Inland Revenue
Te Tari Taake

CASE SUMMARY

Court of Appeal upholds High Court award of indemnity costs to the Commissioner

Decision date: 27 July 2026

CSUM 26/11

CASE

McGuire v Commissioner of Inland Revenue [2026] NZCA 329

LEGISLATIVE REFERENCES

High Court Rules, r 14.6

Court of Appeal (Civil) Rules 2005, rr 53B, 53G(4) and 53GA(1)

LEGAL TERMS

Indemnity costs; appeal against exercise of discretion.

CASE LAW REFERENCES

McGuire v Commissioner of Inland Revenue [2024] NZHC 883

McGuire v Commissioner of Inland Revenue [2024] NZHC 2796

May v May (1982) 1 NZFLR 165 (CA)

Kacem v Bashir [2010] NZSC 112, [2011] 2 NZLR 1 at [32]

McGuire v Commissioner of Inland Revenue [2025] NZCA 641

Commissioner of Inland Revenue v McGuire [2022] NZDC 12179

Marshall v Commissioner of Inland Revenue (2008) 23 NZTC 21,876 (HC)

Bradbury v Westpac Banking Corporation [2009] NZCA 234, [2009] 3 NZLR 400

ALT New Zealand Ltd v Attorney-General [2025] NZCA 344, [2025] 3 NZLR 60 at [125]

J-Corp Pty Ltd v Australian Builders Labourers Federation Union of Workers (WA Branch) (No 2) (1993) 46 IR 301 (FCA)

Ben Nevis Forestry Ventures Ltd v Commissioner of Inland Revenue [2014] NZCA 348, (2014) 22 PRNZ 322

Fountain Selected Meats (Sales) Pty Ltd v International Produce Merchants Pty Ltd (1988) 81 ALR 397 (FCA)

Nandro Homes Ltd v Datt HC Auckland CIV-2008-404-6676, 13 July 2009

Summary

The appellant, Mr Jeremy McGuire, appealed two High Court judgments awarding indemnity costs of $50,274.71 to the Commissioner of Inland Revenue (the **Commissioner**). The Court of Appeal had previously struck out the underlying substantive appeal but allowed the appeal against the award of indemnity costs to proceed.

The central question was whether the High Court Judge, Johnstone J, erred in exercising his discretion to award indemnity costs. The Court confirmed that appeals against discretionary decisions will only succeed where the Judge acted on a wrong principle, overlooked a relevant factor, considered an irrelevant factor, or was plainly wrong.

The Court concluded that the High Court Judge did not err in exercising his discretion to award indemnity costs. It was satisfied that Johnstone J "addressed the correct legal principles and applied them to the facts of the judicial review proceedings before ultimately exercising his discretion to award them."

The appeal was dismissed, with costs and disbursements awarded to the Commissioner.

Impact

The decision confirms:

- the principles for appeals of a discretionary decision
- the circumstances in which indemnity costs may be awarded
- the "hopeless case" test for an award of indemnity costs
- that reliance on legal advice does not necessarily insulate a litigant from an award of indemnity costs

Facts

The Commissioner issued tax and shortfall penalty assessments (**Assessments**) for the appellant for various income tax years and PAYE periods. The appellant applied to the Taxation Review Authority to challenge some of the Assessments relating to the 2014 and 2015 tax years. The parties settled that challenge in December 2020.

The Commissioner later commenced District Court proceedings against the appellant to recover $39,763.48 in unpaid tax. Those proceedings related to Assessments that had not been settled in December 2020. In the District Court, Judge Edwards struck out the appellant's statement of defence (**District Court Decision**) on the basis that the District Court had no jurisdiction to consider the dispute and, in any event, there was no arguable defence to the Commissioner's claim.

The appellant did not appeal the District Court Decision. Instead, after the Commissioner served a bankruptcy notice on him, he commenced judicial review proceedings in the High Court challenging the District Court Decision alleging that it contained errors of fact and law. Johnstone J struck out the application for judicial review and ordered indemnity costs and disbursements of $50,274.71 (**High Court Decision**).

The appellant appealed the High Court Decision to the Court of Appeal. The Court dismissed the substantive appeal and allowed only the question of whether the High Court erred in awarding indemnity costs to proceed.

Issues

Whether the High Court Judge erred in exercising his discretion to award indemnity costs against the appellant.

Decision

The Court of Appeal found that the High Court Judge did not err in exercising his discretion to award indemnity costs. The Court held that the question of indemnity costs had been approached in "an entirely orthodox manner", with the High Court addressing the correct legal principles and applying them to the facts before exercising its discretion.

The Court cited *Bradbury v Westpac Banking Corporation*, which held that indemnity costs may be awarded where a party "has behaved either badly or very unreasonably". The misconduct described in *Bradbury* must be "flagrant" to warrant an award of indemnity costs. Such misconduct may include proceeding with a "hopeless case".

The appellant argued that seeking judicial review of the District Court Decision was not in the *Bradbury* category of misconduct because he was, at least in part, acting on legal advice. The appellant's case also relied on the accepted principle that a case is not "hopeless" merely because there is no seriously arguable case.

The Court of Appeal held that the High Court was entitled to conclude that the judicial review proceeding was brought as a "delaying tactic" after the Commissioner filed bankruptcy proceedings against the appellant. The Court accepted the Commissioner's argument that the claim was "an attempt to dispute the correctness of the assessments underlying the Commissioner's claim, even though it was advanced as a process argument." The Court acknowledged that there was a high bar to awarding indemnity costs and that in this case the High Court Judge was "not wrong to find that pursuit of the proceedings in these circumstances justified an award of indemnity costs" and dismissed the appeal.

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 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.