

## CASE SUMMARY

# Taxpayer's judicial review of the TCRA's unless order successful

Decision date: 05 May 2026

CSUM 26/04

## CASE

**Kaur v TCRA & CIR [2026] NZHC 1149**

## LEGISLATIVE REFERENCES

Taxation Review Authority Act 1994, District Court Rules 2014

## LEGAL TERMS

Judicial review, Unless orders

## LEGALS SOLICITOR

Rob Wallace

## Summary

This judicial review was of an unless order made by the TCRA. The order was not complied with by the taxpayer (Ms Kaur) and her TCRA proceedings were struck out. Ms Kaur judicially reviewed the TCRA decision. The High Court granted the judicial review. It considered the TCRA fell into error in two particulars:

- Firstly, by requiring its unless order to be sealed once Ms Kaur failed to meet its obligations under the order; and
  - secondly by making an order without giving Ms Kaur a chance to apply for relief from the effects of the unless order which was a lack of natural justice.
-

The order was struck down and the matter referred to the TCRA to give Ms Kaur a chance to seek relief before the order takes effect (the application for relief must be made to the TCRA within 15 working days of the High Court decision).

## Impact

Potentially this decision could inhibit the effective use of unless orders by the TCRA as a way of regulating its own procedures. It is likely to affect the way the TCRA makes unless orders in the future.

## Facts

Ms Kaur commenced proceeding in the TRA to challenge assessments by the CIR. Due to Ms Kaur failure to meet timetabling requirements, in July 2022 the parties agreed that the TRA should issue “unless orders” which the TRA did with the consent of both parties. If either party failed to meet the timetable in the unless order (due by 12 October 2022), their pleadings would be struck out and the unless order sealed by the TCRA after a further three working day period. This would have the effect that the tax challenge would be ended.

Ms Kaur failed to file her witness statements with the TRA (although she did serve them on the CIR) and failed to file and serve an index of documents for an agreed common bundle. Both were part for the unless order. The TRA struck out her challenge on 19 October 2022 and sealed the order ([2022] NZTRA 3).

Because the strike out order had been sealed by the TRA, the TRA considered it was unable to revisit the order made (decision dated 9 Nov 2022 [2022] NZTRA 4). Ms Kaur lodged an appeal against the decision of the TRA. She subsequently also commenced a judicial review of the TRA’s decision in case there was no right of appeal against the TRA’s decision.

The High Court accepted there was a right of appeal and did not determine the judicial review (*Kaur v TRA and CIR* [2023] NZHC 2748). The CIR successfully appealed to the Court of Appeal which confirmed there is no right of appeal to interlocutory decisions of the TCRA (*CIR & Or v Kaur* [2025] NZCA 5). The Court of Appeal referred the judicial review back to the High Court for determination.

## Issues

Should the TCRA’s unless order be set aside due to a lack of natural justice?

## Decision

Ms Kaur's judicial review was successful. The High Court considered the TCRA fell into error in two particulars:

[35] Notwithstanding the Commissioner's submissions, I consider the Authority fell into error in two respects. The **first was when it took the unusual step of including a provision in the unless order relating to sealing without notice. As a general rule it is unnecessary for unless orders to make any such provision. Sealing is a step taken to enforce a judgment.** If it is necessary, sealing should take place in accordance with pt 11 of the District Court Rules and as a matter of practice will usually be a matter for the parties and the Registrar to attend to rather than the Authority member.

[36] **The second error was in the decision to issue the 19 October decision carrying the seal of the Authority without having first provided the applicant an opportunity to have her breach excused.**

[37] I do not agree with the Commissioner that the intention or effect of the order's reference to sealing was clear. Nor do I consider that it would have been obvious at the time the orders were made that a "grace period" had been provided to Ms Kaur to advance an application for relief.

[38] First, **the unless orders did not come into effect until the expiry of the three-day period. According to their terms, it would have been open to the Authority to seal the order at 5.00 pm on the third consecutive day of non-compliance. It follows that there was no "grace period" provided in the orders during which an application for relief could be made.**

[39] The **effect of the orders once made was to deprive the Authority of the ability to grant relief once sealing had occurred.** That involved a decision effectively determining the discretion. But nothing in the evidence suggests the parties or the Authority turned their minds to the power to grant relief against the effects of the orders or the need to first hear from the parties in order to do so.

[40] Second, **dispensing with the discretion under the terms of the unless order called for reasons. The 19 October decision does not provide them.**

[41] Nor is it obvious that the interests of justice required a peremptory outcome without an opportunity for Ms Kaur to be heard. Following the amendments to the previous timetabling orders, a new hearing date had not yet been allocated. The admitted breaches did not therefore result in a lost fixture. Counsel for the Commissioner did not identify before me any real prejudice caused by the defaults.

The High Court set aside the TCRA orders to the extent these required sealing and the decision dated 19 October (by which the challenge was struck out by the TCRA). Ms Kaur was given 15 working days to make an application for relief to the TCRA in respect to the operation of the unless order

## About this document

These are brief case summaries, prepared by Inland Revenue, of decisions made by the Taxation 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.