherent power.
>
> The principles just discussed are too well established to require further elaboration here.
>
> [31] The broadest realm of inherent judicial power likely lies in a court's power to regulate its own procedures.

[99] Further, the Court's ability to make disclosure orders in the context of non-party funders "stems from the Court's inherent powers".[54] Where a power exists to grant a remedy, there must also be inherent in that power, the power to make ancillary orders to make the remedy effective.[55]

[100] The point is unless there is a statutory provision which expressly overrules the power (which is to be exercised), then there is nothing preventing the Court making ancillary orders to ensure the Court can "*act effectively and uphold the administration of justice.*" This means the powers go beyond what might be specifically expressed in the Act or the DCRs to ensure the business of the Court is conducted fairly, efficiently, and to ensure no abuse of its processes occurs.

[101] In reaching this conclusion, I also reject Mr Patterson's submission *Jin* is binding on this Court in this context and, that the enactment of the 2016 Act and DCRs somehow mean any authorities decided under the 1947 Act and rules no longer have any application.

[102] *Jin* has no application and is taken out of context because it was dealing specifically with the conduct of lawyers involved in proceedings. The ability of a Court to monitor the behaviour of counsel arises through its inherent jurisdiction,[56]

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[54] *Shanghai Neuhof Trade Company Ltd v Zespri International Ltd* (2020) 25 PRNZ 319 (HC) at [23]; referring *Minister of Education v H Construction North Island Ltd* [2019] NZHC 1459, [2019] 24 PRNZ 549 at [69].

[55] *Minister of Education v H Construction North Island Ltd,* above n 54, at [69]; quoting *Abraham v Thompson* [1997] 4 All ER 362 (CA) per Ackner LJ.

[56] Although I note the District Court's inherent powers include restraining counsel with a conflict of interest: *N v District Court of New Zealand* [2019] NZHC 2744 at [51].

possessed only by the High Court.[57] The District Court has never had this function and to do so would require legislative change.

[103] In contrast *Mark Winter Waikato* continues to have application. The change to the 2016 Act and rules[58] makes no difference to that application because the ability to impose the order is derived from the Court's inherent power to regulate its function and not tied to any express provision.[59]

[104] For the above reasons I find the District Court does have jurisdiction to award costs against a non-party, other than against a lawyer acting as counsel in a proceeding.

If there is Jurisdiction to Award Costs against a Non-Party, should this Court Award Costs against Mr Grenon and what should those Costs be?

[105] I turn now to consider if this Court, in exercising its inherent powers, and as an exercise of the Court's discretion, should award costs against a non-party and if so, on what basis.

[106] The starting point is the decision of *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2)*[60] which was confirmed by the Supreme Court in *Waterhouse*.[61] In *Dymocks* the Privy Council held where the proceedings are substantially controlled by a funder who benefits from them, and the proceedings would not have occurred but for the funder's presence, then the funder may be required to pay costs. These points were helpfully summarised in *Falloon (Estate of Bligh) v Earthquake Commission:*[62]

> [33] … All parties referred to the leading authority of *Dymocks Franchise Systems (NSW) Pty Ltd v Todd (No 2),* where the Privy Council identified principles relevant to exercising the Court's discretionary power to award costs against a non-party. In summary they are:

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[57] *Black v Taylor* [1993] 3 NZLR 403 (CA) at 695 per Richardson J. See also Lawyers and Conveyancers Act 2008, s 268.

[58] Mr Patterson suggested the 2016 Act and DCR effectively created a new District Court. Clearly this is wrong. The District Court Act 2016 expressly provides the Act was only reconstituting (not recreating) the District Court into a "single court" with divisions for a Family Court, a Youth Court, and a Disputes Tribunal: see s 3(a) of the 2016 Act.

[59] The 1992 Rules also had no express provisions which provided for non-party costs to be ordered.

[60] *Dymocks Franchise Systems (NSW) Pty Ltd v Todd* [2005] 1 NZLR 145 (PC).

[61] *Waterhouse*, above n 16, at [52], fn 61. See also *Mana Property Trustee Ltd v James Developments Ltd (No 2)* [2011] 2 NZLR 25 (SC) at [11].

[62] *Falloon (Estate of Bligh) v Earthquake Commission* [2020] NZHC 874 (citations omitted).

(a) cost orders against non-parties are exceptional in the sense that they are outside the ordinary class of cases where parties pursue claims for their own benefit and at their own expense;

(b) the ultimate question in any exceptional case is whether in all the circumstances it is just to make the order, thereby requiring a fact specific inquiry;

(c) as a general rule, third party litigation funders are only liable for costs where the are not only fund proceedings but substantially control it or "at any rate to benefit from them" – that is because the funder is gaining access to justice for its own purposes and is in effect the real party to litigation; and

(d) the most difficult cases are those where non-parties fund receivers or liquidators in litigation which is designed to advance the funders' own financial interests – in that case, again as a general rule, the funder pursuing its own interests should not be able to escape without risk to liability for costs if the proceeding fails.

> [34] Two other matters are addressed in *Dymocks.* First, proof of causation is a necessary pre-condition to the making of an order against a non-party. A 'but for' approach to causation is appropriate. The question in *Dymocks* was whether, but for the funder's involvement, the plaintiff would have pursued its appeal. Second, it is wrong to allow someone to fund litigation in the hope of gaining a benefit, without a corresponding risk that that person will share in the costs of the proceedings, if they ultimately fail.

[107] The position was more recently and succinctly summarised by Blanchard J in *JRA Group Limited v Brown* where it was noted:[63]

> [3] Generally, non-party costs awards will not be made against a "pure funder" who does not stand to benefit from the litigation and who in no way seeks to control its course. However, the inverse is that a funder who stands to benefit from funding litigation, or that substantially directs or controls the proceeding, will be required to pay the successful party's costs if the Court considers it just on the basis that the funder is in effect "the real party" to the proceeding. An interest or control will suffice. Both are not required.

[108] In *Falloon,* the High Court emphasised the making of such orders are exceptional and the presence of a funder is not, in of itself a basis to award costs. However, the test is a fact-specific inquiry, and non-party costs can still be awarded absent the presence of any abuse of process.[64]

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[63] *JRA Group Ltd v Brown* [2025] NZHC 2494 at [3] (citations omitted).

[64] Costs were awarded in *Falloon v Earthquake Commission* against the funder where it was found the claim had little merit and was controlled by the funder.

[109] Mr Patterson's submissions as to why Mr Grenon is not captured by either *Dymock's* or *Waterhouse* can be summarised as follows:

(a) Mr Grenon was a mere funder. Mere funding is insufficient to fall within the ambit of *Waterhouse*.

(b) Mr Grenon did not control the litigation.

(c) Mr Grenon had no financial interest in the outcome.

(d) Mr Batchelor remained the real party throughout the litigation.

(e) The defendants had constructive knowledge of Mr Grenon's presence from 2024 and therefore the delay in raising any issues breaks the causative effect in terms of the "but for" test.

(f) No obligation for disclosure arises, and in any event the non-disclosure did not cause any additional costs.

(g) Mr Grenon's role was limited to a civic/altruistic one and was not commercial or champertous.

[110] During the hearing Mr Patterson sought to draw an analogy with his own personal donations to the Royal Forest and Bird Protection Society of New Zealand (Forest and Bird) and Mr Grenon's decision to fund Mr Batchelor's costs. Mr Patterson's submission is his donations to Forest and Bird are on the basis he believes in it as a good cause and knows Forest and Bird is actively involved in litigation advocating for conservation rights. There would never be any expectation he would be liable for any adverse costs award made against Forest and Bird as a mere donor and funder of any litigation.

Mr Grenon's evidence

[111] As noted, Mr Grenon filed an affidavit in opposition to any cost order against him. By way of background Mr Grenon describes himself as a person with very strong

views on democracy and freedom of expression. To this end, even if views may be unpopular or controversial, the ability to express them freely is fundamental in an open and free democracy.

[112] His affidavit confirms he contacted Mr Batchelor after watching the TVNZ broadcast and reading the online article in August 2023. In that conversation he expressed his concern about TVNZ's broadcast and suggested exploring a potential defamation case against TVNZ. He says Mr Batchelor told him he had not been given an opportunity to respond to Dr Hattotuwa's comments. He deposes he does not endorse or agree with all of Mr Batchelor's views on Co-governance but, rather, thought TVNZ as New Zealand's state broadcaster had acted recklessly in that it had not fairly and accurately portrayed what Mr Batchelor had said publicly and what had been published in the pamphlet.

[113] Mr Grenon met with Mr Batchelor on 20 August. Also present was Mr Barakat, who manages "Centrist" an online media and commentary platform. Centrist promotes many of the values Mr Grenon holds about freedom of expression and debate in an open democracy. Mr Grenon is the owner of Centrist.

[114] During the meeting, the possibility of defamation proceedings and a potential financial contribution of $15,000 to Batchelor's movement was discussed. Mr Batchelor sent Mr Grenon an email shortly after the meeting seeking clarification on what was being offered in terms of funding the proceedings and also donating to Mr Batchelor's movement.

[115] Between 21 August and 23 August Mr Grenon spoke with Mr Stephen Franks, a lawyer who Mr Batchelor had engaged to assist him with the Electoral Commission's investigation into the pamphlet. Mr Franks was not interested in taking on a defamation case given the economic viability and time commitment needed for the case.

[116] Mr Grenon then telephoned Mr Batchelor and suggested he could use Mr Hague as counsel. Mr Grenon, Mr Batchelor and Mr Hague were then involved in a three-way conversation. Mr Grenon deposes he had used Mr Hague on some

matters but generally used lawyers from larger firms. Although he introduced Mr Batchelor to Mr Hague, he says if Mr Batchelor wanted to use another lawyer Mr Grenon would not object and would have covered the other lawyer's costs.

[117] Mr Batchelor agreed to engage Mr Hague following receipt of an e-mail from Mr Grenon agreeing to cover Mr Batchelor's legal costs. Mr Grenon's agreement to cover costs including him covering Mr Batchelor for any costs award against him.

[118] Mr Grenon then deposes, other than paying Mr Hague's fees, he had little to do with the progress of the proceedings. He was kept informed of significant developments and occasionally offered general observations or comments but overall, his involvement was limited. He was not controlling the strategy of the litigation and left any decision-making to Mr Batchelor and Mr Hague. The only other involvement he says he had was in September 2025, when Mr Hague sought Mr Grenon's assistance to identify an expert witness with journalism experience for Mr Batchelor's case. Mr Grenon suggested Mr Williams, contacted him by email, and after Mr Williams expressed his willingness, referred him to Mr Hague. Mr Grenon had minimal prior interaction with Mr Williams and played no further role in his engagement.

Discussion

[119] At the outset of the hearing, I agreed with a submission made by Mr Salmon there was some irony in Mr Grenon seeking to defend his involvement in this proceeding by reference to his stated belief in an open democracy where principles of freedom of speech are upheld, even if that speech is controversial. Dr Hattotuwa was expressing an opinion about what he considered to be Mr Batchelor's use of racist rhetoric in the pamphlet and elsewhere. That opinion was informed by his lived experience and academic perspective. Despite this, Mr Grenon considered it appropriate to fund a defamation proceeding even though Dr Hattotuwa was doing no more than exercising the very freedom of expression Mr Grenon says should be protected in an open democracy.

[120] I deal with the different factors identified in *Dymocks* and *Waterhouse* and apply them against the alleged conduct of Mr Grenon.

Were the proceedings funded by an unrelated third party litigation funder who had no prior interest in the proceedings?

[121] There is no real dispute between the parties on this issue. Mr Grenon and Mr Batchelor were unknown to each other. He had no prior interest in the proceedings,[65] as any such proceedings were always going to be personal to Mr Batchelor.

[122] The answer to this factor then is "yes".

Control

[123] Clearly Mr Grenon instigated the proceedings. By this I mean he suggested them through his initial call. Mr Grenon called Mr Batchelor "out of the blue" and had not, at that point, seen the broadcast himself.[66] There was no evidence from Mr Batchelor to suggest he was independently thinking of issuing proceedings and indeed, seemed unbothered by being called a racist in the past.[67]

[124] Mr Grenon undertook his own due diligence. In the first e-mail exchange between Mr Batchelor and Mr Grenon on 21 August 2023, Mr Batchelor states in his email as an action point the proceedings would be started "via Stephen Franks".

[125] Mr Grenon responded correcting Mr Batchelor to say what was discussed was Mr Batchelor would give permission to Mr Franks for Mr Grenon to discuss the defamation action with him. He says:

> Yes, i am very interested in pursuing that action, and at top speed, but that isn't an absolute commitment. I do need legal feedback they agree it has a reasonable chance of success; Franks is a reasonable way to pursue it (or we agree on another way); total projected costs are acceptable to me, etc.

[126] In my view what is clear is before Mr Grenon committed any funding, he needed to understand the prospects of success and what the proceedings would cost.

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[65] "Prior" in this context would mean when the interview occurred, and the cause of action arose. On the evidence Mr Grenon was involved at the outset of the issuing of the proceedings themselves.
[66] NOE, p 58.
[67] NOE, p 189.

These concerns are not concerns of a person who is altruistically donating towards a cause. This is a much more considered approach in terms of what the litigation risk would be including the costs of bringing a claim.

[127] Although there is no direct evidence on whether Mr Hague was asked for "legal feedback", whether there was a "reasonable chance of success" or what the "total projected costs" would be, but, based on Mr Grenon's email, it would be highly unusual if Mr Hague was not asked. They were legitimate concerns for Mr Grenon to have. I can reasonably infer then these enquires of Mr Hague were made.

[128] Mr Hague was then engaged although Mr Grenon says the decision to engage Mr Hague was made by Mr Batchelor.

[129] The difficulty for Mr Grenon on this point though is Mr Batchelor's evidence contradicts Mr Grenon's evidence. During the substantive hearing Mr Batchelor's evidence was:

> I wasn't the one who chose the lawyer, it was Mr Grenon who chose the lawyer not me.[68]
>
> I don't actually remember being introduced to Mathew at all, it was a choice, it was something Jim Grenon did on his own.[69]

[130] The contradictions continue.

[131] Mr Grenon says he had little to do with the conduct of the litigation, saying he was only involved from time to time other than paying the bills. Mr Batchelor's evidence during the hearing was *"Mr Grenon took over the suing of TVNZ";*[70] *Mr Grenon was organising everything to do with the suing of TVNZ";*[71] and that [he had] *"very little"* involvement in running the case.[72]

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[68] NOE, p 191, line 15.
[69] NOE, p 197, lines 4–15.
[70] NOE, p 200, line 9.
[71] NOE, p 199, lines 9–14.
[72] NOE, p 201, lines 20–25.

[132] At face value, the above evidence suggests both Mr Grenon and Mr Batchelor deny much direct involvement in the conduct of the proceedings at all. It is a difficult proposition to accept, especially given the complexity which is necessarily needed to prosecute a defamation proceeding. Someone needed to be making the decisions.

[133] I note Mr Batchelor says in his recent affidavit he did have "day-to-day" contact with Mr Hague and little to do with Mr Grenon during the proceedings (other than the occasional telephone call or text message). This statement suggests Mr Batchelor was running the proceeding despite what he said in evidence during the hearing. Both Mr Salmon and Mr Nilsson are critical of this apparent change of position by Mr Batchelor and submit I give this evidence little weight. I tend to agree.

[134] Ultimately the "control" of any litigation proceedings comes in different forms. This includes "day-to-day" contact with a lawyer where mundane and/or significant decisions are made to keep the proceedings moving forward. However, overall strategic decisions will also be made where day-to-day contact is unnecessary but nonetheless have a significant bearing on whether the claim proceeds or not. Any person involved in making these decisions clearly has a degree of control over the proceedings.

[135] In my view four instances of these decisions were made in this proceeding which places Mr Grenon squarely in a position where he was influencing the conduct of the litigation and was more than a mere bystander.

[136] The first is that it was Mr Grenon who instigated the proceedings. Mr Batchelor deposes in his affidavit he did not need convincing to bring the claim, which I accept. However, there is a difference between *wanting* to bring a claim and being *able* to bring a claim. It was Mr Grenon who set the litigation wheels in motion.

[137] That brings me to the second point which is the decision to fund the litigation. Through Mr Grenon's agreement to fund the litigation Mr Batchelor was able to bring his claim. The "but for" test is clearly satisfied because Mr Batchelor's own emails confirmed he would not be able to fund the claim without financial assistance.

[138] Mr Hague submitted Mr Batchelor could have funded the claim if his financial position had changed. I reject this submission because there was no evidence which supported it and indeed, it was against the contemporaneous evidence Mr Batchelor's finances did not allow him to fund the litigation. I also observe the submission appears more to support Mr Grenon's position that a costs order should not be made against him despite the clear indemnity Mr Batchelor has from Mr Grenon to pay any adverse costs award.

[139] The third point relates to Mr Grenon's introduction of Mr Hague as counsel and Mr Williams as an expert witness.

[140] Mr Hague was a lawyer known only to Mr Grenon. Although other lawyers may have been suggested or considered, the only other lawyer mentioned was Mr Franks who declined the instruction. Clearly Mr Grenon influenced then who was chosen as counsel.

[141] Mr Batchelor says several possible witnesses were being considered. However, it was Mr Grenon who suggested Mr Williams should be engaged, and his suggestion was accepted by all. Mr Grenon then paid for his services. Importantly, Mr Williams was the only witness to appear for Mr Batchelor other than Mr Batchelor, meaning his evidence (in terms of strategy) was important to the claim.

[142] The final point on decisions which were made is Mr Grenon's involvement in the Judicial Settlement Conference (JSC). A JSC is a without prejudice conference held in front of a Judge to ascertain whether proceedings can be settled at a relatively early stage in a proceeding. Parties are asked to examine the litigation risks they face against any offers which might be made during the conference. An assessment is generally made based on whether what is being offered is a better result than what could be achieved if the matter proceeds to trial. Crucial decisions have to be made at a JSC.

[143] Because a JSC is held on a without prejudice basis, no record of what is discussed is kept or even if it was, could be discussed in a judgment such as this. What is important however is Mr Batchelor's affidavit confirms Mr Grenon was asked for

his view on what was discussed at the JSC because it was appropriate, given he was funding the case.

[144] Mr Grenon made no comment in his affidavit as to why his view was sought, or indeed whether he wanted his views known. However, either way, if Mr Grenon was no more than an altruistic funder, then there would no need for him to express a view on what was being discussed at the JSC irrespective if he was asked or, whether he insisted on his views being known.

[145] In summary, based on the above findings, I assess the conduct of Mr Grenon as meeting the threshold test of control as contemplated by *Waterhouse.*

Benefit?

[146] Both Mr Grenon and Mr Batchelor depose no agreement was reached over who would receive any damages and costs award if Mr Batchelor had received a favourable judgment. Mr Grenon says, based on the evidence Mr Batchelor gave at the hearing, if he was offering to reimburse him for any costs he had paid from any favourable award, then that would be fair. Ultimately that would be for Mr Batchelor to decide as Mr Grenon had no expectation of any reimbursement as his motivation was not financial but instead focused only on supporting the proceedings.

[147] Mr Batchelor's evidence during the hearing is again at odds with what he now deposes. Rather than saying no agreement had been reached, Mr Batchelor said any costs *"will go to pay for all the expenses that he has paid"*,[73] that he would *"not be getting the damages"*,[74] and damages would *"possibly"* be paid to Mr Grenon.[75]

[148] Mr Patterson submitted the evidence supported the position that Mr Grenon received no financial benefit and therefore this threshold test was not met. I do not accept Mr Patterson's submission for two reasons.

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[73] NOE, p 59, line 23.
[74] NOE, p 59, line 25.
[75] NOE, p 60, line 8

[149] The first is the evidence Mr Batchelor gave in the substantive hearing clearly supports the argument Mr Grenon was going to benefit from any favourable judgment, even if the damages sought was relatively modest and scale costs would likely not cover his actual costs.[76] Mr Batchelor's evidence does not support the position that he was offering to repay Mr Grenon from any favourable award he received. Indeed, he appeared to have little idea what would happen if he received such an award.[77]

[150] The second is Mr Grenon still benefited from the proceedings, even if that "benefit" is not a financial benefit. Benefit can also include other factors.

[151] In *JRA Group Ltd v Brown* Blanchard J held:[78]

> (b) Whether the respondents stood to gain financially from the outcome of the litigation is not the test. What matters is whether they stood to benefit from the litigation.

[152] Mr Grenon's own evidence is that he supported Mr Batchelor's claim because doing so was consistent with his own strongly held views on free speech in an open democracy and to ensure access to justice occurs, as well as to ensure judicial scrutiny of unfair accusations is undertaken. I consider Mr Grenon's ability to fund litigation in this context is a clear benefit to him.

[153] For the sake of completeness, I note Mr Patterson has filed a further memorandum which refers to the recent decision of *Brash v Hooton.*[79] This case was an application to strike out a defamation proceeding which was brought on the *Jameel*

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[76] The damages claim was for $50,000. Mr Patterson has filed a further memorandum attaching to the recent decision of *Brash v Hooton* [2025] NZHC 1530. Mr Patterson submits the case is of relevance because of the finding that if Mr Brash decided to apply any recovery towards the repaying a funder, this does not "convert the funder into the "real party" or evidence an improper predominant purpose". The case has little relevance to this issue as I explain in [154].

[77] His ambiguity on this point drove the reason why I required him to answer the question who was funding his costs. I did so because if he was not going to receive any costs the Court was entitled to know who was. See NOE, p 56, line 23

[78] *JRA Group Ltd v Brown*, above n 63, at [6(b)]. In this case the respondents were members of firstly an unincorporated society and then an incorporated society (the Society) which opposed a residential development in Green Bay. Mr Brown, his wife and a Mr Malarczyk were members of the Society and local neighbours to where the development was going to occur. The Society brought a judicial review proceeding attempting to stop the development which failed. Non-party costs were sought. The High Court found the Browns and Mr Malarczyk were the real "drivers" of the litigation because they both controlled the litigation and benefited from it. The benefit was not financial but rather they had an interest in the proceedings because they wished to stop the development.

[79] *Brash v Hooton*, above n 76.

principles. The application was dismissed. Mr Patterson however submits the case is of relevance because of the finding that if Mr Brash decided to apply any recovery towards the repayment of a funder, this does not "convert the funder into the "real party" or evidence an improper predominant purpose".

[154] In that context I do not disagree with this finding. However, this case is distinguishable from *Brash*. The decision in *Brash* was in the strict confines of a strike application. No evidence was heard. In this case I have had the benefit of considering the evidence. I am satisfied on that evidence it was strongly arguable Mr Grenon would receive compensation from a favourable reward. Mr Batchelor was not offering to repay the legal costs. Indeed, as I have already noted, Mr Batchelor appeared to have little idea who was going to receive the money other than suggesting it would all be going to Mr Grenon.[80]

[155] Finally, as I have also noted, the benefit is not limited to a financial benefit. In my view, the primary benefit Mr Grenon derived from the proceeding was his ability to fund litigation which he considered supported his strongly held views on issues of freedom of speech and bringing an unfair characterisation of Mr Batchelor before the Court for scrutiny.

Abuse of Process?

[156] Having reached the above findings, I am satisfied the threshold tests in *Waterhouse* have been met. The conduct of Mr Grenon goes well beyond the example given by Mr Patterson of his donations to Forest and Bird. Mr Grenon may not have been a party in name, but it is clear from the evidence his shadow loomed large over the proceedings.

[157] It follows then, even without considering the issue of abuse of process, Mr Grenon should pay costs. For the sake of completeness however I do go on and consider any conduct of Mr Grenon himself which may have amounted to an abuse of process.

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[80] NOE, p 59, lines 12–30.

[158] As I have discussed, abuse of process will be found if a bare assignment occurs or the torts of maintenance and champerty are committed. I have already found there is insufficient evidence to reach conclusive findings on these issues.

[159] Despite this, I have found an abuse of process did occur because Mr Batchelor failed to disclose the presence of Mr Grenon.

[160] The obligation to disclose, however, is an obligation owed by a party (usually a plaintiff) in the proceeding. Mr Grenon is not a party. Prima facie, as a non-party, he has no independent obligation to the Court to disclose his prescence.

[161] However, in my view, that position changes once the funder's conduct becomes relevant to costs, abuse of process, or disclosure issues. These are some of the various factors identified in *Waterhouse* as to when disclosure must occur. Although *Waterhouse* did not concern a case of non-disclosure, it is implicit in the judgment there is an overarching obligation to disclose once the relevant initial threshold tests are met.

[162] That obligation should extend to a non-party funder where the funder's own conduct is in issue. If a funder actively conceals a funding arrangement, directs the funded party not to disclose it, or permits the Court to be misled, it would be difficult to avoid the conclusion that such conduct amounts to an abuse of process.

[163] I turn to Mr Grenon's conduct relating to the decision not to disclose. I start with Mr Batchelor's unwillingness to make disclosure as to who was funding his claim while he was being cross examined. He only answered the question when he was told by the Court to do so.[81] Up until that point he was reluctant to because he said he did not have "clearance" to do so. He said he would only be in position to do so the following day or that only Mr Hague could answer the question.[82]

[164] Mr Batchelor's inability to answer the question on who was funding the proceeding was clearly linked to his inability to make disclosure of who was funding

[81] NOE, p 57.
[82] NOE, p 56, lines 25–31; and p 57, lines 1–20.

the pamphlet. This was because he was party to a confidential agreement not to make disclosure which he repeated on several occasions. Based on Mr Batchelor's evidence, I find Mr Batchelor and Mr Grenon had reached an agreement Mr Grenon's funding of the proceeding would remain confidential.

[165] It is also relevant Mr Grenon's presence was not disclosed at the outset of the proceedings in accordance with the *Waterhouse* principles. Mr Hague submitted a self-assessment process had been undertaken, leading to the conclusion Mr Grenon's presence did not have to be disclosed because the motivation for the funding was altruistic.

[166] I have found the self-assessment process was not for Mr Batchelor alone to make. No express evidence was given as to whether Mr Grenon was involved in the "self-assessment" process. I find it highly unlikely he was not involved. Indeed, I find it was a deliberate decision which was made by both Mr Batchelor and Mr Grenon which I reasonably infer from the evidence.

[167] Finally, I consider the application for suppression made by Mr Patterson at the commencement of the hearing. The application sought to suppress all aspects of the cost hearing. It then was amended to suppress Mr Grenon's involvement in the proceeding. The application(s) were rejected because this proceeding had already attracted significant public interest and open justice principles overrode any concerns Mr Grenon may have had that his late disclosure in the proceeding may have drawn adverse criticism by counsel for the defendants.

[168] The Court was left with the clear impression the suppression application was driven less by any proper basis for suppression and more by Mr Grenon's wish to avoid public scrutiny of his role in the proceeding. However, once Mr Grenon chose to fund the litigation, he assumed several significant risks: that Mr Batchelor might lose, that adverse costs might follow, and that Mr Grenon's involvement might be revealed. Non-party funders cannot expect to participate in litigation without, at a minimum, disclosing their interest. Whether that role should be publicly aired is then a matter for the Court.

[169] I find the deliberate non-disclosure supports the conclusion that the conduct amounted to an abuse of process. This finding is independent of my finding Mr Grenon funded, directed, had an interest in, and stood to benefit from the claim. Either finding is sufficient to justify a non-party costs order against him. Having chosen to involve himself in the proceeding, Mr Grenon assumed the risks that accompany litigation. Under his funding arrangement with Mr Batchelor, he agreed to meet any adverse costs award, knowing that risk existed. This judgment simply gives effect to that agreement.

[170] In terms of how much Mr Grenon should pay in costs I conclude there is no logical reason why he should not pay the same amount of costs which have been ordered Mr Batchelor must pay. I find accordingly.

Conclusion

[171] Mr Batchelor and Mr Grenon must pay costs jointly and severally to Dr Hattotuwa on a 50 per cent uplifted basis. The sum is $106,596. Disbursements as requested are also awarded making a total of $107,137. They must also pay Dr Hattotuwa further costs on a 2B basis as set out in paragraph [35] above for the additional round of submissions.

[172] Mr Batchelor and Mr Grenon must pay costs jointly and severally to TVNZ on a 50 per cent uplifted basis. The sum is $113,575.50. Disbursements as requested are also awarded making a total of $125,818.65. They must also pay TVNZ's further costs on a 3B basis as set out in paragraph [35] above for the additional round of submissions.

Signed at Auckland this 3rd day of July 2026 at 10.30 am

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Judge D J Clark
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 03/07/2026