

## CASE SUMMARY

# Costs awarded to Commissioner as successful party - no basis for a reduction

Decision date: 25 May 2026

CSUM 26/05

## CASE

**Safi v Commissioner of Inland Revenue [2026] NZHC 1429**

## LEGISLATIVE REFERENCES

High Court Rules 2016, rr 14.1, 14.2(1)(a)–(c) and (g), 14.5(2)(c), 14.7(d)

## LEGAL TERMS

Costs; scale costs; category 2 costs band B, band C

## LEGAL SERVICES SOLICITOR

Helen Salisbury

## TAX IN DISPUTE

Commissioner's costs claim following dismissal of appeal, including category 2 costs, band C uplifts for selected steps, costs for preparing the common bundle, and costs for second counsel.

## DATE(S) HEARD

On the papers

## RESULT

The Court allowed the Commissioner's claim for category 2 costs. Costs were allowed at band C for steps 53 (commencing the Commissioner's response to the appeal), 54 (filing a memorandum for a second case management conference) and 56 (preparing written submissions) because the appellants' approach required the Commissioner to expend a comparatively large amount of time on those steps. The Commissioner was also permitted to recover costs for preparing the common bundle (step 55) and for second counsel (step 58). No reduction was made for the appellants' claimed "limited success".

## Summary

Following the Court's earlier dismissal of the appellants' appeal against assessments and shortfall penalties, His Honour Justice Jagose determined the Commissioner's reserved costs claim. The Court rejected the appellants' submission that costs should be reduced by 50 per cent for alleged "limited success" on appeal. It held the appellants had been comprehensively unsuccessful on the issue for determination, and that the Commissioner's abandonment of part of the shortfall penalty claim during the hearing did not justify any reduction. The Court allowed category 2 costs, including band C costs for selected steps, costs for preparing the common bundle, and costs for second counsel.

## Impact

The decision confirms that a successful party will ordinarily recover scale costs unless the opposing party can show a proper basis for reduction under the High Court Rules. It also illustrates that where the conduct of an appeal makes the Commissioner's response comparatively time-consuming and complex, band C costs may be justified. In an appropriate case, the Commissioner may also recover costs for second counsel and for preparing the common bundle where responsibility for that step has been specifically directed to the Commissioner.

## Facts

In the substantive judgment dated 26 March 2026, the High Court dismissed the appellants' appeal from a Taxation and Charities Review Authority decision concerning assessments and evasion shortfall penalties. Costs were reserved.

The Commissioner sought category 2 costs and disbursements totalling \$53,468.95, calculated largely at band B but with band C costs claimed for commencing the response to the appeal (step 53), filing a memorandum for a second case management conference (step 54), and preparing written submissions (step 56). The Commissioner also claimed costs for preparing the common bundle (step 55) and for second counsel (step 58).

The appellants argued all category 2 costs should be calculated at band B, that no costs should be allowed for second counsel or for preparing the common bundle, and that overall costs should be reduced by 50 per cent to reflect their asserted limited success on appeal. The asserted limited success related to the Commissioner's abandonment, after judicial questioning, of shortfall penalties assessed in relation to particular miscellaneous receipts.

## Issues

The issues were whether the Commissioner's scale costs should be reduced for the appellants' alleged limited success; whether band C costs were justified for steps 53, 54 and 56; whether the Commissioner could recover costs for preparing the common bundle; and whether costs for second counsel should be allowed.

## Decision

The Court rejected the appellants' submission that costs should be reduced by 50 percent for alleged "limited success" on appeal. It held the appellants had been comprehensively unsuccessful on the issue for determination, and that the Commissioner's abandonment of part of the shortfall penalty claim during the hearing did not justify any reduction.

Justice Jagose held that the abandonment of approximately \$143,000 of a shortfall penalty claim exceeding \$2 million did not constitute a failure warranting reduction nor did it amount to success attributable to the appellants.

Band C costs were allowed for steps 53, 54 and 56 because the appellants' approach required the Commissioner to expend a comparatively large amount of time on those steps. Costs were also allowed for step 55 because the Commissioner had been specifically directed to prepare the common bundle.

Finally, the Court allowed costs for second counsel, holding that both counsel were fully engaged and that, given the complexity created by the conduct of the appeal, the appellants should bear that additional cost.

The Judge directed counsel to agree recalculated recoverable costs, failing which the Commissioner was to file an amended costs schedule within 10 working days, with any response by the appellants due within five working days of service.

## 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.