

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**CIV-2009-404-2490**

UNDER Tax Administration Act 1994  
IN THE MATTER OF The Income Tax Act 1994 and the Income  
Tax Act 2004  
BETWEEN TOLL GROUP (NZ) LIMITED  
Plaintiff  
AND TOLL FINANCE (NZ) LIMITED  
First Plaintiff  
AND TOLL LOGISTICS (NZ) LIMITED  
Second Plaintiff  
AND TOLL (NEW ZEALAND) LIMITED  
Third Plaintiff  
AND TLNZ AUCKLAND LIMITED  
Fourth Plaintiff

CONTINUED OVERLEAF

Hearing: 21 September 2009

Appearances: Mr McKay and Mr Windeatt for Applicant  
Mr J Coleman for Respondent

Judgment: 12 October 2009 at 12.30 p.m.

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**JUDGMENT OF ASSOCIATE JUDGE DOOGUE**

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*This judgment was delivered by me on  
12.10.09 at 12.30 pm, pursuant to  
Rule 11.5 of the High Court Rules.*

*Registrar/Deputy Registrar*

*Date.....*

Counsel:  
*Simpson Grierson, Private Bag 92518, Wellesley Street, Auckland*

*Crown Law, P O Box 2858, Wellington  
(Counsel: James Coleman, Barrister, P O Box 10201, Wellington)*

AND

TLNZ LIMITED  
Fifth Plaintiff

AND

TOLL NETWORKS (NZ) LIMITED  
Sixth Plaintiff

AND

THE COMMISSIONER OF INLAND  
REVENUE  
Defendant

[1] Since the hearing of this matter I have considered further the question of whether I have jurisdiction to make orders under s 138 R of the Tax Administration Act 1994. I raised this question at the commencement of the hearing on 21 September and neither counsel were minded to contend that the Court did not have jurisdiction to deal with the matter. There was accordingly no argument on the matter of jurisdiction.

[2] Even though counsel for the parties were content for me to deal with the matter notwithstanding question marks concerning the jurisdiction of an Associate Judge to deal with such an application, I have reluctantly come to the conclusion that this is not a matter in which I ought to give a decision. That is because I consider it is clear that an Associate Judge does not in fact have jurisdiction. It is plainly not permissible for me to give a judgment when there is no jurisdiction to do so. That view must stand whatever the wishes or views of the parties to the application for stay.

[3] Essentially an Associate Judge has the jurisdiction conferred upon him/her by s 26I of the Judicature Act 1908 and as well the Chambers jurisdiction of a High Court Judge – see Rule 2.1 of the High Court Rules.

[4] In this case jurisdiction cannot arise under s 26I of the Judicature Act as a consideration of that section will quickly reveal.

[5] The alternative possibility is that jurisdiction might arise under R 2.1. Rule 2.1 confers on an Associate Judge the powers of a Judge ‘in Chambers conferred by the Act or these Rules’. By 7.34 the mode of hearing for an interlocutory application is a hearing in Chambers and therefore logic requires that an Associate Judge will have power to deal with interlocutory applications except those which are expressly excluded.

[6] But the application under s 138R is an originating application and is not an interlocutory application. The order sought is not one which is an incidental one

made in proceedings in which substantive relief is sought which in general terms is a feature of an interlocutory order.

[7] My conclusion is that I do not have jurisdiction to make the orders sought. I regret that that must be my conclusion. The Registrar is to make arrangements for this matter to be heard again before a Judge.

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J P Doogue  
Associate Judge