

**IN THE COURT OF APPEAL OF NEW ZEALAND**

**I TE KŌTI PĪRA O AOTEAROA**

**CA436/2018  
[2019] NZCA 273**

BETWEEN

MEDIAWORKS TV LIMITED  
First Appellant

KATE MCCALLUM  
Second Appellant

TRISTRAM CLAYTON  
Third Appellant

AND

BRYAN DOUGLAS STAPLES  
First Respondent

CLAIMS RESOLUTION SERVICE  
LIMITED  
Second Respondent

Court: Miller, Asher and Clifford JJ

Counsel: J W J Graham, T F Cleary and L C Bercovitch for Appellants  
P A Morten for Respondents

Judgment: 1 July 2019 at 11 am  
(On the papers)

---

**COSTS JUDGMENT**

---

**A We make an order certifying for second counsel for costs purposes, and directing that costs for the appellants should be calculated on the basis of three one-quarter hearing days.**

**B We make no order as to costs in relation to this application.**

---

## REASONS OF THE COURT

(Given by Asher J)

### Introduction

[1] Judgment was delivered by us sitting as three High Court Judges on 3 May 2019.<sup>1</sup> Our decision followed the filing and hearing of the challenge to the High Court judgment of Associate Judge Matthews as an appeal.<sup>2</sup> In the course of our deliberations we decided that the challenge to the High Court decision should have proceeded as a review by the High Court. We therefore delivered our decision as High Court Judges, for reasons that are set out in full in the decision.<sup>3</sup>

[2] At the conclusion of our decision we determined that the appellants, being successful, were entitled to costs. In relation to the costs of the hearing we determined:

[104] The respondents are jointly and severally to pay one set of costs to the appellants costs on a 2B basis under the High Court Rules 2016 and usual disbursements.

[3] The parties have been unable to agree on the precise consequences of this ruling. We have decided that it is appropriate for us sitting as three Judges, rather than for the High Court Registrar, to determine the issue, given the unusual history of the case.

[4] We turn therefore to the specific matters on which the parties have been unable to agree. We record that the memoranda filed by counsel in relation to costs disclose agreement on all points save the two which we now determine.

### Second counsel

[5] The respondents pointed to the fact that category 2 proceedings are deemed to be of average complexity.<sup>4</sup> They submitted that the proceedings did not warrant a certification of second counsel for costs purposes.

---

<sup>1</sup> *Mediaworks TV Ltd v Staples* [2019] NZCA 133.

<sup>2</sup> *Staples v Freeman* [2018] NZHC 1604.

<sup>3</sup> *Mediaworks TV Ltd v Staples*, at above n 1, at [3] and [77]–[95].

<sup>4</sup> High Court Rules, r 14.3(1).

[6] The hearing involved the detailed analysis of a number of High Court decisions. The reality was that there were two counsel on each side before us. All those four counsel were fully engaged in the submission process. We consider that certification for second counsel is warranted.

### **Time for the hearing**

[7] The successful appellants sought costs for a full day. In response the respondents noted that while a full day allocation might have been warranted in the Court of Appeal where costs are determined on a half day basis, in the High Court time allowed for appearance at the hearing is broken down into quarter days. Given that the hearing concluded at 3.10pm, it was submitted that the hearing lasted .75 days and the appellants' schedule of proposed costs must be reduced from a full day to that lesser period of time.

[8] Schedule 3 of the High Court Rules sets out the time allocations. The measurement of appearance time at a hearing is stated to be in quarter days.<sup>5</sup> We have specified that the High Court Rules apply and therefore time must be measured in those quarter days. The Court of Appeal (Civil) Rules 2005 and the practice of the Court of Appeal are irrelevant.

[9] It follows that the calculation must proceed on the High Court basis and we accept the respondents' submission that a three-quarter day should be allocated for the hearing before us.

### **Result**

[10] We decide those two issues by certifying for second counsel for the appellants and directing that the calculation of costs should be on the basis of three one-quarter hearing days or, put alternatively, .75 of a day. Costs are otherwise as ordered in [104] of the primary decision and as agreed in the exchange of memoranda between counsel.

---

<sup>5</sup> See High Court Rules, sch 3, items 42 and 57.

[11] The parties have both enjoyed a measure of success on this application, and we make no order as to costs.

Solicitors:

Chapman Tripp, Auckland for Appellants

Canterbury Legal Services Ltd, Christchurch for Respondents