

## CASE SUMMARY

# Taxpayer ordered by Court of Appeal to pay increased security for costs

Decision date: 8 May 2020

CSUM 20/05

## Case

**Dowden v Commissioner of Inland Revenue [2020] NZCA 152**

## Legislative References

Court of Appeal (Civil) Rules 2005, rr 5A and 35

## Legal terms

Review; Registrar decision; Security for costs; Dispensing with Security for Costs; Increased security for costs.

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## Facts

In the underlying substantive matter, the appellant, Mr John Alfred Dowden (“Mr Dowden”), appealed the High Court decision that he is liable for unpaid PAYE, GST and income tax for the period from April 2003 to November 2011 in respect of two businesses conducted by him.

Mr Dowden applied for an order dispensing with security for costs for the appeal (which the Court of Appeal (Civil) Rules set at \$7,060). The Commissioner of Inland Revenue (“the Commissioner”) cross-applied for an order increasing security for costs by \$2,500 to \$9,560.

The Deputy Registrar declined Mr Dowden’s application and granted the Commissioner’s application. Mr Dowden then applied for review of the Deputy Registrar’s decision, which the Court of Appeal upheld.

## Impact

The appellant must pay the security for costs by 29 May 2020 to proceed with his appeal.

## Issues

Was the Registrar correct in deciding to:

- Decline to dispense with security for costs; and
- Order increased security for costs.

## Decision

The Court upheld the Deputy Registrar’s decision to decline Mr Dowden’s application to dispense with security for costs. See paragraphs [8] – [12] of this judgment.

Mr Dowden provided information to the Court regarding his financial circumstances. The Deputy Registrar and the Court both agreed that this information (especially with regard to Mr Dowden’s liabilities other than the disputed debt to the Commissioner) were not sufficient to demonstrate that he was impecunious and could not afford to pay security for costs.

The Court also noted:

- Mr Dowden had not applied for legal aid and considered it appeared he would not qualify for it even if his appeal had merit; and
- It did not consider that Mr Dowden had much prospect in succeeding in his appeal.

Accordingly, the Court held it would not be right to require the Commissioner to defend the judgment under appeal without the usual protection of security for costs.

The Court upheld the Deputy Registrar's decision to increase security for costs. See paragraphs [13] – [14] of this judgment.

The Commissioner provided evidence of Mr Dowden failing to pay the Commissioner agreed or unchallenged debts including costs of prior proceedings. The Court accepted that these instances of past procedural misconduct meant there was clearly a high risk that Mr Dowden would not meet any costs award made against him if his appeal fails. The Court reiterated that in its view the appeal is without merit.

Accordingly, setting an increased amount for security for costs was justified.

## About this document

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