IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY

I TE KŌTI MATUA O AOTEAROA
TĀMAKI MAKAURAU ROHE

CIV-2022-404-002170
[2026] NZHC 1318

BETWEEN	PAUL CHUNG CHE YOUNG Plaintiff
AND	MORGAN ZHIHONG XIAO Defendant

Hearing: On the papers

Counsel: K Crossland for the Plaintiff
B Zheng for the Defendant

Judgment: 15 May 2026

JUDGMENT OF WALKER J
[Costs]

This judgment was delivered by me on 15 May 2026 at 3 pm
pursuant to r 11.5 of the High Court Rules 2016

Registrar/Deputy Registrar

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Solicitors:
Righteous Law, Auckland
OneLegal, Auckland

[1] Mr Young is the successful party in this defamation claim pursuant to my judgment dated 1 December 2025.[1]

[2] He now seeks:

(a) Costs on a 2B basis plus an uplift under r 14.6(3) of the High Court Rules 2016 (HCR);

(b) Payment of his reasonable disbursements; and

(c) Costs of the application for costs (costs on costs), the defendant having rejected a reasonable post-judgment offer to resolve costs on a 2B basis with a 10 per cent uplift.

[3] The essential argument he advances is that the defendant's conduct before, during and after trial materially increased the time and expense of the proceeding. Further, the plaintiff made genuine efforts to resolve costs without recourse to the Court, which efforts were rebuffed.

[4] Mr Young's quantification of category 2B costs amounts to $146,268 which, if uplifted as he argues it should be, produces a total costs award of $182,835. The disbursements are calculated at $70,606.89.

[5] Clearly, Mr Young succeeded at trial in that this Court found that Mr Xiao had defamed him in multiple publications resulting in an award of general damages of $225,000 including an aggravated component. This Court also ordered removal of the defamatory posts and granted a permanent injunction.[2]

[6] The defendant succeeded in a limited number of other publications and in respect of discrete aspects of the honest opinion defence pleaded. He also succeeded in arguing that one of the primary imputations was not defamatory because of the

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1 *Young v Xiao* [2025] NZHC 3697.
2 At [424]–[427].

common law "consensus" principle. I am easily satisfied that Mr Young, as the successful party, is entitled to an award of costs.

[7] In my judgment, I reserved the question of costs so the parties could address whether departure from the ordinary rules was warranted.

[8] The plaintiff has provided a schedule of costs and disbursements setting out his calculation of scale costs. As far as I can discern, there is no arithmetical or methodological error. None has been identified or challenged by the defendant. Despite invitation to respond and additional time to respond, the defendant has not filed any responsive memoranda on costs.

[9] I am satisfied that category 2B is an appropriate category in this case for what was a complex and lengthy proceeding involving numerous publications in Mandarin. There are some features of the case which could well point to adopting a category 2C characterisation, in respect of some steps. Nonetheless, Mr Young reasonably accepts that 2B is the appropriate scale.

[10] That then becomes the starting point for this costs determination.

[11] The plaintiff seeks increased costs for the defendant's failure to take up reasonable opportunities to resolve these proceedings before they commenced.

[12] He relies on:

(a) An open letter dated 29 September 2022 in which he sought a full retraction and apology, removal of the offending publications from platforms administered by Mr Xiao, undertakings against repetition and a modest contribution to costs.

(b) The defendant's failure to respond to that offer.

(c) The defendant's publication of further defamatory material subsequent to that proposal to resolve the dispute.

(d) The plaintiff made an offer on 22 January 2024 to resolve the dispute. The offer included retraction and an open apology which was rejected by the defendant on 9 February 2024.

(e) The terms of the January 2024 offer substantially foreshadowed the relief ultimately granted by the Court.

(f) The rejection of these offers meant that a nine-day trial was required so that the plaintiff could obtain the vindication which the defendant could have voluntarily provided as early as September 2022.

[13] The plaintiff also points to the way the defendant conducted his defence, including the pursuit of extensive and ambitious third party joinder applications, attempts to join multiple media organisations and, at one stage, a foreign state. The plaintiff argues that this led to preparation, timetabling and resourcing of a case based on a broader and more complex dispute than that ultimately advanced. By way of illustration, the Court was required to allocate a materially longer hearing timetable of 13 days which was then reduced to nine days. The manner of defence unnecessarily expanded the scope, duration and costs of the proceeding which justifies an award of increased costs.

[14] Additionally, the defendant repeatedly failed to comply with Court-ordered timetables which necessitated further case management conferences, memoranda and unless orders. Other delays were incurred such as late discovery, late exchanges of briefs and delays arising out of the failed joinder applications.

[15] This Court is entitled to take notice of the way in which the trial is conducted. In saying this, I make clear that counsel at trial for the defendant is not in any way responsible for Mr Xiao's conduct at the hearing. Counsel was instructed late in the day and valiantly attempted to inject discipline and focus to the case to limited avail.

[16] One example suffices. The defendant replaced his signed brief of evidence which had been served prior to trial and then replaced it without notice to anyone to

make it consistent with another witness brief. His own counsel was unaware. There were material changes to the brief. Additionally, he continued to publish defamatory material during the proceeding and after conclusion of the hearing, which required further submissions.

[17] I consider that those matters individually and collectively all justify an uplift under r 14.6(3)(b) and (d). However, any uplift must also be balanced against the defendant's successful argument that the primary imputation complained about could not be defamatory under present New Zealand law. It assumed significant importance at trial and in counsel's closings and in the preparation of legal submissions. I also have not overlooked that the aggravation component of the award of damages already considers elements of the approach the defendant took to the proceedings.

[18] Taking all those matters into consideration, I make an award of 2B costs as claimed with a 25 per cent uplift. In addition, I make an order for payment of the disbursements claimed.

Costs on costs

[19] The plaintiff offered to settle costs on a category 2B basis with a modest uplift of 10 per cent, together with disbursements. The defendant rejected that offer but did not seek to correct any item in the costs schedule sent to him.

[20] I am satisfied that an award of scale 2B costs in respect of the costs submissions themselves becomes appropriate in those circumstances. In addition to the costs awarded at [18] I make an order for 'costs on costs' in the sum of $750.

Outcome

[21] I make an award of costs against the defendant in favour of the plaintiff in the sum of $146,268 plus a 25 per cent uplift making a total costs award of $182,835. In addition, I order the defendant to pay disbursements of $70,606.89 being satisfied that

the disbursements are reasonable, supported by invoices and warranted in all the circumstances of this case.

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Walker J