

In the High Court of New Zealand
Hamilton Registry
I te Kōti Matua o Aotearoa
Rohe Kirikiriroa

No:

UNDER THE Taxation Review Authority Act 1994 and New Zealand Bill of Rights Act 1990

IN THE MATTER OF the Enforced Confidentiality of TRA 1994 s16 (4)

DENNIS ARTHUR SMITH, Beneficiary, of Taumarunui
Applicant

**ORIGINATING APPLICATION SEEKING DECLARATORY JUDGMENT
OF s16 (4) TAXATION REVIEW AUTHORITY ACT 1994**

Dated: 7 December 2020

Filed by: Dennis A. Smith. Applicant in person
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dennis@dennis.nz



The Applicant submits that:

BACKGROUND

1. The Applicant is an investigative author and blogger who has written and/or published 35 books, and more than 2 million words online;
2. Section 16 (4) of the Taxation Review Authorities Act 1994 requires that hearings before the Taxation Review Authority (TRA) be held in closed court¹;
3. Section 36 of the Taxation Review Authorities Regulations 1998 restricts the reporting of matters brought before an Authority.²
4. Section 14 of the New Zealand Bill of Rights (NZBORA) gives an individual the right to freedom of expression.³
5. In 2018, a Disputant company commenced action against the Commissioner of Inland Revenue in the TRA.⁴
6. On 20 February 2019 the TRA determined on an Interlocutory Application in this matter that a Disputant company could not publish details of its own tax affairs being considered by the Authority.⁵
7. The TRA determined that it had the power to prohibit publication but not the power to approve publication i.e. it necessitated an “enforced confidentiality”.⁶

1 Taxation Review Authorities Act 1998, s16 (4): The hearing of an objection or a challenge before an Authority shall not be open to the public.

2 Taxation Review Authorities Regulations 1998, s36: Reports of decisions
(1) An Authority may from time to time compile and publish reports of matters brought before it and of the Authority's decisions on such matters, and the Authority may authorise a person to compile and publish such reports.
(2) A report may not contain –
(a) the name of the disputant or objector; or
(b) any other particular likely to identify the disputant or objector, unless the Authority considers that omission of the particular will affect the usefulness or value of the report.

3 New Zealand Bill of Rights Act 1990, s14: Everyone has the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.

4 Disputant Business v Commissioner of Inland Revenue TRA 006/18 [2019] NZTRA 4

5 Disputant PI v Commissioner of Inland Revenue TRA 06/18 [2019] NZTRA 1 [15]: The Taxation Review Authority is a specialist tribunal for the hearing and determination of tax disputes. The Legislature clearly intended that challenge proceedings coming before an Authority should be conducted in private and that reporting of decisions would be restricted in order to maintain the confidentiality of the disputants and their tax affairs...

6 Ibid [17]: The Authority has power under Reg 36(3) to prohibit publication. However, it does not have power under Reg 36 (or otherwise), to approve the unrestricted publication sought by the disputant. On close analysis, the ability to make such an order would, in effect, run contrary to the confidential nature of this jurisdiction.

THE ISSUE

8. The law as interpreted appears to assume that all taxpayers wish their tax affairs to remain confidential;
9. This may not always be the case;
10. The application of an “enforced confidentiality” to a taxpayer wishing to reveal his/her/its identity and his/her/its tax affairs that have been subject to a TRA hearing:
 - 10.1 Disadvantages a taxpayer in a manner that the legislators did not intend;
 - 10.2 Runs contrary to natural justice; and
 - 10.3 In the case of an individual, conflicts with their rights as detailed in NZBORA s14.

APPLICATION FOR RELIEF

- A) In the case of an individual, the Applicant seeks a **DECLARATORY JUDGMENT** in relation to the application of s16 (4) of the Taxation Review Authority Act 1994 when a taxpayer seeks to publish (or wishes to approve third party publication), answering the questions:
 1. Which law has priority – the Taxation Review Authority Act 1994 s16(4) or the New Zealand Bill of Rights Act 1990, s14?;
 2. If the latter, what if any restrictions of law apply to the taxpayer (or any publisher of a TRA matter - with the taxpayer's approval)?
- B) In the case of a non-individual, the Applicant seeks a **DECLARATORY JUDGMENT** in relation to the application of s16 (4) of the Taxation Review Authority Act 1994 when a taxpayer seeks to publish (or wishes to approve third party publication), answering the questions:
 3. Under what circumstances can a taxpayer identify itself as (or permit itself to be known as) a participant in a TRA hearing?
 4. Under what circumstances can a taxpayer publicise details of its tax affairs if they have been a subject to a TRA ruling?

7th day of December, 2020

A handwritten signature in blue ink, appearing to read "Dennis A. Smith", is written over a horizontal dotted line.

Dennis A. Smith, Applicant.