

CASE SUMMARY

Relief from consequences of unless order granted

Issue date: 19 October 2026

CSUM 26/14

Case	TCRA 06/21
Legislative References	District Court Rules, rr 1.3, 1.23, 7.1, 7.41 Taxation Review Authorities Act 1994, ss 13AB, 17(1), 22, 26A Taxation Review Authorities Regulations 1998, reg 4
Case Law References	<i>Anderson v Mainland Beverages Ltd</i> (2005) 17 PRNZ 757 (CA) <i>Hytec Information Systems Ltd v Coventry City Council</i> [1997] 1 WLR 1666 (CA) <i>Jarden v Lawlor</i> (1998) 12 PRNZ 516 (HC) <i>Low v Xue</i> HC Auckland CIV-2006-404-1863, 29 November 2006 <i>Marcan Shipping (London) Ltd v Kefalas</i> [2007] EWCA Civ 463, [2007] 1 WLR 1864 <i>Matthews v Scott</i> HC Auckland CIV-2010-404-001117, 19 November 2010 <i>Payne v Thomas</i> [2025] NZHC 2864 <i>Qian v Dong</i> [2026] NZCA 209 <i>SM v LFDB</i> [2014] NZCA 326, [2014] 3 NZLR 494 <i>Smith v Antons Trawling Co Ltd</i> HC Auckland CL 40/98, 24 March 2000 <i>Z v Dental Complaints Assessment Committee</i> [2008] NZSC 55, [2009] 1 NZLR 1
Legal Terms	Unless order; strikeout; intentional or wilful disobedience; interests of justice; fair hearing.
Court	Taxation and Charities Review Authority
Chair	Mr Grant Pearson

Decision/Judgment date	25 September 2026
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Summary

1. The disputant sought relief from the consequences of an unless order made by consent. The disputant's challenge to income tax assessments was struck out after the disputant's former counsel failed to comply with the unless order by the required date.
2. The Authority granted relief. The non-compliance was serious, and responsibility lay at the least primarily with the disputant's former counsel. The Authority was satisfied, however, that confusion, misunderstanding and a failure to appreciate the legal significance of the order caused the defaults. The evidence does not support a finding of intentional or wilful disobedience. The overall interests of justice require relief to be granted.

Impact

3. The decision confirms that relief from the consequences of an unless order requires an overall assessment of proportionality and the interests of justice.

Facts

4. The Authority made an unless order under r 7.41 of the District Court Rules 2014. The material obligations were that the disputant:
 - File and serve an affidavit of documents by 12 September 2022.
 - File and serve witness statements and an index of documents by 12 October 2022.
 - If the disputant failed to comply and remained in default for three working days, have her notice of claim struck out and an order sealed dismissing the challenge without further notice.
5. On 9 September 2022 a person assisting the disputant's former counsel filed and served the disputant's affidavit of documents. The listed documents were provided electronically on 14 September 2022 after the Commissioner requested them. That was within the unless order's three-working day period. The Commissioner disputed the adequacy of the discovery schedule.

6. On 11 October 2022 the disputant's former counsel emailed the Commissioner five proposed witness statements and exhibits. The email omitted the Authority therefore the proposed evidence was served in time but not filed within time. The disputant's former counsel failed to file or serve the index of documents.
7. On 19 October 2022 the Authority issued a sealed decision recording the failure to file the witness statements and index and dismissing the challenge. The following day the disputant's former counsel first said the briefs had been sent on time however three minutes later he apologised for omitting the case manager.
8. The disputant sought recall however the Authority held that it had no further jurisdiction because the final decision had been sealed.
9. There followed appeal and judicial review proceedings. The Court of Appeal held that the procedural strike out was not a determination on the merits appealable under s 26A of the Taxation Review Authorities Act 1994 and could not be appealed. The court directed the judicial review application be heard. On 5 May 2026 the High Court set aside cl 3(c) of the unless order insofar as it provided for sealing without further notice and set aside the sealed decision of 19 October 2022. The High Court remitted the matter back to the TCRA for consideration of any application for relief.
10. The disputant filed the application for relief from the unless order within the period allowed by the High Court and the Commissioner filed an opposition. The disputant also filed the index of documents at the same time. It was common ground that the Authority should put itself, so far as practicable, in the position the Authority would have occupied had relief been sought promptly after the default in October 2022.

Issue(s)

11. The questions requiring determination are:
 - The nature and consequences of the defaults;
 - The weight to be given to the interests of each party and the administration of justice; and
 - Whether maintaining the strikeout is proportionate.

Decision

12. The Authority granted the disputant relief from the strikeout consequence of cl 3(c) of the unless order and the disputant's notice of claim and challenge are reinstated.
13. There are substantial considerations against relief: a justified consent order made after earlier failures, several defaults under that order, an unsatisfactory explanation for the index, and uncompensated expense to the Commissioner.

14. The considerations favouring relief are the character of the actual default, timely provision of the principal evidence to the Commissioner, the absence of a further lost fixture, the finite and curable remaining steps, and the ability to determine the confined income issue and any remaining shortfall penalty issue fairly. The former counsel's failures were serious but arose from misunderstanding and inadequate appreciation of the order's operation. The prospective legitimacy of the strikeout does not make its continued operation proportionate once those causes and consequences are assessed.
15. The disputant established that the overall interests of justice require relief. There is a public interest in the fair determination of a genuine challenge and maintaining a strikeout would end a substantial statutory tax challenge without determining its disputed merits. The material before the Authority did not identify a particular impairment that makes a fair hearing unattainable.

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 the parties' names are anonymised. The findings of the court described in a case summary are no longer current law where the matter has been successfully appealed or the relevant legislation has been amended.