IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV 2025-404-003778
[2026] NZHC 1137

IN THE MATTER OF	an application under s 16 of the Contempt of Court Act 2019
AND	
IN THE MATTER OF	the non -compliance with the orders of Walker J in Young v Xiao [2025] NZHC 3697
BETWEEN	PAUL CHUNG CHE YOUNG Applicant
AND	MORGAN ZHIHONG XIAO Respondent

Hearing: 10 March 2026

Appearances: K J Crossland & J Boparoy for the Applicant
B Zheng & T Chan for the Respondent

Judgment: 30 April 2026

JUDGMENT OF TAHANA J

This judgment was delivered by me on 30 April 2026 at 4.00 pm
Pursuant to Rule 11.5 of the High Court Rules

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Registrar/Deputy Registrar

Solicitors/Counsel:
One Legal, Auckland
Righteous Law Limited, Auckland

Introduction

[1] Paul Young was successful in a claim for defamation against Morgan Xiao.[1] On 1 December 2025, Walker J ordered that Mr Xiao delete posts from his WeChat account and write to any third-party platform hosting those posts to request their removal.[2]

[2] Mr Xiao did not delete the posts despite the orders and a request from Mr Young's solicitors that the posts be deleted. Nor did Mr Xiao request third-party platforms to remove the posts. Mr Young applies for enforcement orders under s 16 of the Contempt of Court Act 2019 (the Act). Shortly before the hearing, Mr Xiao provided an affidavit deposing that he had deleted the posts and had requested third-party hosting platforms to delete any posts. Mr Xiao requested that the hearing be vacated, and costs be determined on the papers. Mr Young wished to proceed with the hearing, requesting a formal finding of contempt for the period where Mr Xiao had not complied with the orders and submitting that Mr Xiao had only partially complied with the orders because there was no evidence he had written to third party platforms.

[3] I must therefore determine the following issues:

(a) Whether the requirements under s 16(3) of the Act have been met such that I should make orders under s 16(4) sanctioning Mr Xiao's conduct.

(b) If yes, whether indemnity costs should be awarded to Mr Young.

Background

[4] On 1 December 2025, Walker J made the following orders:[3]

> [426] I make an order that Mr Xiao remove the second, third, fourth, sixth, eighth, tenth, eleventh, twelfth, thirteenth, fifteenth and sixteenth posts from his WeChat account. I further direct that he request in writing any third-party platform hosting these to remove those posts.
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> [427] I make an order that Mr Xiao be restrained from repeating the disloyalty imputations, dishonesty imputations, lack of fitness for public

1 *Young v Xiao* [2025] NZHC 3697.
2 At [426].
3 At [426] to [427].

> office imputations, corruption and foreign influence imputations, and misuse of court proceedings imputations.

[5] The judgment was embargoed to 5 December 2025. Despite this, Mr Xiao posted about the judgment that evening.

[6] On 3 December 2025, counsel for Mr Young notified the Court requesting directions to rectify Mr Xiao's non-compliance with the embargo. That same day, Mr Young's counsel confirmed that the post about the judgment had been deleted.

[7] On 19 December 2025, Mr Young's solicitors wrote to Mr Xiao's solicitors noting that he had not deleted the WeChat posts and requesting that he do so within two hours or Mr Young would apply for enforcement orders. No response was received, and the posts were not deleted.

[8] On 22 December 2025, Mr Young filed his application for enforcement orders.

[9] On 28 January 2026, Mr Xiao filed a notice of opposition on grounds that he had appealed Walker J's decision and Mr Young had not established contempt beyond reasonable doubt so that the enforcement orders were premature, improper, punitive and oppressive.

[10] On 5 March 2026, Mr Xiao confirmed that he had deleted the WeChat posts and had requested all third-party platforms to delete the posts. Counsel requested that the hearing be vacated, and the issue of costs be determined by further memorandum.

[11] Mr Young requested that the hearing proceed on the basis that there had only been partial compliance with the orders. He also requested findings that Mr Xiao had acted in contempt of court during the period of his non-compliance.

Contempt of Court Act 2019

[12] Section 16 applies to enforcement of court orders, including an interim or final order.[4] Mr Young, as the party who sought the order being enforced, is entitled to bring the application.[5]

[13] Section 16(3) prescribes the requirements on the Court in determining whether to make orders under s 16(4):

> The court -
>
> (a) must not proceed further under [s 16] unless it is satisfied that other methods of enforcing the court order or undertaking have been considered and are inappropriate or have been tried unsuccessfully; and
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> (b) if so satisfied, must make a finding as to whether it is proved beyond reasonable doubt that:
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> (i) the court order or undertaking being enforced has been made in clear and unambiguous terms and is clearly binding on the person; and
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> (ii) the person had knowledge or proper notice of the terms of the court order or undertaking being enforced; and
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> (iii) the person has, without reasonable excuse, knowingly failed to comply with the court order or undertaking being enforced.

[14] On finding beyond reasonable doubt that the requirements under s 16(3)(b) are met, the court may under s 16(4)(a) do any of the following:[6]

> (a) issue a warrant committing the person to a term of imprisonment;
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> (b) impose a fine in the case of an individual not exceeding $25,000;
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> (c) order that the person do community work.

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4 Contempt of Court Act, s 16(1).
5 Section 16(2)(a).
6 Section s 16(4).

Are the requirements of s 16(3) of the Act met?

Section 16(3)(a)

[15] Section 16(3)(a) requires that the court not proceed further unless it is satisfied that other methods of enforcing the order have been considered and are inappropriate or have been tried unsuccessfully.

[16] On 2 December 2025, Mr Young's counsel served the sealed judgment on Mr Xiao's counsel and requested that Mr Xiao comply with the orders. Mr Young's counsel requested a list of the third-party hosting platforms and asked that they be able to view his request to those platforms before it was sent. It was also recommended that Mr Xiao provide a copy of the sealed judgment to those third-party platforms. Mr Xiao was therefore notified of what he was required to do and given suggestions on how this might be achieved. He nevertheless ignored that request.

[17] On 19 December 2025, Mr Young's counsel again wrote to Mr Xiao's counsel noting that 18 days had elapsed since the judgment and the offending posts had not been removed. The letter set out the orders and requested Mr Xiao's compliance or Mr Young would apply for enforcement orders under s 16 of the Act.

[18] Mr Crossland submitted that no other methods of enforcement could require Mr Xiao to delete the posts because the order was personal to Mr Xiao. I accept that in relation to the order requiring that Mr Xiao delete the posts, there was no alternative enforcement mechanism available to Mr Young other than the action he took in requesting Mr Xiao to delete the posts. That mechanism was not successful in getting Mr Xiao to comply.

[19] In relation to the order requiring Mr Xiao to write to the third-party platforms, I queried whether Mr Young could have written to third-party hosting platforms requesting that the posts be deleted. Mr Crossland submitted that writing to the third-party platforms was not an alternative legal enforcement method as contemplated by s 16(3). He submitted that s 16(3) does not contemplate self-help methods but should be interpreted as referring to legal enforcement methods.

[20] Mr Crossland referred the Court to *Han v Zhu* where this Court noted that s 16(3)(a) requires that the court not act unless all other methods of enforcing an order have been either exhausted or have been considered and deemed inappropriate.[7] In that case, Mr Han sought orders under s 16 in relation to a Family Court order that a property be sold. Gordon J was not satisfied that other methods of enforcement had been considered noting that leave had been reserved for parties to come back to the Court if there were difficulties with implementing the sale. There was also the alternative option to appoint the Registrar to affect the sale. Mr Crossland submitted that *Han v Zhu* was distinguishable because here, there was no alternative legal enforcement method.

[21] In *Whimp v Dugdale*, Campbell J rejected a narrow view of "enforcing" and considered that s 16 supported a broad conception. The Court considered that if the breach of the court order had been remedied as *a result of actions* by the party who had the benefit of the order, the court should not proceed further. In *Whimp*, the plaintiffs had, on learning of the breach, urged the defendants to remedy the breach by paying an amount into court or into a trust account. That request and the defendants' positive response had put the plaintiffs in the same financial position they would have been in had the order not been breached such that the plaintiffs had successfully enforced the order. Those actions had not involved legal enforcement methods. Campbell J declined to proceed further.

[22] Here, the orders were intended to achieve the deletion of the posts. Mr Young could have written to third-party platforms requesting that the posts be removed and that could have achieved the desired outcome without resort to an application for orders under s 16(4).

[23] Mr Crossland submitted that writing to third party platforms was not an option available to Mr Young. Mr Young was no longer a member of particular WeChat groups so could not request the administrator to delete the posts.

[24] The order refers to third party hosting platforms. I do not understand individuals or individual devices to be equivalent to a hosting platform. The hosting

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7 *Han v Zhu* [2021] NZHC 3007 at [30].

platform refers to the service provider of the platform on which the content is hosted — that is, WeChat or other websites. The correspondence from Mr Young's solicitors to Mr Xiao's solicitors dated 9 March 2026 indicates that the posts are also contained on other third party websites: ausnznet.com and zhihu.com. There is no reason why Mr Young could not have requested that WeChat or the third party platforms hosting those websites delete the posts.

[25] I accept however, that despite this potential option, Mr Young was not necessarily aware of all the platforms on which Mr Xiao had posted the posts. Mr Young had attempted to enforce the orders by reiterating them to Mr Xiao and requesting his compliance, including requesting a list of the third-party platforms. That request had gone unanswered.

[26] In these circumstances, I am satisfied that Mr Young had considered enforcement mechanisms and had tried unsuccessfully to get Mr Xiao to comply. While there was the option of also writing directly to WeChat and other third-party platforms of which Mr Young was aware, I accept that such an option was not available to the extent Mr Young did not know about a platform.

[27] I am satisfied that Mr Young has tried unsuccessfully to enforce the orders by other means.

[28] I therefore go on to consider whether findings should be made under s 16(3)(b).

Section 16(3)(b)

[29] Section 16(3)(b) requires that Mr Young satisfy the Court to the criminal standard that each of the three elements are met. That requires that Mr Young prove beyond reasonable doubt that:

(a) the court order is in clear and unambiguous terms and is clearly binding on Mr Xiao;

(b) Mr Xiao had knowledge or proper notice of the terms of the court order; and

(c) Mr Xiao has, without reasonable excuse, knowingly failed to comply with the court order being enforced.

[30] I consider whether Mr Young has proven each of these elements.

Is the court order made in clear and unambiguous terms and clearly binding on Mr Xiao?

[31] The order stated:

> [426] I make an order that Mr Xiao remove the second, third, fourth, sixth, eighth, tenth, eleventh, twelfth, thirteenth, fifteenth and sixteenth posts from his WeChat account. I further direct that he request in writing any third-party platform hosting these to remove those posts.

[32] The order identifies the posts to be removed by reference to their number so that it is clear and unambiguous what is to be removed and from where (his WeChat account). The order is directed at Mr Xiao so it is clearly binding on him. The order also clearly states that the request to third-party platforms is to be in writing and is to request that the posts be removed.

[33] While Mr Xiao initially argued that the lack of a specified timeframe was relevant, this argument was not advanced at the hearing. Even if it had been, I do not consider that the absence of a specified timeframe by which the orders were required to be met, made the orders unclear or ambiguous. In the absence of a specified timeframe, on their face, the orders required immediate compliance.

[34] I am satisfied that it is proved beyond reasonable doubt that the court order being enforced has been made in clear and unambiguous terms and is clearly binding on Mr Xiao.

Did Mr Xiao have knowledge or proper notice of the terms of the court order?

[35] The judgment was delivered to the parties by the Court on 1 December 2025. That same evening, Mr Xiao posted about the judgment on his WeChat account. A Chinese translation of that post indicates that Mr Xiao received the judgment from his counsel together with notice of the Court's orders. Further, on 2 December 2025

Mr Young's counsel wrote to Mr Xiao's counsel setting out the terms of the order, and requesting that he comply.

[36] I am satisfied that it is proved beyond reasonable doubt that Mr Xiao had knowledge and proper notice of the Court's orders.

Did Mr Xiao, without reasonable excuse, knowingly fail to comply with the court order?

[37] Mr Crossland referred to *Burmester v Burmester*[8] and submitted that the law is settled; deliberate conduct in breach of a court order constitutes contempt regardless of whether the contemnor intended to be in contempt. *Burmester v Burmester* was decided prior to the introduction of the Act. The Court's assessment was made in the context of the Court's inherent jurisdiction and not in the context of the language of the Act.

[38] In *Whimp,* Campbell J considered the language of s 16(3)(b)(iii) and whether it was enough to prove that the conduct was deliberate. He held that s 16(3)(b)(iii) is concerned with actual knowledge.[9] After considering the history of the Act, Campbell J observed that the wording in s 16(3)(b)(iii) differs from the position expressed by the Court of Appeal in *Siemer v Stiassny* where the relevant question was whether the defendant's conduct was deliberate.[10] Campbell J considered that the question is whether the defendant knowingly failed to comply. "To knowingly fail to comply, one must know that one's conduct is in breach of the order."[11]

[39] I therefore apply the test as enunciated by Campbell J in considering whether Mr Xiao knowingly failed to comply with the Court order.

[40] In his affidavit dated 30 January 2026, Mr Xiao deposed that in circumstances where he had appealed, he did not regard himself as acting in defiance of the Court and nor did he act with any intention to undermine the authority of the Court. At the hearing, Mr Xiao's counsel confirmed that at the time of the appeal Mr Xiao was

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8 *Burmester v Burmester* [2018] NZHC 2352.
9 *Whimp v Dugdale* [2023] NZHC 2018 at [69].
10 *Siemer v Stiassny* [2007] NZCA 117; [2008] 1 NZLR 150.
11 *Whimp v Dugdale*, above n 9 at [75].

legally advised, including as to the requirements of the Court orders and the effect of the appeal. He continued to be advised to delete the posts and eventually did so on 5 March 2026. Mr Xiao was therefore aware that refusing to delete the posts was contrary to the Court orders.

[41] At the hearing, when asked whether he had written to third-party hosting platforms, Mr Xiao referred to a message on his phone. That message was translated by his legal counsel and indicated that he had simply requested his username and password so that he could log in to WeChat and delete the posts. There was no evidence that Mr Xiao had written to third-party platforms to request that they remove the posts other than him asserting that he had done so. Mr Xiao did not comply with this aspect of the order.

[42] There was no expert evidence before the Court as to whether hosting platforms can delete content or the process that is followed when requests to delete content are made. Nor was there any evidence as to whether Mr Xiao should be able to himself delete the content. It was, however, clear from Mr Xiao's evidence that he had not written to any third-party platform. Rather, he had himself attempted to delete the posts. In doing so, he had replaced the content with a note referring to his appeal.

[43] I accept that in circumstances where Mr Xiao had received notice from Mr Young's solicitors as to the consequences of non-compliance and was legally advised to delete the posts and write to third party platforms, he knew that refusing to do so was in breach of the Court orders.

[44] I am therefore satisfied that it is proved beyond reasonable doubt that Mr Xiao has, without reasonable excuse, knowingly failed to comply with the court order.

Orders under s 16(4)

[45] Upon finding beyond reasonable doubt that the requirements in subsection 3(b)(i)–(iii) are met, the court *may* make any of the orders under s 16(4) including imposing a fine. The posts now appear to have been deleted. At the hearing, Mr Crossland indicated that Mr Young's primary concern is compliance and

Mr Crossland submitted that any sanction (which includes a potential fine) should be considered separately.

[46] Counsel for Mr Xiao did not advance submissions in relation to whether a fine should be imposed.

[47] It is appropriate that the parties have an opportunity to consider and make submissions in relation to whether a fine should be imposed given my findings under s 16(3). I therefore provide directions at [1][52] below in relation to a separate penalty hearing.

Indemnity costs

[48] Mr Young seeks indemnity costs. In circumstances where Mr Xiao has now deleted the posts, his counsel did not advance submissions in opposition to indemnity costs.

[49] Under r 14.6(4)(b) of the High Court Rules 2016, the Court may order that a party pay indemnity costs if the party has "ignored or disobeyed" an order or direction of the court. Mr Xiao has clearly done so. The application was necessary to enforce compliance and to obtain clarity as to whether Mr Xiao has in fact complied with Walker J's orders. It appears that he has not done so in relation to the requirement to send a request to third-party platforms.

[50] I consider that indemnity costs are appropriate in circumstances where Mr Xiao was given notice of the application but refused to delete the posts. This was despite legal advice and threats of enforcement orders. This failure occurred for almost three months (from 1 December 2025 to 5 March 2026). Mr Young has been put to the unnecessary expense and stress of having to seek orders from the Court.

Result

[51] I find Mr Xiao in contempt of court by knowingly failing to comply with Walker J's orders dated 1 December 2025.

[52] I direct that Mr Xiao:

(a) request in writing any third-party platform hosting the posts to remove them; and

(b) file and serve an affidavit exhibiting the requests sent to the third-party platforms.

[53] A further two-hour hearing will be held on **17 June 2026** at 10 am to determine whether any orders should be made under s 16(4) of the Act and I direct that:

(a) Mr Young file and serve submissions by no later than **3 June 2026**; and

(b) Mr Xiao file and serve submissions by no later than **10 June 2026**.

[54] I order Mr Xiao to pay Mr Young's reasonable costs of and incidental to this application on an indemnity basis, dating from and inclusive of 19 December 2025 to (and including) the date of the hearing on 5 March 2026, to be fixed by the Registrar in default of agreement.

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Tahana J