

**IN THE HIGH COURT OF NEW ZEALAND
DUNEDIN REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
ŌTEPOTI ROHE**

CIV-2020-412-000115

Under	Judicial Review Procedure Act 2016
In the Matter	of an application for judicial review
Between	KELLY ALEXANDRA ROE Applicant
And	THE UNIVERSITY OF OTAGO Respondent

MEMORANDUM OF COSTS

Next Event	Costs Determination on Papers
Judicial Officer	Justice Gendall

**GALLAWAY COOK ALLAN
LAWYERS
DUNEDIN**

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MEMORANDUM OF COSTS

May it please the Court:

1. Counsel for the Respondent advises that he has sought to reach agreement with the Applicant in relation to costs, but agreement has not been achieved.
2. Accordingly, the Respondent seeks costs and disbursements. It submitted that the appropriate award is \$27,776.00 being costs and disbursements on a 2B basis calculated in accordance with the Schedule to these submissions.
3. Counsel records that his memorandum for the first case management submitted that 2B was the appropriate costs categorisation. Although the Court did not confirm that in its Minute following the conference, that submission was not challenged by the Applicant at the time and no contrary indication has been given by the Court at any point.
4. In support of 2B categorisation, it is submitted that the proceedings are to be considered of average complexity, justifying category 2, and that band B is the reasonable time band for each of the steps identified in the Schedule. Although the issues which ultimately needed to be determined by the Court were fairly confined, the Applicant's pleadings created considerable difficulty for the Respondent in addressing the case and counsel confirms that each of the steps claimed in the Schedule involved at least the time that would be regarded as normal. Counsel records:
 - (a) the commencement of Respondent's defence required significant factual and legal research. The Respondent was also required to plead to an Amended Statement of Claim that significantly repleaded the claim. However, the Schedule does not include a claim for costs in relation to the Amended Statement of Defence as Counsel accepts the time allocation under Item 2 as sufficient;
 - (b) the four Case Management conferences held were each important for clarifying and defining the issues for hearing and each necessarily involved counsel for the Respondent in preparing a detailed memorandum for the Court. Had extensive effort not been devoted to these conferences the evidence and hearing would have had to address the far wider range of issues that had been raised or alluded to by the Applicant in her pleadings - including allegations of discrimination, and claims for damages and the removal of University personnel from office. Ultimately, confirmation of the abandonment of the last issue was only achieved after a Strike Out application was filed.

- (c) Although only one affidavit was filed, its content necessarily traversed the extensive history of the Applicant's engagement with the University over 11 years.
 - (d) The Respondent, unusually, took responsibility for the bundles to ensure that the papers before the Court assisted its consideration of the matter.
5. In the course of seeking to agree costs with the Applicant, the attached Schedule was provided to her. Her response, in part, was as follows:
- I have looked through your filings and it appears, to me, to be an accurate record of the respondents schedule 2B costs and disbursements.*
- I do not intend to pay the University's costs or disbursements. I intend to appeal the matter until I obtain justice in this matter.*
6. From these comments it appears that the Applicant does not challenge the correctness of the calculated 2B costs in the Schedule.
7. The Applicant has now lodged an appeal, but it is submitted that it remains appropriate for costs in the High Court to be fixed.
8. The principles governing the award costs are well established:¹ It is submitted that key considerations here are:
- (a) the discretion on costs is not unfettered but is qualified by rules rr 14.2– 14.10 which should be applied unless the situation is not contemplated by those rules, or fairly recognised by them;
 - (b) there is accordingly a strong implication that the Court is to apply the regime in the absence of some reason to the contrary;
 - (c) any departure must be a considered and particularised exercise of the discretion;
9. The general principles to be applied to a determination of costs are:²
- (a) the party who fails should pay costs to the party who succeeds;
 - (b) an award of costs should reflect the complexity and significance of the proceeding;

¹ High Court Rules 2016, r 14.1; *Manukau Golf Club Inc v Shoye Venture Ltd* [2012] NZSC 109, [2013] 1 NZLR 305, (2012) 21 PRNZ 186 at [7] and [16]; *Glaister v Amalgamated Dairies Ltd* [2004] 2 NZLR 606, (2004) 16 PRNZ 1047 (CA) at [21]–[24] and [28]; *Mansfield Drycleaners Ltd v Quinny's Drycleaning (Dentice Drycleaning Upper Hutt) Ltd* (2002) 16 PRNZ 662 (CA) at [27].

² High Court Rules 2016, r 14.2.

- (c) costs should be assessed by applying the appropriate daily recovery rate to the time considered reasonable for each step reasonably required;
 - (d) an appropriate daily recovery rate should normally be two-thirds of the daily rate considered reasonable;
 - (e) what is an appropriate daily recovery rate should not depend on the skill or experience of counsel or on the time actually spent or on the costs actually incurred;
 - (f) an award of costs should not exceed the costs incurred by the party claiming costs;
 - (g) so far as possible the determination of costs should be predictable and expeditious.
10. It is submitted that these considerations confirm the appropriateness of the Award of 2B costs as set out in the Schedule. Counsel confirms that such an Award would be in general accord with the expectation that awards will equate to two thirds of solicitor and client costs.

Date: 30 November 2021



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RJM Sim
Counsel for the Respondent

SCHEDULE**Costs** (Category 2B: \$2,390 daily)

Item	Description	Allocated Days	Amount
2	Commencement of defence by defendant	2	\$4,780.00
10	Preparation for first case management conference	0.4	\$956.00
11	Filing memorandum for first case management conference	0.4	\$956.00
13	Appearance at first case management conference	0.3	\$717.00
23	Filing opposition to interlocutory application	0.6	\$1,434
11	Filing memorandum for second case management conference	0.4	\$956.00
13	Appearance at second case management conference	0.3	\$717.00
11	Filing memorandum for third case management conference	0.4	\$956.00
13	Appearance at third case management conference	0.3	\$717.00
11	Filing memorandum for fourth case management conference	0.4	\$956.00
13	Appearance at fourth case management conference	0.3	\$717.00
22	Filing interlocutory application – strike out	0.6	\$1,434
30	Preparation of affidavits, list of issues or authorities; and agreeing common bundle	2	\$4,780.00
31	Additional allowance for whichever party prepared bundle	0.5	\$1,195.00

32	Preparation for hearing	2	\$4,780.00
34	Appearance at hearing for sole counsel	0.5	\$1,195.00
Total Costs		11.4	\$27,246.00

Disbursements

Description	Amount
Ministry of Justice Filing Fee – Statement of Defence	\$110.00
Ministry of Justice Filing Fee – Notice of Opposition	\$110.00
Ministry of Justice Filing Fee – amended Statement of Defence	\$110.00
Ministry of Justice Filing Fee – Strike Out	\$200.00
Total Disbursements	\$530.00

Costs + Disbursements

Total	\$27,776.00
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