IN THE DISTRICT COURT
AT AUCKLAND

I TE KŌTI-Ā-ROHE
KI TĀMAKI MAKAURAU

CIV-2023-004-001621
[2026] NZDC 8881

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

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: 30 April 2026
(On the papers)

DECISION OF JUDGE DAVID J CLARK

Introduction

[1] On 10 April 2026, I issued a Minute making timetabling directions for the filing of applications for costs which were to be made against Mr Batchelor and/or Mr Grenon as a non-party. Such applications were directed to be filed no later than 1 May 2026.

[2] This decision is necessary because issues have arisen as to whether Mr Batchelor is required to disclose documentation relating to a funding arrangement where Mr Batchelor's legal fees in these proceedings were paid by Mr Grenon. The

defendants say disclosure of relevant documentation to any funding arrangement is required. They say such disclosure is necessary to enable them to focus on the issues which will arise in the forthcoming costs hearing scheduled for 28 May 2026.

[3] Mr Batchelor and Mr Grenon oppose the making of any order which requires Mr Batchelor to disclose.

The Defendants' Position

[4] On 21 April, the defendants filed their applications for costs against both Mr Batchelor and Mr Grenon. In addition to the applications for costs, a joint memorandum (the joint memorandum) was filed by counsel for the defendants. The joint memorandum sought that the following orders be granted against Mr Batchelor:[1]

> (a) That the plaintiff's solicitor produce, to the defendants, copies of documents in his control that fall into the categories set out at [6] above.
>
> (b) To the extent that privilege is asserted in any document, the existence of document must nonetheless be discovered in a list that complies with the standard listing and exchange protocol in Part 2 of Schedule 9 to the High Court Rules 2016. However, any claim for privilege should be accompanied by a brief explanation of the grounds on which privilege is claimed, and why privilege has not been waived.
>
> (c) Disclosure shall be provided by no later than 1 May 2026.

[5] The categories outlined in paragraph [6] of the joint memorandum are:

> (a) Documents recording or evidencing when the non-party first contacted the plaintiff regarding a potential claim against the defendants.
>
> (b) Documents recording or evidencing when the non-party contacted the plaintiff's solicitors regarding a potential claim against the defendants.
>
> (c) Documents recording or evidencing the terms on which the non-party provided funding for the claims, including:
>
> (i) How fees were invoiced and paid;
>
> (ii) Who paid the fees; and

[1] These orders were not incorporated in the applications for costs but by way of the joint memorandum only.

(iii) Whether the plaintiff paid any fees associated with the claim, and if so which ones.

(d) Documents recording or evidencing who would receive any damages and costs award in the event that the claims were successful.

(e) Documents recording or evidencing the level of input or control that the non-party (or any other person other than the plaintiff) had in the conduct of the proceeding, including documents relating to Peter Williams' as an expert witness.

[6] The joint memorandum recorded an approach had been made by the defendants' counsel to the plaintiff's counsel seeking disclosure of the documentation referred to paragraph [6] of their memorandum. The memorandum further advised the disclosure was to be provided but that was withdrawn the following day. The reason given was no costs application had been filed at that point, and therefore, the information requested was not relevant to any extant issue before the Court.

[7] In requesting the disclosure of documents, the defendants rely on the decision of the Supreme Court in *Waterhouse v Contractors Bonding Limited*.[2] This case resolved issues about the disclosure of funding arrangements where a third-party is funding the payment of legal costs in certain circumstances; what information has to be disclosed and the timing of such disclosure.

[8] The defendants note the disclosure requirements at the commencement of a proceeding are limited. The funded party must only disclose the fact a litigation funder is involved, the identity of the funder, and whether the funder is subject to the jurisdiction of the New Zealand Courts.[3] However, the defendants submit now that the substantive decision in this matter has been delivered in their favour,[4] and that applications for costs have been made against both Mr Batchelor and Mr Grenon, disclosure of the details of the funding arrangement itself are necessary and compulsory. This is because, the funding arrangement will be relevant to the costs

[2] *Waterhouse v Contractors Bonding Limited* [2014] 1 NZLR 91 (SC).
[3] At [67] to [69]. The reason being such disclosure would be relevant to "…applications for security for costs and [for] costs. The non-funder would also have to know of the existence of a litigation funder before it can decide whether to make an application for a stay on abuse of process grounds." At [67]
[4] *Batchelor v Hattotuwa and Television New Zealand Limited* [2026] NZDC 489 [24 March 2026].

applications which have now been filed[5] which may include whether an abuse of process has occurred.[6]

[9] As to the scope of the disclosure (as set out in paragraph [6] of the joint memorandum), the defendants submit full disclosure of the funding arrangement is needed. This is because, and again relying on *Waterhouse:*

> In assessing whether litigation funding arrangements effectively amount to an assignment, the Court should always 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.[7]

[10] Mr Hague for Mr Batchelor and Mr Patterson for Mr Grenon have both filed submissions, and as I have noted, both oppose the making of any orders.

Mr Hague's Submissions

[11] In summary, I apprehend Mr Hague's submissions raise concerns the request for disclosure has unnecessarily placed urgency and pressure on the existing timetabling directions (timetabling which the defendants themselves requested) when it could have been avoided. This is because the request for disclosure could have been made much earlier.

[12] Mr Hague submits the disclosure of the funding arrangements by Mr Batchelor occurred on the first day of the hearing when Mr Batchelor was being cross-examined.[8] Despite his admission, no request for disclosure of the funding arrangements were made over the balance of the hearing (a further three days), nor during the period between the end of the hearing and when judgment was delivered on 24 March 2026.

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[5] Which includes an application against a non-party: See *Waterhouse* at [73] and [76].
[6] Whether an assignment of the bare cause of action has occurred; whether the funder's remuneration is tied to the success of the proceedings; whether the funder has any ability to exercise control over the conduct of the proceeding. *Waterhouse* at [57] and [76].
[7] *Waterhouse* at [57].
[8] Which was on 15 December 2025.

[13] Furthermore, no request for disclosure was made when the case management conference was held on 10 April before me. Mr Hague submits no "plausible" explanation is given as to why such a delay has occurred (by his calculation well over three months).

[14] Mr Hague also submits other potential serious issues arise as a result of the request:[9]

> The defendants' memorandum contains several serious allegations, and the orders that are sought, if granted, have potentially serious implications, including but not limited to whether they may disqualify counsel from being able to continue to act for the plaintiff. The issues now raised are relatively novel. It is not in the interests of justice to require rushed submissions. Additionally, the possibility that the plaintiff may need to be advised to seek independent advice cannot be ruled out.

[15] Finally, he suggests if there is any urgency imposed because of the defendants' request, it is open for the defendants to request an extension of the timetabling directions which have been made.

Mr Patterson's Submissions

[16] Mr Patterson has filed two sets of submissions. Firstly, he supports Mr Hague's submissions that earlier requests could have been made by the defendants for disclosure and no explanation for the delay has been given.

[17] Secondly, he submits the delay is further exacerbated by the defendants' knowledge Mr Batchelor was being funded by a non-party well before Mr Batchelor disclosed in cross examination Mr Grenon was funding his legal costs.

[18] Mr Patterson points out that during discovery, a transcript of an interview Mr Batchelor had with Sean Plunket was discovered which occurred at least a year before the hearing. Mr Batchelor stated during the interview he had a "benefactor" who was funding his litigation. Despite this admission, no steps were taken by the defendants to seek any information about the funding arrangement from Mr Batchelor.

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[9] Para [7] of his submissions.

[19] Thirdly, on a different ground, Mr Patterson submits the defendants request for disclosure goes beyond the type of funders captured by the decision in *Waterhouse*. The "obligation of disclosure"[10] applies only to funding by a third party who is an unrelated party "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."

[20] Mr Patterson points out the Court expressly held it was not dealing with funders who do not fall within this definition:

> 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 funding by insurance.[11]

[21] Mr Patterson submits there is no evidence establishing Mr Grenon is a third-party funder who falls within the Court's definition which requires disclosure. He submits the only evidence of the funding arrangement is Mr Batchelor's evidence where he says he was contacted by Mr Grenon, who was unknown to him. Mr Grenon had seen the television news article, thought it was wrong, and offered to fund (these) proceedings against Television New Zealand.

[22] Mr Patterson submits the evidence supports a position the funding was motivated by an "altruistic" motivation on the part of Mr Grenon and not driven by commercial gain.

[23] Fourthly, Mr Patterson submits the decision in *Waterhouse* and the powers which are conferred on a Court to compel disclosure of a funding arrangement is based on the High Court Rules and the High Court's inherent jurisdiction.

[24] No reference has been made by the defendants' counsel in the memorandum as what power the District Court has to make the orders which are sought. He submits the only power this Court has to make any such rulings is confined to either the District

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[10] As set out in [76] of *Waterhouse*.
[11] At [24].

Court Act 2016 and/or the District Court Rules 2014 or a limited number of other statutes. As this Court does not have an inherent jurisdiction it is then a creature of statute whose powers are limited. Unless powers are expressed in some form of statutory context or the District Court Rules, the Court has no authority to go beyond the powers granted by Parliament.

[25] Finally, Mr Patterson submits this Court lacks jurisdiction to make any disclosure orders. He submits the definition of orders for discovery[12] relates to any "proceeding". Given the application for costs is by way of an "interlocutory application" (which does not fall into the definition of a proceeding) no disclosure orders can be made either against Mr Batchelor and certainly not against a non-party.

[26] Given all of the above, Mr Patterson submits the defendants request for disclosure should be dismissed.

Discussion

[27] I deal firstly with Mr Grenon's position.

[28] Mr Grenon is not a party to this proceeding. The orders which are being sought by the defendants, are not against Mr Grenon. If they were, an application for discovery against a non-party would need to have been made.[13] However, no such request or application has been made and this decision makes no orders against him.

[29] Nonetheless submissions have been filed as if Mr Grenon is a party and orders are to be made against him. To be clear, Mr Grenon has requested to participate in these proceedings as a non-party to be heard given the risks he faced when the defendants signalled, they may seek costs against him. Leave was granted for him to participate in the case management conference on 10 April. However, his direct involvement has only become clear given the applications which have now been filed by the defendants on 21 April.

[12] As provided for in District Court Rule 8.1.
[13] As provided for in District Court Rule 8.21.

[30] The fact that he now has an opportunity to respond to the application for costs against him (as natural justice requires)[14] does not compel him to do so. He may choose to do so, but equally he may not. He may choose to file evidence but equally, he may not. Until he does so, this Court has no evidence of what his position is in relation to any funding arrangement other than what the Court has heard from Mr Batchelor namely, Mr Grenon paid Mr Batchelor's legal costs.

[31] The above commentary goes to and responds directly to some of the submissions made by Mr Patterson. Because Mr Grenon is not a party, in my view, it is strictly unnecessary to respond in full to those submissions, but I do so for the sake of completeness.

Delay in requesting disclosure

[32] I do not accept there is any issue arising over the alleged delay by the defendants to request disclosure of the documents. *Waterhouse* makes it clear what can be disclosed at the commencement of the hearing is limited to whether third party funding is occurring and the identity of the funder. The obligation to disclose is on the party being funded, and not on the non-funder to make a request for disclosure. Indeed, how could a non-funder make a request if they are unaware such arrangements are in place? It follows then the initial disclosure requirements were satisfied when Mr Batchelor admitted in cross examination his legal costs were being funded and by whom, albeit significantly late.

[33] I place little weight on the interview which Mr Batchelor had with Mr Plunket. This was not disclosure, which was contemplated by *Waterhouse* and in any event, he refused to disclose who was funding his costs. Furthermore, whether the defendants knew about the interview or not does not change the obligation on Mr Batchelor to make disclosure. Indeed, in my view Mr Batchelor remained reluctant to make any form of disclosure regarding the presence of a funder given the Court had to compel him to answer questions as to whether he was being funded and by whom during cross examination.

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[14] *Haines v Memelink and Forester (as trustees of Link Trust No 1)* [2021] NZSC 14.

[34] What the above means is Mr Batchelor's and Mr Grenon's position of what is required to be disclosed and when, is misconstrued. Their criticism of the delay relates to the request for details of the funding arrangement. *Waterhouse* makes it clear these details will not be disclosed until they become relevant to the determination of applications for security for costs, costs (against a party), costs against a non-party or whether abuse of process is occurring. Other than the issue of potential abuse, none of the other grounds would have existed which justified disclosure during the middle of the hearing. The right to request that information only arose when the applications for costs and costs against a non-party were only filed which was on 21 April. No delay then has occurred.

Jurisdictional issues

[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.[15] 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.

The funding arrangement does not fall within the Waterhouse definition which requires disclosure

[36] This is a position in my view which cannot be determined at this juncture. Whilst Mr Patterson submits the motivation of Mr Grenon was "altruistic", to make such a determination requires an assessment of Mr Grenon's motivation relating to the funding arrangements. His motivation is a subjective one, and one which cannot be

[15] For a full discussion of inherent jurisdiction and inherent powers see Joseph, Rosara *Inherent jurisdiction and inherent powers in New Zealand* [2005] CanterLawRw 10; (2005) 11 Canterbury Law Review 220.

inferred from the evidence which Mr Batchelor has given. Determining whether his motivation was altruistic is a different assessment from the mechanics of what the funding arrangement was, although I accept, it may impact on the overall assessment.

[37] It is for these reasons then why the Court needs to undertake an assessment as a whole, and not on a piecemeal basis. Until the details of the funding arrangements have been provided the Court is no position to reach any determinations on Mr Grenon's position. As I say, Mr Grenon is given an opportunity to explain his position if he chooses to do so, however, there is no obligation on him to do so.

[38] Mr Batchelor, however, does not enjoy the same position. He had an obligation to disclose the existence of the funding arrangement at the commencement of the proceedings[16] but did not do so. The position has now changed given the applications which have been filed. Details of the funding arrangements will be relevant to the assessment of whether costs should be paid over scale or on an indemnity basis and whether Mr Grenon may be required to pay costs.

[39] In my view the requirement to disclose such information does not necessarily fall as part of the discovery process in terms of the District Court Rules but rather as an obligation imposed as a result of the decision in *Waterhouse*. If I am wrong in this view, then I note standard discovery orders were made (by consent) on 4 March 2024. Discovery is an ongoing obligation.[17] The details of the funding arrangement must fall as part of these discovery obligations, and therefore need to be disclosed. For these reasons no formal application for discovery is necessary.

Extent of disclosure

[40] Neither Mr Hague (nor Mr Patterson's) submissions addressed the scope of the disclosure requested. As I have already noted, strictly speaking the disclosure obligations are only on Mr Batchelor and orders are only sought against him. On that basis I see no reason why all documents which may be in existence as contemplated by paragraph [6] of the joint memorandum should not be disclosed.

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[16] Even if it was to contend it was an arrangement not captured by *Waterhouse*.
[17] District Court Rule 18.18.

[41] Such disclosure should be way of an affidavit of documents which complies with the standard listing and exchange protocol in Part 2 of Schedule 9 to the High Court Rules 2016. Such affidavit must be filed and served no later than 5 pm 5 May 2026.

[42] Costs are reserved.

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Judge D J Clark
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 30/04/2026