



## Episode 66

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# Post Judgment Missteps

So you have successfully defended your client in civil proceedings. The Court even made a costs order in your client's favour. The client is delighted. What could possibly go wrong?

Fast forward eighteen months and the party-party costs have still not been recovered from the plaintiff. What's worse is the plaintiff has divested themselves of assets and now appears to be insolvent. The client is no longer delighted and is blaming you for the fact that they are still out of pocket.

There are a few factors that can lead to delay in recovery of party-party costs:

- Some time is likely to be taken in attempting to reach agreement on the amount of the costs before incurring further costs of preparing the application for assessment
- There can be difficulty in serving an application for assessment on the party liable to pay the costs, particularly if the solicitor on the record in the substantive proceedings does not have instructions to accept service
- Making submissions and addressing objections may also take some time

There are a few practical tips for managing the client relationship through this process:

1. Keep the client informed of what stage the process is at and the reason for any delays
2. Be upfront with the client about the cost of preparing the application for assessment, the filing fee and the costs assessor's fees, which will need to be paid before a certificate of determination will be issued
3. Manage expectations around timeframes, noting that enforcement action will not ordinarily be possible before the certificate of determination has been filed with the court
4. Confirm in writing the advice you give and the instructions you receive in relation to the costs recovery process

I'm Malcolm Heath

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