

considered she had no discretion to accept or consider a late application. On that basis alone she dismissed Mr Orlov's application.

[4] In his application seeking a review of the Registrar's decision, Mr Orlov's counsel, Mr Deliu, relied on r 5 in submitting the Registrar's decision that she had no discretion to consider a late application "was a patent error of law". He invited review of the Registrar's decision on the merits of Mr Orlov's application to dispense with security.

[5] Mr Deliu is not correct in relying on r 5. All the powers in that rule, including the power in r 5(2) to extend any time fixed by the Rules, lie with "the Court". The Court is defined in r 3(1) as meaning "the Court of Appeal of New Zealand". The Court of Appeal of New Zealand does not include the Registrar of the Court. "Registrar" is separately defined in r 3(1) as meaning "the Registrar of the Court".

[6] In three judgments the Supreme Court has confirmed that the proper way of dealing with security for the costs of an appeal is:¹

- security is fixed automatically pursuant to the formula set out in r 35(5);
- any application to alter the amount so fixed, or to dispense with or defer security, must be made to the Registrar: r 35(6);
- application for a review of the Registrar's decision by a Judge can be made under s 61A(3) Judicature Act 1908 and r 7(2); and
- application to depart from the result of the r 35(5) formula for fixing security may not be made direct to a Judge under s 61A(1) at least where the Registrar has made a decision under r 35(6).

[7] There are at least three reasons why the Rules do not give the Registrar a discretion to extend the r 35(7) period. First, the period is a generous one – four

¹ *Siemer v Stiassny* [2013] NZSC 110 at [10]; *Siemer v Stiassny* [2013] NZSC 115 at [8]-[9] and *Siemer v Official Assignee* [2014] NZSC 42 at [5].

working weeks. Second, application to the Registrar can be made on an informal basis: r 35(7)(b). It can, for example, be made in an email or letter to the Registrar. So there is not the need to draft and file a formal application. Thirdly, the whole aim of r 35 is to deal with security promptly once an appeal is filed. Strict enforcement of the r 35(7)(a) time limit is commensurate with that aim.

[8] I therefore consider the Registrar was correct not to entertain the application, and to decline to consider it on its merits.

[9] Even if that were an incorrect view, a consideration of the merits would not alter the outcome. There are two points. First, I accept Mr Orlov's submission that his appeal is one of some importance and general interest. In the judgment under appeal, Fogarty J accepted that because he observed:²

[16] The High Court will benefit from the assistance of counsel for Mr Orlov. The case has an importance beyond the appellant, Mr Orlov, including at the very least Mr Deliu.

[10] The second point is one made by Mr Pyke in the memorandum he filed for the respondent on 2 May, opposing Mr Orlov's r 35(6) application. Mr Pyke stated:

3. The application for waiver of payment for security for costs is opposed. It is unsupported by any financial information.

[11] I accept that Mr Orlov has been struck off. I am prepared to accept Mr Orlov's assertion in his application to the Registrar that he has two dependents and has not been able to gain other employment. None of that obviates the need for Mr Orlov to support his application to the Registrar with adequate particulars of his financial situation. Impecuniosity, though not in itself a ground for dispensing with or reducing security, is a relevant factor. Mr Orlov sought to rely on that factor, but simply did not provide the Registrar with sufficient particulars to establish it.

[12] If Mr Orlov were able to give security, I do not consider security should be dispensed with because the appeal is of some general interest.

² *Orlov v National Standards Committee No 1* [2014] NZHC 257.

[13] For those reasons, having reviewed the Registrar's decision, I uphold it and confirm that Mr Orlov is to give security for costs in the sum of \$5,880.

[14] Given r 37, and the fact that Mr Orlov's appeal is to be heard on 27 May, I direct that Mr Orlov is to provide the security by *5 pm on Monday 19 May 2014* latest.