

## CASE SUMMARY

# **Court approves proposal under the Insolvency Act 2006 despite Commissioner's objection.**

Decision date: 17 October 2025

**CSUM 26/01**

## CASE

***Commissioner of Inland Revenue v Pronk and Garnham* [2025] NZHC 3087 [17 October 2025]**

## LEGISLATIVE REFERENCES

Insolvency Act 2006 (**the Act**), ss 5, 29, 231, 274 and 325 through to 339 (Subpart 2 of Part 5)

Tax Administration Act 1994 (**the TAA**), ss 6, 6A, 176, 177, 177A, 177B and 177C

Companies Act 1993, ss 227 through to 234 (Part 14), 236 and 302

## LEGAL TERMS

Bankruptcy, proposal, related creditors, hardship provisions, statutory obligations, integrity of the tax system, proposal regime, relief regime

## Summary

This case involved a proposal submitted on behalf of Mr Michael Robert Garnham (**Mr Garnham**) under Subpart 2 of Part 5 of the Act during bankruptcy proceedings commenced by the Commissioner of Inland Revenue (the **Commissioner**). If accepted by a majority of Mr Garnham's creditors, and approved by the High Court, the proposal would bind the Commissioner and Mr Garnham would avoid bankruptcy.

The Commissioner voted against the proposal during the creditors meeting and opposed the provisional trustee's application for the High Court to approve the proposal.

Despite the Commissioner's objection, the Court approved the proposal.

## Impact

The judgment highlights the conflict between the proposal regime under the Act and the relief provisions of the TAA. As the case turns on its specific facts it has limited precedential effect. However, it may be persuasive, as there are few decisions considering proposals where the Commissioner is a creditor. The Commissioner may be bound by any future Insolvent's proposal (even where he has already declined relief under the TAA) if the requirements of s331 of the Act are satisfied. However, the findings in relation to the Commissioner's objection pursuant to s333(3) of the Act will have little to no impact as they are fact specific.

## Facts

In October 2023, the Commissioner served a bankruptcy notice on Mr Garnham and subsequently filed a creditor's application in the Wellington High Court seeking an order adjudicating Mr Garnham bankrupt.

Over the next 11 months Mr Garnham made three hardship applications to the Commissioner under the TAA. The first two hardship applications were declined by the Commissioner for several reasons, including concerns that accepting the applications would not promote the integrity of the tax system or voluntary compliance. The Commissioner requested further information in relation to the third hardship application, however, that information was not provided and the application was declined.

On 15 April 2024, Mr Garnham filed a judicial review application of the decision to decline the first hardship application. That application was subsequently discontinued, and this proceeding continued.

In November 2024, Mr Garnham submitted a proposal under the Act and the High Court directed that bankruptcy proceedings and the proposal proceedings be case managed together. The bankruptcy proceedings were adjourned to consider the proposal.

The proposal offered a total contribution of \$380,000 to satisfy the debts of all creditors and would be paid by one of Mr Garnham's family trusts. The Commissioner was the only preferential creditor (\$300,000 of the total tax debt of approx. \$900,000 was preferential debt).

The creditor's meeting in relation to the proposal was held in February 2025 and the Commissioner made a postal vote to decline the proposal. Seven out of the 10 listed creditors in the proposal attended the meeting and voted. The required majorities (being a majority in number and over three quarters in value of the total debts) were met.

In March 2025, the provisional trustee applied to the Wellington High Court for approval of the amended proposal pursuant to section 333(1) of the Act. The Commissioner opposed the approval.

## Issues

The issues in this case were as follows:

- 1) Was the Commissioner bound by Subpart 2 of Part 5 of the Act;
- 2) Alternatively, were the terms of the proposal not reasonable and/or not calculated to benefit the general body of creditors for the purposes of s 333(3)(b) of the Act;
- 3) Alternatively, was the proposal not expedient for the purposes of s 333(3)(c) of the Act; and
- 4) If it was found that a ground under section 333(3) was met, should the Court exercise its residual discretion to refuse to approve the proposal.

## Decision

### Issue 1: The Commissioner is bound by Subpart 2 of Part 5 of the Act

Associate Judge Skelton did not accept the Commissioner's argument that *Commissioner of Inland Revenue v Wilson* [2017] NZCA 100 [31 March 2017] (CA) (*Wilson*) was authority for the proposition that the hardship provisions of the TAA prevailed over the proposals regime in the Act. He determined that the Commissioner was bound by Subpart 2 of Part 5 of the Act because: section 5 of the Act binds the Crown and there was nothing in the Act suggesting that the Commissioner could not be bound by a proposal; *Wilson* related to bilateral proposals,

not multi-creditor proposals like the present case; prior High Court cases had determined that the Commissioner could be bound by an analogous compromise regime under Part 14 of the Companies Act 1993; A finding that the Commissioner was not bound would create significant difficulties for the proposals' regime under the Act; and the Commissioner's argument was inconsistent to his own position in relation to proposals put forward under Subpart 2 of Part 5 of the Act in cases before and after *Wilson*.

**Issue 2: The terms of the proposal were reasonable and geared to benefit the general body of creditors (s 333(b) of the Act)**

The Court considered the Commissioner's arguments under this ground (including the argument that creditors other than the CIR and the provisional trustee were likely to receive nothing or much less than what was promised in the proposal). Arguments in support of the proposal included that: creditors were unlikely to receive any distribution if Mr Garnham is adjudicated bankrupt; the related party trust would be under no obligation to contribute funds and the related party creditors will be entitled to submit claims in the bankruptcy.

AJ Skelton weighed the various competing factors relevant to this ground and determined that the proposal was reasonable and geared to benefit the general body of creditors.

**Issue 3: It was expedient to approve the proposal (s 333(3)(c) of the Act)**

Again, AJ Skelton noted the Commissioner's arguments under this ground, including: that the related party creditors had effectively determined the outcome of the proposal and had voted for the proposal on grounds other than maximising commercial return; that approving the proposal would undermine the integrity of the tax and insolvency regimes; and that Mr Garnham had an extensive history of financial mismanagement and was an ongoing risk to the revenue. He weighed this up against other competing factors and concluded that, on balance, it was expedient to approve the proposal.

**Issue 4: Conclusion on Commissioner's objection under s 333(3)(b) and (c) of the Act**

AJ Skelton determined that: a) the terms of the proposal were reasonable and geared to benefit the general body of creditors; and b) it was expedient to approve the proposal.



## About this document

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