

**PROTOCOLS BETWEEN THE SOLICITOR-GENERAL AND  
COMMISSIONER OF INLAND REVENUE  
JULY 2009**

**1. ROLES**

**Solicitor-General and Crown Law**

- 1.1 The Solicitor-General, as junior law officer of the Crown and the Crown's principal professional legal adviser, has constitutional responsibility to see that executive government is conducted according to law. This includes determining the Crown's view of what the law is and conducting the Crown's litigation in the Courts. The Solicitor-General is also deemed by the State Sector Act 1988 to be the Chief Executive of the Crown Law Office, a government department, which supports the Law Officers in the provision of legal advice and conduct of litigation.
- 1.2 The responsibility for the conduct of all of the Crown's litigation, including litigation in the name of the Commissioner of Inland Revenue, rests with the Solicitor-General.
- 1.3 The Solicitor-General, supported by Crown Law, provides the authoritative view of what the Crown considers the law to be.

**The Commissioner of Inland Revenue**

- 1.4 The Commissioner of Inland Revenue is Chief Executive of the Inland Revenue Department, a government department under the State Sector Act 1988. Save as to the limited extent provided in s 6B Tax Administration Act 1994, the Commissioner is an independent officer of the Crown in collecting taxes. The Commissioner's statutory roles include:
- 1.4.1 Protecting the integrity of New Zealand's tax system;
- 1.4.2 Collecting the highest net revenue that is practicable within the law having regard to:
- The resources available to the Commissioner;
  - The importance of promoting compliance, including voluntary compliance, by all taxpayers;
  - The cost of compliance to taxpayers.
- 1.5 In addition to collecting taxes and administering the tax system, the Commissioner and the Department drafts tax legislation and, in conjunction with the Treasury, provides tax policy advice to Ministers.
- 1.6 In performing his or her functions the Commissioner will, from time to time, require definitive advice on the meaning of the law, and in particular the meaning of tax legislation. The Commissioner will often face legal challenges to his or her actions and decisions.

## 2. OBJECTIVES OF THIS PROTOCOL

- 2.1 This Protocol records the processes which the Solicitor-General and the Commissioner of Inland Revenue have agreed in order to enable them to discharge their respective roles.
- 2.2 The Solicitor-General and the Commissioner of Inland Revenue recognise that their roles are complementary.
- 2.3 Both the Solicitor-General and the Commissioner of Inland Revenue wish to ensure that Crown Law and Inland Revenue have in place procedures which will facilitate:
  - 2.3.1 The Commissioner of Inland Revenue interpreting and applying tax law correctly and consistently;
  - 2.3.2 Inland Revenue and Crown Law having consistent positions on the interpretation and application of tax law when the Solicitor-General has expressed his opinion on the relevant law; and
  - 2.3.3 The Commissioner making decisions about the affairs of taxpayers that are timely and according to law.

## 3. GUIDING PRINCIPLES

- 3.1 Crown Law and Inland Revenue acknowledge and respect each other's roles and mandate in, respectively, ensuring that executive government is conducted according to law, and for administering the tax system.
- 3.2 Both Inland Revenue and Crown Law must work together with the aim of ensuring that all of Inland Revenue and Crown Law have consistent positions on the interpretation and application of tax laws.
- 3.3 Both Inland Revenue and Crown Law will ensure that their respective internal processes and systems will ensure that decisions about the affairs of taxpayers are made in a timely and efficient manner.
- 3.4 Both Inland Revenue and Crown Law will maintain relationships between all levels of their respective organisations that will enhance the ability of both organisations to discharge their respective roles. In particular:
  - 3.4.1 All staff will continue to acknowledge the professionalism and expertise of their colleagues in both organisations.
  - 3.4.2 All staff will strive to understand the demands placed upon their colleagues in both organisations.
  - 3.4.3 All staff will understand and respect the different roles played by their respective organisations.

- 3.5 The Solicitor-General and Commissioner of Inland Revenue agree to work together to identify and take advantage of potential synergies in recruitment, staffing, training and development.
- 3.6 Crown Law and Inland Revenue agree to work together to ensure that effective cost management processes associated with litigation, including discovery processes, are formalised and implemented.

#### 4. IMPLEMENTATION

- 4.1 Inland Revenue is responsible for ensuring that its staff, who are responsible for issuing Interpretive Statements, Statements of Position, Binding Rulings and Adjudication Reports, are aware of whether a legal issue is the subject of significant dispute in litigation. Where a legal issue is central to a significant dispute in litigation and is due to be the subject of an Interpretive Statement, Statement of Position, Binding Ruling, or Adjudication Report or escalation, then Inland Revenue will consult with Crown Law on the issue and, if necessary, obtain Crown Law's formal advice before issuing that Statement, Ruling or Report.
- 4.2 If Crown Law becomes aware that a legal issue that is the subject of significant dispute in litigation is about to be the subject of an Interpretive Statement, Statement of Position, Binding Ruling or Adjudication Report, then it must advise Inland Revenue of that as soon as practicable.
- 4.3 If the Solicitor-General concludes that Inland Revenue has misunderstood or misapplied the law, the decision as to how Inland Revenue will apply the Solicitor-General's advice on the law is a matter for the Commissioner.

#### 5. CONDUCT OF LITIGATION

- 5.1 The Solicitor-General is ultimately responsible for the conduct of all litigation in the name of the Commissioner. Disagreements between Inland Revenue and Crown Law about the conduct of litigation will be discussed respectfully and constructively and escalated within each organisation. It is expected that most disagreements will be resolved at or below the level of the Team Leader of the Tax and Commercial Team in Crown Law and the Director of the Litigation Management Unit in Inland Revenue. Only difficult and important matters are expected to be escalated to the level of Deputy Solicitor-General/Deputy Commissioner. Ultimately the Solicitor-General, after consultation with the Commissioner of Inland Revenue, will resolve any outstanding issue over the conduct of litigation.
- 5.2 The Solicitor-General is ultimately responsible for determining which counsel will represent the Commissioner. In practice, the Team Leader of the Tax and Commercial Team in Crown Law will make those decisions up to High Court level, the Deputy Solicitor-General at Court of Appeal level, and the Solicitor-General at Supreme Court level. In each case, Inland Revenue will be fully consulted and their views will be taken into account.

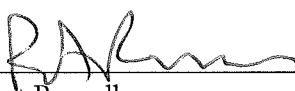
- 5.3 By agreement, the Solicitor-General may “reverse instruct” a member of Inland Revenue’s Litigation Management Unit to represent the Commissioner in litigation. The Solicitor-General approves, with the exception of precedential cases, Inland Revenue Solicitors acting as counsel for the Commissioner on debt matters and summary prosecutions under the Tax Administration Act 1994 in the District and High Courts. The Solicitor-General may withdraw his approval at any stage in a particular case.
- 5.4 The settlement of cases in litigation (other than debt matters and summary prosecutions in which Inland Revenue solicitors represent the Commissioner) will be jointly approved by Crown Law and Inland Revenue. This reflects the respective obligations and responsibilities of the Commissioner under s 6 and 6A Tax Administration Act 1994 and the Solicitor-General as summarised in paragraph 1.1 above. In the event that joint agreement cannot be reached the escalation process set out in paragraph 5.1 will be followed.
- 5.5 Counsel appointed by the Solicitor-General to represent the Commissioner are responsible for what legal arguments are put to the Court, subject to the views of the Solicitor-General. Counsel will ensure that proposed submissions are fully discussed with Inland Revenue whose views on the proposed submission will be carefully considered and followed unless there are good reasons for not doing so. In the event of a dispute about proposed submissions, that dispute will ultimately be resolved by the Solicitor-General if the dispute is unable to be resolved through dialogue between Crown Law and Inland Revenue.
- 5.6 Counsel appointed by the Solicitor-General to represent the Commissioner will be responsible for ensuring that the Crown’s discovery obligations are discharged.
- 5.7 All communication with the Court must be authorised by counsel appointed by the Solicitor-General to represent the Commissioner.
- 5.8 Crown Law will communicate with Inland Revenue on litigation matters through Inland Revenue’s Litigation Management Unit in the first instance. The Litigation Management Unit will, in the first instance, be responsible for communication over litigation matters with other parts of Inland Revenue. Crown Law will advise Litigation Management Unit of any Inland Revenue matter that has not come through the Unit or other approved channel.

## 6. STRATEGIC LEADERSHIP MEETINGS

- 6.1 The Solicitor-General and Commissioner of Inland Revenue will ensure that appropriate fora exist between Crown Law and Inland Revenue to ensure the effective functioning of the relationships between the two organisations.

**RELATIONSHIPS WITH EXTERNAL PARTIES**

- 6.2 The Solicitor-General and Commissioner of Inland Revenue recognise that their complementary roles should be explained to the broader community through joint communications. In the event that it is necessary for any public statements on tax litigation or tax legal issues, the Solicitor-General and Commissioner will first confer and agree to the contents of any statement.
- 6.3 Crown law and Inland Revenue will ensure appropriate representation from both organisations at important external tax gatherings such as NZICA and NZLS tax conferences, and the International Fiscal Association annual conference.
- 6.4 When Inland Revenue is applying a legal position advised by Crown Law in a particular taxpayer situation, Crown Law will, when requested by Inland Revenue, assist in communications with taxpayers and their advisers (including attending meetings where appropriate).

  
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Robert Russell  
Commissioner of Inland Revenue

  
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Dr David Collins QC  
Solicitor-General

Dated: 29 July 2009