Inland Revenue
Te Tari Taake

CASE SUMMARY

High Court dismisses judicial review of decisions to decline proposals for relief under s 177 of the TAA

Decision date: 30 May 2025

CSUM 25/10

CASE

***Anthony v CIR* [2025] NZHC 1382**

LEGISLATIVE REFERENCES

Companies Act 1993, s 4

Judicial Review Procedure Act 2016

Tax Administration Act 1994, ss 6, 6A, 157, 176, 177, 177A, 177B

CASE LAW REFERENCES

Kea v Commissioner of Inland Revenue (2011) 25 NZTC 25,740 (HC)

Russell v Commissioner of Inland Revenue [2015] NZCA 351

Raynel v Commissioner of Inland Revenue (2004) 21 NZTC 18,583 (HC)

Berryman v Solicitor-General [2008] 2 NZLR 772 (HC)

Rochdale Precinct Society Inc v Christchurch City Council [2018] NZHC 467

Watergates NZ Ltd v Commissioner of Inland Revenue [2024] NZHC 1128

FORUM

Auckland High Court

Summary

This was a judicial review case. The applicants challenge decisions of the Commissioner to decline proposals for relief under s 177 of the Tax Administration Act 1994 (the **TAA**). At issue is the interpretation of provisions of the TAA and the Commissioner's obligation to collect the highest net revenue that is practicable within the law.

Roshan Anthony (**Mr Anthony**) was the first applicant and Summit Scaffold NZ Limited (**Summit Scaffold**) was the second.

Mr Anthony is the sole director of Summit Scaffold. He challenged the Commissioner's decision not to have the default judgment against him set aside. The Court found that there is no specific legislative provision for making a proposal for the Commissioner to consent to an application for setting aside a judgment.

Summit Scaffold challenged the Commissioner's decision not to accept its request for an instalment arrangement. The Court held that the Commissioner has a broad discretion in deciding whether to accept a proposal for relief and must balance considerations of maximising recovery from individual taxpayers with broader public interest considerations including, importantly, the integrity of the tax system. The Commissioner may justifiably reject a proposal in the face of a taxpayer's poor compliance history, even if the proposal might appear to maximise recovery of outstanding tax from the individual taxpayer in the short term.

Impact

The decision affirmed the Commissioner's broad statutory discretion when considering applications for tax relief. It also recognised the test for solvency as set out in section 4 of the Companies Act.

Facts

In March 2024, the Commissioner filed debt proceedings against Mr Anthony in the District Court seeking judgment of $180,886.52 for unpaid income tax for the 2019, 2020, 2022 and 2023 tax years. In July 2024, a certificate of judgment debt in the amount of $181,248.69 for Mr Anthony's debt was sealed by the District Court against him.

In May 2024, the Commissioner initiated liquidation proceedings against Summit Scaffold for $399,220.27 of unpaid tax. This included GST, PAYE and income tax.

Between June 2024 and October 2024, Mr Anthony and Summit Scaffold made five proposals to the Commissioner for instalment arrangements for the outstanding tax. These were all declined.

The fifth proposal was a request for financial relief under the TAA by letter from their lawyer dated 22 October 2024:

(a) Mr Anthony's request was predicated on a claim for serious hardship under s 177(1)(a) of the TAA and offered to pay Mr Anthony's outstanding personal tax of $54,387.86 in full, within two months. Mr Anthony also made an ancillary request for the Commissioner to consent to an application to set aside the default judgment entered against him;

(b) Summit Scaffold's request was to pay the total tax arrears owing by it, namely $533,329.32, by entering into an instalment arrangement with the Commissioner under s 177(1)(b) of the TAA. The proposal involved Summit Scaffold making a lump sum payment of $100,000.

In relation to Mr Anthony, the Commissioner did not accept that his circumstances met the test for serious hardship under s 177(1)(a), but accepted his proposal to pay his outstanding personal tax within two months. That proposal was considered to maximise recovery of outstanding tax. However, the Commissioner did not agree to consent to an application to set aside the default judgment. It is this aspect of the decision which Mr Anthony challenged.

In relation to Summit Scaffold, the Commissioner declined to accept the instalment arrangement proposal, primarily (but not solely) because accepting the proposal was not considered to be consistent with the duty to protect the integrity of the tax system. The Commissioner's decision was explained in a six-page letter to Summit Scaffold dated 24 October 2024.

The applicants commenced judicial review proceedings alleging failure to take relevant considerations into account, taking irrelevant considerations into account, breach of legitimate expectation, unreasonableness and procedural unfairness.

They argued that the Commissioner failed to adequately consider the level to which the proposal would be revenue maximising for the IRD, the applicants' compliance efforts, and their counter-offer of security, and improperly relied on past compliance failures without acknowledging the applicants' more recent efforts and arrangements to meet the tax obligations.

The Commissioner submitted that the applicants cannot point to a reviewable error in the decision-making process. Furthermore, the Commissioner has appropriately exercised judgement within the boundaries of the statutory framework.

Issues

At issue is the interpretation of provisions of the TAA related to financial relief (ss 176, 177, 177A and177B) and the Commissioner's obligation to collect the highest net revenue that is practicable within the law (ss 6 and 6A).

Decision

Andrew J recognised that the Commissioner has a discretion to grant financial relief to taxpayers who are unable to pay their tax in full immediately. In considering any request for relief, the Commissioner's broad managerial responsibilities under ss 6 and 6A are also engaged. His Honor held:

> [36] Under s 176 of the TAA, the Commissioner "must maximise the recovery of outstanding tax from a taxpayer" but not to the extent that "recovery is an inefficient use of the Commissioner's resources." The section (appearing in Part 11 of the TAA) is targeted at recovery of arrears from individual taxpayers as relevant to any remission, relief and refunds to be granted. A consequence of s 176 is that, save in the limited circumstances specified in s 176(2), relief must not be granted other than where it is considered to maximise recovery of outstanding tax from any individual taxpayer.
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> [37] The duty in s 6A of the TAA (to collect over time the highest net revenue practicable within the law) is more general in its focus. Unlike s 176, it is not targeted at recovery of "outstanding tax" from individual taxpayers. The Commissioner's managerial responsibility in s 6A requires the Commissioner to have regard to broader matters including promoting compliance (especially voluntary compliance) amongst the body of New Zealand taxpayers more generally. The duty in s 6(1) to protect the integrity of the tax system (including taxpayers' perception of the integrity) is interrelated – a tax system that is perceived to be unfair, arbitrary or without consequence for non-compliance will not engender taxpayer compliance, voluntarily or otherwise.
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> [38] Section 176 of the TAA does not place a greater obligation on the Commissioner than the duty imposed by s 6A to collect over time the highest net revenue practicable within the law (a duty that expressly applies "despite anything in the Inland Revenue Acts") nor does it relieve Inland Revenue officers of their duty under s 6 to use their best endeavours to protect the integrity of the tax system as defined. The obligation to protect the integrity of the tax system is to be read alongside the duties expressed in both ss 6A and 176A.
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> [39] This means that s 176 sets a bar below which the Commissioner cannot lawfully use his discretion to grant financial relief, but it does not impose a positive duty on the

> Commissioner to accept each and every relief proposal solely on the basis that the proposal would maximise recovery of outstanding tax from a particular taxpayer when compared to the alternatives, such as liquidation or bankruptcy. In considering a request for financial relief, the Commissioner and his delegates must balance considerations of maximising recovery from individual taxpayers with broader public interest considerations.

In relation to Mr Anthony's application for judicial review, Andrew J held that there is no specific legislative provision for the Commissioner to consent to an application for setting aside a judgment. Section 177 only allows requests for financial relief in one of two ways – by claiming that recovery or relief would place the taxpayer in serious hardship (under s 177(1)(a)), or by requesting to enter into an instalment arrangement (under s 177(1)(b)).

As for Summit Scaffold's application for judicial review, Andrew J acknowledged that the Commissioner has a broad discretion in deciding whether to accept a proposal for relief.[1] There is a clear statutory duty on the Commissioner and officials to at all times use their best endeavours to protect the integrity of the tax system and to collect, over time, the highest net revenue practicable within the law.[2] The Commissioner may justifiably reject a financial proposal in the face of a taxpayer's poor compliance history.[3] That is so, even if the proposal might appear to maximise recovery of outstanding tax from the individual taxpayer in the short term.

His Honour noted the fundamental problem to the challenge brought by Summit Scaffold is it seeks to conflate the distinction between maximising recovery of outstanding tax from a single specified taxpayer under s 176 and the more general duty under s 6A. His Honour held that it is manifestly clear from the legislation that in considering requests for financial relief, the Commissioner and his delegates must balance considerations of maximising recovery from individual taxpayers with broader public interest considerations including, importantly, the integrity of the tax system.

Summit Scaffold argued that this case is analogous to *Watergates NZ Ltd v Commissioner of Inland Revenue* in that the Commissioner here has similarly failed to have regard to the parameters of the TAA when declining the proposal. This argument was rejected. His Honour stated that *Watergates* was an exceptional and unusual one where the Commissioner gave cursory and very limited regard to mandatory relevant factors, including the applicant's financial position and an ability to pay historic tax arrears. Here, the decision to decline the proposal was explained in a six-page letter. One of the factors that carried significant weight was Summit Scaffold's poor compliance history. This included its failure to comply with the

[1] *Watergates NZ Ltd v Commissioner of Inland Revenue* [2024] NZHC 1128

[2] Tax Administration Act, s 6A.

[3] *Kea v Commissioner of Inland Revenue, Russell v Commissioner of Inland Revenue*

previous instalment arrangement. Another important factor was that Summit Scaffold had received financial relief in February 2021 which involved remission of penalties of $17,815.73 to promote voluntary compliance. However, Summit Scaffold continued its poor compliance practices, leading to the present situation of significant arrears being owed to the Commissioner.

Turning to the test for solvency, His Honor held:

> [61] The test for solvency is set out in s 4 of the Companies Act 1993. To satisfy the solvency test, the company must both be able to meet its debts as they become due, and the value of the company's assets must be greater than the value of its liabilities.

His Honor found that the issue of whether the company was balance sheet insolvent is a red herring. The company was unable to pay its debts as they fell due, as is clear from the significantly overdue tax debt. The company had been in default of its tax obligations since the fourth quarter of 2022 and it is not seriously arguable that the company is not insolvent. An offer of security might have had a mitigating effect on the Commissioner's concern but the applicants elected not to offer security over any property held in the name of Mr Anthony's spouse.

None of the causes of action succeeded. Andrew J concluded that the applicants failed to establish any material error of law by the Commissioner.

About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation and Charities Review Authority, the District Court, the High Court, the Court of Appeal or the Supreme Court in matters involving the Revenue Acts. For Taxation and Charities Review Authority matters, names have been anonymized. The findings of the court described in a case summary will no longer represent current law where the matter has been successfully appealed or subsequent amended legislation has been enacted.