IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2021-404-2354
[2026] NZHC 1404

UNDER	Defamation Act 1992
BETWEEN	TALLEY'S GROUP LIMITED First plaintiff (discontinued)
	TALLEY'S LIMITED Second plaintiff
	AFFCO HOLDINGS LIMITED Third plaintiff
	AFFCO NEW ZEALAND LIMITED Fourth plaintiff
	SOUTH PACIFIC MEATS LIMITED Fifth plaintiff (discontinued)
AND	TELEVISION NEW ZEALAND LIMITED First defendant
	THOMAS MEAD Second defendant

Hearing:	On the papers
Counsel:	B H Dickey KC, W R Potter, J L Gibson and R M Shasha for plaintiffs D M Salmon KC, E D Nilsson and K R Havemann for defendants
Date of judgment:	22 May 2026

JUDGMENT OF JAGOSE J
[Costs]

This judgment was delivered by me on 22 May 2026 at 3.30pm pursuant to r 11.5 of the High Court Rules 2016.

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Registrar/Deputy Registrar

[1] My 17 December 2025 judgment, dismissing Talley's proceeding, reserved costs for TVNZ's claim.[1]

TVNZ's costs claim

[2] In summary, TVNZ claims scale costs of $363,492.00, increased by 25 per cent to $427,752.25 on account of its unaccepted settlement offers, plus disbursements of $241,083.70. It also seeks to recover from Talley's any amount it is ordered to pay WorkSafe on a non-party discovery application.[2]

[3] Talley's contends for deductions in those amounts, on four particular grounds, resulting in scale costs of $187,137.00 plus disbursements of $220,489.97. The four grounds are:

(a) categorisation of the proceeding as category 2 for costs purposes, TVNZ having claimed steps in pleading its defence and preparing for and appearing at trial as category 3;

(b) rejecting any indemnity of TVNZ's liability for costs in respect of its non-party discovery application;

(c) multiplication of steps taken by TVNZ in discovery and inspection; and

(d) disputing TVNZ's claim for an uplift in respect of unaccepted settlement offers.

Talley's also contends for some excess in steps and disbursements claimed by TVNZ.

Applicable law

[4] All matters relating to costs are at my discretion, having regard for relevant principle.[3] Of particular principled relevance here is "an award of costs should reflect the complexity and significance of the proceeding"; "costs should be assessed by

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1 *Talley's Group Ltd v Television New Zealand Ltd* [2025] NZHC 4006 [judgment] at [214]–[215].

2 Subsequent to the parties' filing of costs memoranda, this Court ordered TVNZ pay WorkSafe $53,494.90: *Talley's Group Ltd v Television New Zealand Ltd* [2026] NZHC 1001 [non-party discovery costs judgment of Andrew J] at [27].

3 High Court Rules 2016, r 14.1. Given costs were reserved on 17 December 2025, the version of the Rules then in force have application.

applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required in relation to the proceeding"; and "so far as possible the determination of costs should be predictable and expeditious".[4]

Discussion

—categorisation of proceedings

[5] Proceedings are to be classified within particular categories by reference to their "straightforward nature", "average complexity" or "complexity or significance" as requiring apposite counsel in each case.[5] If, as has not occurred here, a proceeding's categorisation is determined in advance (then to apply "to all subsequent determinations of costs in the proceeding"), any later diversion requires "special reasons to the contrary".[6]

[6] That unitary approach—even if subject to judicial discretion, especially in relation to diverse claims maintained within a single proceeding—is not more generally liable to be diminished in respect of particular steps in a proceeding.[7] A proceeding's categorisation informs "the appropriate daily recovery rate", which "must be applied".[8] Rather, steps in a proceeding inform the reasonable time for each to be taken.[9]

[7] I may have accepted this proceeding qualified as category 3. It appeared a proceeding which, because of its complexity and significance, "required counsel to have special skill and experience in the High Court".[10] So far as 'significance' is concerned, each Talley's and TVNZ was at pains in evidence and submission to emphasise the particular significance the proceeding had for it. That significance plainly required specially skilled and experienced counsel to ensure their respective clients' collateral objectives were maintained and pursued only to the extent proper in

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4 Rule 14.2(1)(b), (c) and (g).
5 Rule 14.3(1).
6 Rule 14.3(2).
7 *Hojsgaard v Chief Executive of Land Information New Zealand* [2019] NZCA 84, [2019] 2 NZLR 864 at [127].
8 High Court Rules, r 14.4.
9 Rule 14.5.
10 Rule 14.3(1).

civil litigation. And the proceeding also was complex—spanning multiple causes of action across alternative media in differently particularised terms, all for claim and defence to meet defamation's technical requirements in such litigation; most tellingly here, of pleading meaning[11]—again warranting such skilled and experienced counsel.

[8] But, without TVNZ's claim to category 3 overall (and then subject to Talley's contest), I am not prepared to allow such a claim effectively in part. The proceeding is category 2.

[9] Even within category 2, however, I apprehend that complexity and significance to mean a comparatively large amount of time was reasonable for each step taken by TVNZ formally to establish its defence: that is to say, in commencing its defence to Talley's claim (step 2); and pleading in response to Talley's amended claims (step 9), including other such steps (being notices for particulars (analogously with step 18)).

[10] I will allow a time allocation at band C for each of those steps. It is not argued either the nature of the proceeding or the particular step in it to be such that the time required by TVNZ for any of those steps would substantially exceed the time allocated under band C for them, as may warrant an award of increased costs.[12] Neither do I accept preparation for and attendance at trial reasonably required a comparatively large amount of time beyond that required for any long trial.

—TVNZ's non-party discovery costs

[11] Given this Court's order TVNZ pay WorkSafe its reasonable costs,[13] if then they are recoverable from Talley's initially depends on if those costs constitute disbursements: that is, are "an expense paid or incurred for the purposes of the proceeding that would ordinarily be charged for separately from legal professional services in a solicitor's bill of costs".[14] WorkSafe's reasonable costs clearly are such an expense.

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11 Judgment, above n 1, at [29].
12 High Court Rules, r 14.6(3)(a).
13 See n 2 above.
14 High Court Rules, r 14.12(1)(a).

[12] As both claimed and verified, WorkSafe's costs "must … be included in the costs awarded for a proceeding", here, if "of a class … approved by the court for the purposes of the proceeding" and specific to and reasonably necessary for its conduct and reasonable in amount.[15] The latter considerations are made out by this Court's decision ordering TVNZ pay WorkSafe its costs.[16] The former consideration may be thought made out by r 8.22,[17] except for its express provision "another party" may be ordered to meet those costs "if it is manifestly unjust for a party to have to meet the costs of complying with an order" for particular disclosure against a non-party.[18] Thus the question of a party's liability for non-party costs orders may be a question open to determination in the original assessment.

[13] But, notwithstanding the "manifestly unjust" threshold for discharge of primary liability, a subsequent "different allocation" can be made if "just".[19] And the orthodox position "the applicant … pay to the person from whom disclosure is sought the whole or part of that person's expenses" is only if "just" (not "manifestly" so).[20] So TVNZ's payment of WorkSafe's disclosure costs is a qualifying disbursement. It is for reimbursement by Talley's.

—discovery and inspection steps

[14] As indicated at [9] above, the High Court Rules' sch 3 specifies the reasonable time for the taking of steps in the proceeding by reference to comparatively small, normal and comparatively large amounts of time for the particular step.[21] Prior to this year's amendments to sch 3 in wake of the High Court (Improved Access to Civil Justice) Amendment Rules 2025, the reasonable times for "list of documents on discovery" and "inspection of documents" steps in terms of bands A, B and C were respectively 0.7, 2.5 and 7 and 0.5, 1.5 and 6 days.

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15 Rule 14.12(2).
16 Non-party discovery costs judgment of Andrew J, above n 2, at [20]–[26].
17 *Mac Motors Ltd v Butch Pet Foods Ltd* [2019] NZCA 148 at [37], n 16.
18 High Court Rules, r 8.22(1). I am uncertain if "party" here is to exclude the non-party.
19 Rule 8.22(2).
20 Rule 8.22(3).
21 Rule 14.5.

[15] Discovery and inspection is conducted in accordance with a discovery order, generally with reference to the High Court Rules' "listing and exchange protocol".[22] That protocol required parties to "list" and "exchange" documents.[23] Sch 3's "discovery" and "inspection" steps necessarily were derivative. Discovery and inspection steps thus were allocated a single time allocation each. So, for time allocations, it is immaterial if documents were listed or inspected in tranches (as for which TVNZ claims four tranches of document listing and ten tranches of document inspection, albeit under band B, thus 10 days for listing documents and 15 days for inspecting them).

[16] Given my apprehension of the common bundle's volume at trial,[24] if at least a comparatively large amount of time was required for each TVNZ's list of its own documents and its inspection of Talley's documents, its claim cannot exceed seven and six days respectively. It was open to TVNZ to argue for increased costs if the time required for those steps "would substantially exceed" that allocation,[25] but that is not how it has approached its claim for costs. Despite the principle "an award of costs should not exceed the costs incurred by the party claiming costs",[26] I am not prepared to assume TVNZ's claim reflects its actual substantial excess over sch 3's allocation.

—settlement offers

[17] Under r 14.6(3)(b)(v), I may order Talley's pay increased costs if it has contributed unnecessarily to the time or expense of the proceeding by "failing, without reasonable justification, to accept an offer of settlement … or some other offer to settle or dispose of the proceeding".

[18] On 4 April 2025, before any exchange of proposed witness briefs, Talley's rejected TVNZ's offer to settle the proceeding by its discontinuance with no admission of liability and without public comment, except "if questioned about it, … the matter was resolved on a 'drop hands' basis for pragmatic reasons, and without admission or concessions by either party".

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22 Rule 8.12(2).
23 Schedule 9, cl 6.
24 Judgment, above n 1, at [7].
25 High Court Rules, r 14.6(3)(a).
26 Rule 14.2(1)(f).

[19] Although Talley's disputed any foundation for TVNZ's then-expressed confidence in its ultimate success, it did not expressly stipulate what it contended justified its rejection of the offer. But it indicated settlement was achievable on terms including TVNZ's apology, acknowledgement Talley's "take[s] health and safety seriously" and removal of the impugned publications from TVNZ's sites. TVNZ later sought to bridge the gap, ultimately proposing to remove the 21 November 2021 publications (relating to Talley's decisions as an ACC accredited employer on injured workers' treatment, rehabilitation and compensation) and acknowledging "Talley's has taken steps to address the concerns raised in the reports", but that was not accepted either.

[20] Clearly, by failing to accept any of TVNZ's offers of settlement, Talley's contributed to the time and expense of the continuing proceeding. Whether 'unnecessarily' may be assessed by reference to any reasonable justification for so doing.

[21] Talley's says its "imperative was correcting the untrue statements made by sources in the 1NEWS broadcasts". I do not consider that reasonably justifies Talley's rejection of TVNZ's offer(s). Defamation proceedings, especially when brought by a body corporate, are a poor vehicle to establish the truth of any published statement. Rather, defamation proceedings test contended derogatory imputations said to be drawn from a publication and, if of a body corporate, only if establishing consequential pecuniary loss. Truth is a *defence*; it is a shield, not a sword.

[22] Within r 14.6(3)(b)'s express qualifications for increased costs is the broad expectation "increased costs may be ordered where there is failure by the paying party to act reasonably".[27] Under subpara (v), 'reasonableness' is to be viewed against:[28]

> … a requirement of fairness that litigants … have some economic means of limiting their exposure to the risk of costs; and secondly the Court itself must ensure … an effective encouragement to settle.

A "steely" approach is required:[29]

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27 *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [27(b)].
28 *Moore v McNabb* (2005) 18 PRNZ 127 (CA) at [58].
29 *Bluestar Print Group (NZ) Ltd v Mitchell* [2010] NZCA 385, [2010] ERNZ 446 at [20], citing *Health Waikato v Elmsly* [2004] 1 ERNZ 172 (CA) at [53].

> … the scarce resources of the Courts should not be burdened by litigants who choose to reject reasonable settlement offers, proceed with litigation and then fail to achieve any more than was previously offered.

[23] Nonetheless—in circumstances such as here, in which the parties' evidence remained unknown and the offer of settlement was noncommittal as to any substantive result—continuation of the proceeding may be thought necessary to test the claim. Talley's rejection of TVNZ's final offer, which offered some substantive result, still did not contribute unnecessarily to the proceeding's cost and expense (except in continuation of its ninth and 10th causes of action in relation to the 21 November 2021 publications, but then replicated to some degree by the subject matter of the 11th and 12th causes of action).

[24] Ultimately, although by a fine margin, I do not consider Talley's rejection of TVNZ's settlement offers to have been unreasonable. The offers did not materially substitute for Talley's prospective success in the proceeding. It was not contended Talley's case was inarguable in any respect. Given my substantive decision,[30] I am caused some pause by TVNZ's original offer identifying Talley's appeared "unable to establish an essential element of [its] cause of action, namely financial loss caused by the reporting at issue", but note Talley's rejoinder "an inferential case on pecuniary loss is unexceptional and there is no obligation on corporate plaintiffs to plead or prove quantifiable damage". Bedevilling any settlement were the parties' respective corporate positions: Talley's desire for comprehensive rectification of the record; and TVNZ's certainty of its obligations as a responsible broadcaster. Neither justifies any costs premium.

[25] I will not order Talley's pay increased costs to TVNZ.

—miscellaneous issues

[26] Schedule 3 allocates time for "[f]iling memorandum for case management conference or mentions hearing" (step 11). Notably, the times allocated are equivalent to preparation for the conference and (except for band A) exceed allocations for appearances at either. That suggests memoranda attracting such an award of costs are

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30 Judgment, above n 1, at [201].

to have some substantive content for determination. Costs for the "procedural" and joint memoranda to which Talley's take objection are not analogous and are not recoverable at the sought rate. The better analogy is with step 12's "appearance at mentions hearing or callover", particularly as such memoranda tend to substitute for such appearance. I will allow TVNZ costs on those memoranda at that 0.2 day rate.

[27] An award of costs relating to admissions of facts might be thought only to make sense if facts are admitted. Otherwise, r 8.47(4) presumes "the costs of proving the facts must be paid by that party". It seems uroboric if the costs of proving the facts may include the step of administering an unanswered notice to admit facts. The recipient is not required to respond.[31] And r 14.6(3)(b)(iii) entitles a court to order payment of increased costs on a party's unnecessary contribution to the time or expense of the proceeding in "failing, without reasonable justification, to admit facts". Here, Talley's did not admit any facts; it is to pay the costs of proving those facts as part of its liability for costs in this proceeding; and no increased costs are sought for its failure to admit facts. TVNZ's claim to costs on step 18 is disallowed.

[28] Finally, Talley's disputes TVNZ's claimed disbursements for "Law Society research charges" ($100) and "Printing / photocopying / stationery" ($1,555.07). I have explained qualification for recoverable disbursements at [11]–[12] above.

[29] I accept expenses incurred for research conducted by third parties ordinarily separately would be charged to a client, rather than subsumed within a lawyer's fee. If verified, I approve inclusion of the Law Society's charges in costs payable by Talley's.

[30] I do not accept generalised document handling expenses ordinarily would separately be charged to a client. Rather, such expenses ordinarily would be subsumed in a lawyer's fee as part of the overhead of providing legal professional services. On the other hand—given the volume of hard-copy documents in the proceeding, notwithstanding its primarily electronic conduct—I doubt the claim is of generalised document handling expenses incurred by TVNZ. But it has not better been specified, and I therefore disallow it also.

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[31] *Deliu v New Zealand Law Society* [2013] NZHC 1584 at [68].

Next steps

[31] I expect counsel will be able to agree recalculated recoverable costs in accordance with my determinations above.

[32] If not, TVNZ is to file and serve an amended version of its costs submission's schedule with those recalculations within 10 working days of the date of this judgment, for any response by Talley's within five working days of service.

—Jagose J

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