

**IN THE EMPLOYMENT COURT OF NEW ZEALAND  
AUCKLAND**

**I TE KŌTI TAKE MAHI O AOTEAROA  
TĀMAKI MAKĀURAU**

**[2025] NZEmpC 224  
EMPC 144/2024**

IN THE MATTER OF            an application for judicial review

AND IN THE MATTER OF    an application for leave to extend time to file  
   a challenge to an objection to disclosure

AND IN THE MATTER OF    an application for costs

BETWEEN                      ALADDIN AL-BUSTANJI  
   First Applicant

AND                              GLEN JENNER  
   Second Applicant

AND                              CORRECTIONS ASSOCIATION OF NEW  
   ZEALAND INCORPORATED  
   Respondent

Hearing:                      On the papers

Appearances:                M O’Flaherty and A Little, counsel for applicants  
   JM Roberts and K Kleingeld, counsel for respondent

Judgment:                    15 October 2025

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**COSTS JUDGMENT OF JUDGE KATHRYN BECK  
(Application for costs on interlocutory application)**

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[1] This judgment resolves the respondent’s application for costs following the Court’s interlocutory judgment issued on 18 July 2025,<sup>1</sup> which declined the applicants’ application for leave to extend time to challenge an objection to disclosure.

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<sup>1</sup> *Al-Bustanji v Corrections Assoc of New Zealand Inc (No 4)* [2025] NZEmpC 147.

[2] At the conclusion of my judgment, I stated that the respondent was entitled to costs and invited memoranda if the parties were unable to agree.

[3] The parties have now filed submissions.

[4] The Court has a broad discretion as to costs.<sup>2</sup> It uses a guideline scale to guide the exercise of that discretion.<sup>3</sup>

[5] The respondent seeks \$6,214 in costs and disbursements based on the Court's guideline scale on a category 2 band B basis:

<b>Item</b>	<b>Step</b>	<b>Time</b>	<b>Cost</b>
11	Preparation for first directions conference	0.4	\$956.00
12	Filing memorandum for first or subsequent directions conference	0.4	\$956.00
13	Appearance at first or subsequent directions conference	0.2	\$478.00
29	Filing opposition to interlocutory application	0.6	\$1,434.00
30	Preparation of written submissions	1.00	\$2,390.00
<b>Total</b>			<b>\$6,214.00</b>

[6] The respondent also seeks an uplift of 20 per cent, as well as \$850 in costs for the preparation of its memorandum on this application, bringing the total amount claimed to \$8,306.80.

[7] The applicants submit that costs should not be awarded now but should be reserved until the conclusion of the proceeding. Further, they say that there is no basis for an uplift.

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<sup>2</sup> Employment Relations Act 2000, sch 3 cl 19

<sup>3</sup> Employment Court of New Zealand "Practice Directions" (1 September 2024) <[www.employmentcourt.govt.nz](http://www.employmentcourt.govt.nz)> at No 18.

*Awarding cost now*

[8] The applicants submit that the respondent's present costs application is one of several made during the course of a protracted proceeding and that all costs should be determined at the conclusion of the substantive proceeding, which was scheduled to be heard on 30 September and 1 October 2025

[9] The general approach to costs in respect of interlocutory applications is that they are dealt with at the time the applications are determined rather than being held over until the outcome of the proceeding is known.<sup>4</sup> This reflects the fact that the merits of interlocutory applications and the merits of the substantive proceedings are different matters.<sup>5</sup>

[10] I agree with the respondent that it is appropriate that the present costs application be dealt with now. The proceeding to which the application relates has been adjourned pending the outcome of the decision of the Court of Appeal in respect of my judgment declining the respondent's application for a verification order.<sup>6</sup> The hearing scheduled for 30 September and 1 October 2025 was adjourned on that basis. Given that it is now uncertain as to when the substantive proceedings will be able to recommence, it is preferable to deal with the separate costs issue now. Further, the outcome of the substantive proceeding will not affect the respondent's entitlement to costs on this application.

[11] However, I do not agree with the amount of costs sought by the respondent in accordance with the guideline scale. It has sought costs in relation to two directions conferences which I consider are better dealt with as part of the overall costs. I consider that the only costs related to this particular application are:

29	Filing opposition to interlocutory application	0.6	\$1,434.00
30	Preparation of written submissions	1.00	\$2,390.00
<b>Total</b>			<b>\$3,824.00</b>

<sup>4</sup> High Court Rules 2016, r 14.8; *Chapman v Badon Ltd* [2010] NZCA 613 at [12]; and *Noble v Ballooning Canterbury.com Ltd* [2018] NZEmpC 142 at [17].

<sup>5</sup> *Chapman v Badon Ltd*, above n 4, at [12].

<sup>6</sup> *Al-Bustanji v Corrections Assoc of New Zealand Inc (No 3)* [2024] NZEmpC 225.

*Request for uplift*

[12] The respondent submits that it is fair and appropriate to apply a modest uplift on the basis that the interlocutory application was without merit. Further, the applicants filed a draft notice of challenge without explanation, which the respondents say incurred additional cost.

[13] The respondent relies on *Bradbury v Westpac Banking Corp* where the Court held that “increased costs may be ordered where there is a failure by the paying party to act reasonably.”<sup>7</sup> It submits that the application lacked merit and resulted in increased costs to the respondent.

[14] The applicants submit that an uplift is not required. They refer to *Bathurst Resources Ltd v L&M Coal Holdings Ltd* where the Court said:<sup>8</sup>

It is not enough that an appeal ... lacks merit. Increased costs will generally not be appropriate where there are “at least available starting points” for the argument — where its pursuit is not “unreasonable” nor “hopeless”. The costs regime should be predictable and litigants with “real arguments presented responsibly” to the courts should not fear an adverse increased costs award if their case fails. The standard costs regime recompenses in the case of normal failure.

[15] The applicants say that, in view of the oversight in filing a challenge to objection during the disclosure process, the application to extend time to file that challenge was appropriate and in the circumstances, no uplift should be awarded.

[16] The Court has power to order an uplift of scale costs where a party has conducted themselves in a manner tending to increase costs.<sup>9</sup> I agree that this is an appropriate case for an uplift. The applicants were seeking an indulgence but that would not justify an uplift. It was the changing nature of the application and the lack of clarity as to what was being challenged that resulted in further costs.

[17] I consider an uplift of 10 per cent is appropriate.

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<sup>7</sup> *Bradbury v Westpac Banking Corp* [2009] NZCA 234, [2009] 3 NZLR 400 at [27(b)].

<sup>8</sup> *Bathurst Resources Ltd v L&M Coal Holdings Ltd* [2021] NZCA 684 at [16]. (footnotes omitted)

<sup>9</sup> Employment Court Regulations 2000, reg 68.

### *Costs on costs*

[18] The respondent also seeks costs in relation to its application for costs and its memorandum in reply to the applicants' memorandum in response. It acknowledges that in the circumstances, such an award should be modest.

[19] In response, the applicants submit that if the Court finds that there are no grounds for an uplift in costs, or that it is less than the amount claimed by the respondent, then no award of costs on costs is justified.<sup>10</sup>

[20] I have reduced the scale costs award as set out above. However, I have also found that there should be a 10 per cent uplift. Having invited the parties to consider and resolve the issue of costs, it was not unreasonable for the respondent to pursue this application. An award of \$750 is appropriate.

### **Outcome**

[21] The respondent's claim for scale costs is successful, albeit on a reduced basis. I have also ordered an uplift and costs on costs.

[22] Therefore, I order the applicants to pay the respondent the sum of \$4,956.40 within 14 days of the date of this judgment being:

- (a) costs of \$3,824, uplifted by 10 per cent to \$4,206.40; and
- (b) costs of \$750 in relation to this application.<sup>11</sup>

Kathryn Beck  
Judge

Judgment signed at 8.30 am on 15 October 2025

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<sup>10</sup> See *Osborne v Speedway New Zealand Inc* [2025] NZHC 2074 at [14].

<sup>11</sup> *Al-Bustanji v Corrections Assoc of New Zealand Inc (No 4)*, above n 1, at [51].