

[3] On 21 May last year, Mallon J delivered a judgment in litigation between Dr Moodie and Elizabeth Strachan.¹ Ms Strachan has appealed against part of that judgment under CA380/2010. The Registrar fixed security on that appeal in the sum of \$2,370. The Registrar adopted that figure by reducing what she understood to be “the daily recovery rate for category 3 proceedings”, namely \$4,740, by half. She apparently did that on the basis that counsel told her the appeal could be heard in half a day.

[4] Although that decision is not before me, I need to record, because of its relevance to what is before me, that the Registrar made two errors in fixing that security. First, by the time that appeal was filed, “the daily recovery rate for category 3 proceedings” had increased to \$2,780 a day, making standard security under r 35(5) of the Court of Appeal (Civil) Rules 2005 \$5,560, not \$4,470.² Secondly, there was no justification for reducing security on the basis that the appeal might be heard in half a day rather than a day. Generally speaking, costs awarded on a half day hearing are identical to costs awarded on a full day hearing.³ It follows that security for those costs should be the same.

[5] Another aspect of the same litigation between Dr Moodie and Ms Strachan resulted in a judgment delivered by Wild J on 26 August last year.⁴ From this judgment, Dr Moodie has appealed under CA115/2011. Under the Civil Rules, security in the sum of \$11,120 was payable. The sum doubles from the standard \$5,560 because, on Dr Moodie’s appeal, there are two active respondents. Each is entitled to security in this Court.⁵ Dr Moodie applied for a reduction in security. The Registrar did reduce security to \$5,560, by decision dated 13 April 2011. Dr Moodie has now applied for a review of that decision under r 7(2) of the Civil Rules.

[6] Mr Upton QC, for Ms Strachan, the first respondent, accepted that Dr Moodie should have to provide security only in the sum of \$2,370 for Ms Strachan. That

¹ *Moodie v Strachan* HC Wellington CIV-2007-485-2212, 21 May 2010.

² See High Court Amendment Rules 2010, rr 2 and 4 and sch 1.

³ Court of Appeal (Civil) Rules 2005 [“Civil Rules”], sch 2, item 13.

⁴ *Moodie v Strachan* HC Wellington CIV-2007-485-2212, 26 August 2010.

⁵ Civil Rules, r 35(4).

after all is the reduced sum Ms Strachan had to pay by way of security in her appeal. Clearly that is appropriate. It may well be that Ms Strachan had to pay too little, as I have indicated, but it would be quite unfair now if Dr Moodie were required to pay the correct amount for Ms Strachan's benefit.

[7] Dr Moodie submits that this is all he should have to pay. But that leaves APN Specialist Publications NZ Limited, the second respondent,⁶ which intends to take an active part on this appeal (though not on Ms Strachan's), without any security. Mr Ringwood, for APN, submitted his client should have the benefit of normal security (\$5,560). So it should. The Registrar should never have reduced security to \$5,560, as that leaves only \$3,190 available for APN as opposed to its entitlement of \$5,560.

[8] I have considered whether I should increase the security payable to \$7,930 (\$2,370 for Ms Strachan and \$5,560 for APN). I have decided not to do that as APN has not itself sought to review the Registrar's decision *upwards*. Clearly, however, there is no scope for a review *downwards*, as Dr Moodie has suggested. Rather, he should consider himself lucky that the Registrar's error has led to him paying less security than was appropriate.

Solicitors:
Moodie & Co, Feilding for Appellant
Rainey Collins, Wellington for First Respondent
Bell Gully, Auckland for Second Respondent

⁶ APN is wrongly called "the Cross-Respondent" on Dr Moodie's appeal. It is not. It is the second respondent on this appeal and should be so called henceforth.