

[THE FLIP SIDE](#)

Dogged anti-bullying campaigner again tries his luck in court

OPINION: Legal establishment dislikes his tactics. But advocate Allan Halse provides hope for those without resources in fight against workplace harassment.

04:35

NBR senior journalist Dita De Boni speaks with Maria Slade.

[Dita De Boni](#)

Wed, 22 Feb 2023



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Not all employers are bullies and not all employment advocates are exemplary human beings. But it's almost as though employment advocates willing to become bankrupt are the last line of defence against powerful employers drawing on seemingly endless pots of public money to drive whistleblowing former employees to the wall.

The case of advocate Allan Halse, and his client Ana Shaw – formerly an employee of the Bay of Plenty District Health board – is one such case. The bones of the case are well known by now from media reporting and involve personal grievances bought by Shaw, a cardiac physiologist formerly employed at Tauranga Hospital, against the BoP DHB (now Health NZ / Te Whatu Ora). She'd been dismissed because, in the course of reporting fraud and bullying towards her, she'd collected up a file of documents including some patient notes she believed had been tampered with, and was duly dismissed in 2015 for breaching patient privacy.

In 2017, she made a claim of unjustified disadvantage to the Employment Relations Authority, which was rejected. In 2022, the Employment Court agreed with the ERA's finding. In the meantime, Shaw and Halse were slapped with a SLAPP (Strategic Litigation Against Public Participation) – a counter lawsuit intended to censor, intimidate, and silence critics. The SLAPP means Halse and Shaw owe \$48,960 in costs and penalties to the BoP DHB.

According to Leighton & Associates, an organisation that researches and reports employment law proceedings, the costs now being fought by Halse and Shaw are estimated to be less than a sixth of what the BoP DHB (Te Whatu Ora) have spent on contempt proceedings against them since late 2018. Now approaching \$700,000, according to official documents obtained as part of an OIA, the health authority's claims to be trying to recover public funds becomes a nonsense in light of this expenditure.

Leighton & Associates believe the SLAPP in this case to be “bogus”.



Auckland asking for a decision on costs to be put on ice until he's able to progress an appeal he has finally pushed up to the Supreme Court.

The decision of that is as yet unknown but, if unsuccessful, Halse and Shaw intend to go even further and inter-nation, by seeking an examination of the ongoing case under the United Nations Convention Against Corruption (UNCAC).

Ana Shaw

Going back to the beginning, and – as one would expect – the court documents that describe the BoP DHB's defense of its firing of Shaw show her in a far from flattering light. As a journalist, it is hard to judge the professional competency of a medical professional but, as Shaw observed, she had never had a blemish in a 32-year career in her homeland of South Africa before being headhunted to come to New Zealand.

As reported in an investigation by Mava Enoka of RNZ into Shaw's case

back in 2018, the work environment at BoP DHB almost immediately went downhill for Shaw when she arrived in 2010 – she was called a an 'African wildebeest' and told to go back to South Africa; unpleasant notes and sentiments about her were posted on the staff notice board; she was berated by some managers and frozen out by others; and one staff member repeatedly tampered with her patient notes.



Allan Halse.



Tauranga Hospital.

Sitting down with me some nine years after she was sacked after four years of this treatment, Shaw is still quick to shed tears over it, and reflects openly on the toll it has taken on her life. Her problem was to have reported the treatment to her managers, who refused to get involved; the union rarely takes such a case, WorkSafe have never taken such a case, and she didn't have the money for a corporate lawyer. So, who to take on, except an advocate? Even after leaving, and pursuing the personal grievances through her advocate, as was her right, a manager she claims was stalking and harassing her only stopped after photos of his actions were provided to the ERA.



nurse had been fired for “undermining authority” after she had raised concerns about feeling harassed, and won \$2500 in a pay-out. Enoka uncovered at least two other settlements along similar lines that had seen the BoP DHB pay out a total of more than \$80,000.

Allan Halse

Whether or not one believes Ana Shaw was the victim of harassment and bullying in the workplace, she is now unequivocally the victim of a vendetta being pursued through the courts designed to financially ruin her and ensure she cannot work in the medical profession again.



Ana Shaw.

But the proceedings are also intended to slap down her advocate, long-time anti-bullying crusader Allan Halse. The February 10 case just heard has seen Halse argue that findings along the way are wrong in law, from the very beginning, when the ERA issued an order preventing Halse, as Shaw’s advocate, getting in touch with her employer at the BoP DHB (which is something he is entitled to do as an advocate). He now wants the courts to hold off retrieving costs from him until his Court of Appeal’s application for judicial review is lodged, something the judge is considering (the same judge that Halse claims had erred in law).

Halse has been at the centre of a number of SLAPPs intended to shut him down and indeed, on February 10, he was defending two of them – the aforementioned, issued by lawyers for Te Whatu Ora, and another bought by a company called Progress To Health. Halse is defending a personal grievance for a former employee of the company, while Progress to Health has lodged a counterclaim for Halse allegedly aiding and abetting a breach of the former employee’s employment agreement.

Halse has certainly flirted with trouble over the years, in being outspoken about employers he believes have bullied their workers, particularly when they have been exonerated by the Employment Relations Authority and courts. His name is used by employment lawyers when they complain about the license advocates take upon themselves to act, and he’s been the subject of penalties before – he was ordered by the ERA to pay \$18,000 for making disparaging remarks about an employer in 2022, for example.

His attempts to get a judicial review conducted in the case of Shaw have been called “vexatious” (by the same courts whose conduct he is questioning); the last was called “an unreasonable and tendentious conduct of litigation and a pattern of behaviour characterised by a refusal to accept adverse decisions”.

On the flip side, it is also true that certain employment law firms have appeared to be very pleased to have tried bankrupting Halse, including Norris Ward McKinnon, which posted on LinkedIn last year its litigation team “achieved a major victory with the liquidation of CultureSafe NZ Ltd by the Hamilton High Court”. They were the team that bought a SLAPP against Halse on behalf of a Putaruru rest home where some 13 workers had complained about being bullied and harassed.



Bullying

Allan Halse is an extremely dogged, some might say zealous campaigner on behalf of the people who turn to him, people who often have little money to pay him with and are at the end of their tethers. Sometimes they are almost literally at the end of a rope, with many reporting suicidal thoughts and ideation as a result of treatment they've received in the workplace.

Halse's belief that the judicial system dealing with employment issues is corrupted by a cosy relationship between certain corporate lawyers and some judges (who he is not shy of naming) might possibly be overblown, and some of his arguments a stretch as he seeks to find any small loophole through which to command some level of satisfaction for his clients.

But what is certainly true is that large organisations, including those paid for by the public purse, have used the system over many years to silence people that have been subjected to harassment and bullying, either through non-disclosure agreements agreed in mediation, fighting them through the ERA and Employment Court (which can sometimes fly under the radar of media), and then, when all else fails, slapping claimants and advocates with counter legal claims designed to silence and intimidate them.

It is one thing to have the money to employ an employment lawyer to pursue some of these injustices, but another when you have nothing at all to defend your professional reputation with. You turn to advocates for this task, and dogged is certainly one of the main attributes you'd be looking for.

More broadly, as this issue relates to Shaw: when you are the type of skilled migrant New Zealand is supposedly crying out for and goes to the bother of headhunting to this country, and you expose what you think is an unpalatable truth and are subsequently reduced to both working a low-paid retail job while defending yourself against long-term malicious legal action, you serve as a kind of warning to other skilled migrants seeking to enter our workforce.

However, perhaps not the kind of example New Zealand would like.

Dita De Boni is a senior journalist with NBR.

Dita De Boni
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At 11:30 am today our litigation team achieved a major victory with the liquidation of CultureSafe NZ Limited by the Hamilton High Court.

Today's decision follows a difficult series of cases in the Employment Relations Authority, Employment Court, Court of Appeal and Supreme Court. During this time our brave client and our legal team have been subjected to unrelenting personal attacks and threats, so it's great to achieve a measure of justice for our client.

Congratulations to **Jesse Savage** for leading the insolvency proceedings, to **Sophie Newman** for her invaluable support and to the many people who have offered us and our client support and encouragement along the way.





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