IN THE COURT OF APPEAL OF NEW ZEALAND

CA25/04

	BETWEEN	TELECOM NEW ZEALAND LIMITED Appellant
	AND	CHRISTCHURCH CITY COUNCIL Respondent

Hearing: 14 June 2004

Court: Glazebrook, Chambers and O'Regan JJ

Counsel: J B M Smith and J A Kean for Appellant
D A Kirkpatrick and G D Palmer for Respondent

Judgment: 7 March 2005

JUDGMENT OF THE COURT

A Appeal dismissed, save with respect to costs.

B Appeal against that part of the High Court's judgment which upheld the validity of the respondent's 1998 valuation dismissed, with the consequence that the appellant's objection to that valuation is referred back to the North Canterbury Land Valuation Tribunal for determination of the appropriate valuation of the appellant's infrastructural assets as at 1 September 1998.

C Appeal against High Court costs order allowed, with the appellant being required to pay costs to the respondent on a 2B basis rather than a 3C basis.

D The appellant must pay costs to the respondent in respect of the appeal to this court in the sum of $6,000, together with reasonable

disbursements, including travel and accommodation costs of counsel. These should be agreed by counsel but, if agreement cannot be reached, they are to be fixed by the registrar.

REASONS

(Given by Chambers J)

Rating Telecom's infrastructural assets

[1] In *Telecom Auckland Limited v Auckland City Council* [1999] 1 NZLR 426, this court held that local authority rates were payable by Telecom New Zealand Limited and its subsidiaries not only on telephone exchanges and office buildings ("exchanges") but also on telephone boxes and lines ("infrastructural assets"). By the time this decision was announced (25 September 1998) the Christchurch City Council had completed its 1998 valuation review for its district valuation roll. This exercise had valued Telecom's exchanges but not its infrastructural assets.

[2] For some time, the council did nothing to bring Telecom's infrastructural assets within the rating net. But eventually it resolved to do so – as it was bound to do. The council decided to bring Telecom's infrastructural assets within the rating system for the 2001/2002 year. To achieve that, the council had to have the infrastructural assets on its district valuation roll by 30 June 2001. It achieved this – but only just in time. The council assessed these assets' value, as at 1 September 1998, the date of the last general revaluation, at $45 million. We refer to this valuation as the 1998 valuation. The purported effect was to bring the infrastructural assets within the rating system for the 2001/2002 rating year. Rates payable for that year were in the order of $350,000.

[3] On 27 July 2001 Telecom objected to the 1998 valuation. Telecom's complaint was fundamental: Telecom argued that the process by which the valuation had been arrived at was so flawed that the valuation was a nullity.

[4] District valuation rolls are reviewed every three years. So, later in 2001 and as part of its 1 September 2001 general revaluation, the council issued another notice, advising its assessment of the value of the infrastructural assets as at that date at $65 million. We call that the 2001 valuation. We do not need to go into any detail as to that valuation to which Telecom also later objected, as Telecom's objection – while still outstanding – is not a matter with which we are seized.

[5] The council, on receiving the objections, caused the valuations to be reviewed, as required by law. The reviewing valuer recommended no change to the valuations, with the consequence that the council declined to alter them. Telecom, being dissatisfied with the review, then required the objections to be heard by the North Canterbury Land Valuation Tribunal.

[6] The statutory regime dictated that the tribunal would conduct a hearing and then determine the values. But, for reasons we shall explain, the tribunal did not do that. Instead, it succumbed to Telecom's entreaty that there should be a preliminary hearing to determine whether the council's valuations were "valuations" at all. Following that hearing, the tribunal issued two judgments, the first on 5 September 2003, the second on 24 October 2003. The tribunal upheld the Telecom argument in relation to the 1998 valuation and found that the valuation was invalid and a nullity. But it rejected the corresponding argument in relation to the 2001 valuation. The effect of the tribunal's finding with respect to the 1998 valuation was that Telecom did not have to pay any rates on its infrastructural assets for the 2001/2002 rating year, as those assets had no rateable value in the 1998 roll. Presumably the rates Telecom had paid with respect to that year would have to be refunded. The effect of the tribunal's decision with respect to the 2001 valuation was that the tribunal would proceed to determine, in the normal way, its valuation of the infrastructural assets as at 1 September 2001.

[7] The council appealed to the High Court in relation to the conclusion that the 1998 valuation was invalid. Telecom cross-appealed against the conclusion that the 2001 valuation was valid. The appeal was heard in the High Court at Christchurch on 12 December 2003. The court comprised William Young J and Mr R P Young. The court delivered its judgment on 22 December 2003: HC CHCH CIV

2003-409-002530. The court allowed the council's appeal and dismissed Telecom's cross-appeal. The effect of the High Court's decision is that the tribunal is bound to continue hearing and determining in the normal way Telecom's objections to the 1998 and 2001 valuations.

[8] Telecom then appealed to this court. It argued that the High Court was wrong in overturning the tribunal's decision in respect of the 1998 valuation. It also contended that the High Court was in error in dismissing Telecom's cross-appeal with respect to the 2001 valuation. Telecom later abandoned, however, its appeal with respect to the 2001 valuation. We need say no more, therefore, about that valuation.

Issues on the appeal

[9] So far as the 1998 valuation is concerned, Mr Smith, for Telecom, approached the issue under the following four heads:

(a) Was the valuation an Optimised Depreciated Replacement Cost valuation?

(b) Was there provisionality in the 1998 valuation and did this render it invalid?

(c) Was the 1998 valuation carried out by a registered valuer as required by s 8 of the Rating Valuations Act 1998?

(d) Did the failures taken together (if not individually) render the 1998 valuation invalid?

[10] These are essentially the same "invalidity" issues Telecom has been raising since it first lodged its objection back in 2001. Telecom's stance was that the council's valuation methodology was so flawed that the result could not be legally considered a valuation at all. Mr Smith argued that the tribunal had been correct to find the 1998 valuation a nullity and the High Court wrong in finding it valid.

Mr Smith developed a detailed argument based on the evidence given before the tribunal in an attempt to show how flawed the council's processes had been.

[11] Mr Kirkpatrick, for the council, disputed that Mr Smith's issues were the issues. He said that the primary issue for our determination, as for the High Court, was whether the tribunal had erred in addressing the "invalidity" issues at all. The issue, he said, was not how the council's valuer might have approached his task, but rather how the tribunal approached its task. He contended that the tribunal had acted without jurisdiction in conducting the preliminary hearing and in purporting to find that the 1998 valuation was a nullity.

[12] We agree with Mr Kirkpatrick. The central issue with respect to the 1998 valuation was whether the High Court was wrong in holding that the tribunal had erred in addressing the "invalidity" issues.

[13] The second issue which arises is whether the costs order made in the High Court was appropriate.

[14] We shall consider the issues in turn.

The 1998 valuation

[15] The essential issue with respect to the 1998 valuation is the proper role of the Land Valuation Tribunal when an objection to a valuation is referred to it under s 36 of the Rating Valuations Act. That can be determined only by a close analysis of the relevant legislation.

The statutory scheme

[16] The primary statute to be considered for the purposes of this appeal is the Rating Valuations Act. This Act has been heavily amended. We shall refer to it in the form in which it was at the relevant time, namely 2001.

[17] Section 6 of the Act provided that all local authorities must use the values in the relevant district valuation roll "as the authoritative roll for rating purposes". Every rate levied by a local authority was to be levied "on the basis of the values appearing in the relevant district valuation roll".

[18] Section 7 required each territorial authority to prepare and maintain a district valuation roll for its own district. That roll was to contain such information in respect of each separate property within the district as was required by rules made under the Act.

[19] Section 8 provided that all valuation services required by the Act were to be carried out by a registered valuer.

[20] Section 9 provided that every territorial authority must revise its district valuation roll at intervals of not more than three years by revaluing every separate property within its district to ensure that the roll represents values current as at the date of the revaluation.

[21] Section 12 provided that public notice must be given of a general revaluation. The roll was to be open for inspection, free of charge. The roll was to be kept available for inspection until the period allowed for objections had expired. Section 13 then provided that the territorial authority must give to each owner and occupier of land in its district a notice of the valuation placed on that land in a general revaluation and information as to the right of the owner or occupier to object to the valuation and as to the manner in which an objection might be lodged.

[22] Sections 14 and 15 empowered territorial authorities to make alterations to current district valuation rolls "in order to readjust and correct valuations and entries and bring them up to date". Section 17 provided for notification of any such alterations. It also provided for a power to object to alterations.

[23] Part 4 of the Act dealt with objections to valuations. Section 32 provided that an owner or occupier could object to a valuation. The objection had to be made within the time and in the manner specified in regulations made under the Act. The

relevant regulations are the Rating Valuations Regulations 1998. Regulation 7 stated that an objection had to contain certain information. That information included "the reason for objecting" and "the relevant value contended for by the objector".

[24] Section 34 provided that, if an owner or occupier made an objection, the territorial authority was to refer that objection to a registered valuer for review. It is significant that the reference is to a registered valuer. Clearly Parliament envisaged that the scope of any review was to be confined to matters of valuation. On conclusion of the review, the territorial authority had two options: either it altered the valuation or it declined to alter the valuation. Although the Act does not expressly so state, one would assume that the territorial authority's decision would reflect the reviewing valuer's opinion as to the correct value of the property in question. That is reinforced by the fact that the territorial authority itself, if dissatisfied with the review, may insist on the objection being heard by a Land Valuation Tribunal: s 36.

[25] Section 35 required the territorial authority to give the objector written notice of its decision on the review and of the objector's right to require the objection to be heard by a Land Valuation Tribunal.

[26] Section 36 provided that any affected person dissatisfied with a review might require the objection to be heard by a Land Valuation Tribunal. It is important to note that it is the original objection which is referred to the tribunal.

[27] The tribunal consists of a District Court judge and two others, at least one of whom must be a registered valuer: Land Valuation Proceedings Act 1948, s 19(2). There is a hearing before the tribunal. As the High Court observed, it was common ground before them, as it was before us, that the hearing before the tribunal is on a de novo basis: at [26]. It is not an appeal from the territorial authority's decision. The original valuation has no particular status. Nor does the review decision. It is, however, for the objector to prove that the correct value is different from the authority's valuation: Rating Valuations Act, s 38(2).

[28] It is the tribunal's task to form a view as to the correct valuation of the land in question. If the tribunal fixes a value different from the authority's value, the

authority must alter its district valuation roll to reflect the tribunal's decision: s 39(a). Section 40(2) provided that, if the valuation was altered on appeal, due adjustment was to be made to any rates paid on the basis of the discredited valuation, with amounts paid in excess to be refunded and amounts paid short to be recoverable as arrears.

What happened here

[29] In this case, the council altered its 1998 district valuation roll and notified Telecom of its valuation. Telecom made an objection. It set out its reasons for objecting. It contended that "the relevant value" should be nil.

[30] The valuation was reviewed. The reviewer, who was a registered valuer, considered that the council's valuation should stand. As a consequence, the council declined to alter the valuation. Telecom referred the objection to the North Canterbury Land Valuation Tribunal.

[31] Before the objection could be heard, however, Telecom issued judicial review proceedings in the High Court challenging the validity of the valuations. The Christchurch City Council, which was the respondent on that application, applied for an order striking out or staying the proceeding on the ground that the issues to be resolved could be more appropriately determined pursuant to the statutory objection procedure provided by the Rating Valuations Act. Telecom opposed the strike-out/stay application.

[32] The council's application for strike-out was heard in the High Court in Christchurch on 16 December 2002. Chisholm J delivered his decision on 18 March 2003: HC CHCH CP68/02. His Honour stayed the judicial review proceeding.

[33] His Honour considered that the statutory objection process was capable of resolving the rating issues raised in the judicial review proceeding. He considered that the defects pleaded in the amended statement of claim – which are the same

defects referred to in **[9]** above – could all be considered by the tribunal. His Honour observed (at [43]):

> The Tribunal will have the ability to conduct a full and independent enquiry de novo. It is difficult to see how the pleaded defects could seriously hamper that process. Despite the pleaded defects the Tribunal will be able to receive evidence representing both points of view, which will presumably include expert valuation evidence, and apply its expertise to arrive at a conclusion.

[34] Later in his judgment, Chisholm J remarked that he was satisfied that this was a case where it was possible for the pleaded defects to be cured by the statutory objection procedure: at [46].

[35] Telecom did not appeal Chisholm J's judgment.

[36] Telecom then filed an amended notice of objection with the tribunal. In that, Telecom claimed "orders" from the tribunal as follows:

(a) a declaration that the 1998 valuation is unlawful and invalid;

(b) an order setting aside the 1998 valuation;

(c) an order that the value contained in the district valuation roll be corrected to a nil value;

(d) such further or other relief as the tribunal sees fit.

[37] The tribunal decided to conduct a preliminary hearing at which it dealt with "all legal points raised, leaving the pure valuation issues for later determination": DC CHCH LVP18/02 5 September 2003 at [7]. This preliminary hearing considered Telecom's "invalidity" arguments and culminated in a decision – the tribunal's second – in which the tribunal purported to hold that the 1998 valuation was invalid, and should be declared a nullity: DC CHCH LVP18/02 24 October 2003 at [31] and [34]. As we have already stated, the effect of that finding was that no value for Telecom's infrastructural assets could be entered in the district valuation roll, with the consequence that Telecom would not be liable for rates for the 2001/2002 year.

The High Court decision

[38] Although the High Court decision under appeal was given by William Young J and Mr R P Young, we shall refer to it, for convenience, as "William Young J's decision", so as to distinguish it from the other High Court judgment with which we are indirectly concerned, that of Chisholm J. The essence of William Young J's decision was set forth in [51]-[55] of the reasons for judgment. We set out the relevant paragraphs:

> [51] It is perfectly clear that the Tribunal decision has produced a result which is discordant with the scheme and purpose of the legislation. The effect of the decision is that the Council must amend its 1998 valuation entry for the network by deleting the capital value. The result will be that the relevant entries in the district valuation roll will not comply with the Rating Valuations Act and the Rules. The key entry (capital value) will be blank. In practical terms this means that the network will lie outside the rating scheme for the relevant year. But it could not credibly be suggested that the network has no value. So this produces not only a district valuation roll entry that does not comply with the Rules but more importantly inconsistencies and general unfairness to other City Council ratepayers.
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> [52] The Tribunal did not refer to these consequences in its decisions although it can hardly have overlooked them. Its approach was to come at the problem another way: that is to work on the basis that the valuation and rating process as a whole (i.e. nationally) will be enhanced in terms of equity if compliance with the Act and Rules as to process is firmly insisted on. Most valuations are not challenged. Accordingly, systemic slackness on the part of valuers and local authorities may be more erosive of the legislative scheme than the odd anomalous result such as that produced by its decision in this case. The largely unarticulated premise which seems to underlie the decision of the Tribunal is that to overlook process defects may tend to encourage such slackness…
>
> *Judgment of Chisholm J*
>
> [54] If Chisholm J had thought there was a credible argument for the view that the valuations were invalid, we have no doubt that he would have retained jurisdiction in relation to proceedings which he stayed in his decision delivered in March this year. It is not appropriate for a tribunal which does not have the full range of powers available to this Court to address invalidity issues. For instance, if the validity issue had remained in this Court and the trial Judge had reached the view that the valuation was prima facie invalid, he or she would have been highly likely to have exercised the statutory power under s 5, Judicature Amendment Act 1972 to validate the valuation or, alternatively, may have remitted the valuation back for reconsideration by the City Council pursuant to s 4(5) Judicature Amendment Act 1972. Obviously, if the latter course was under consideration, questions as to timing would have been required to be considered. These factors point to the inappropriateness of an invalidity issue being dealt with otherwise than in this Court.

> [55] So, whether there was a credible argument for the view that the valuations were invalid was squarely before Chisholm J in the judgment he delivered in March this year. It is perfectly clear that his view was that there was no such credible argument. He plainly did not believe that the Telecom arguments as to invalidity could result in a "rating hiatus", as he put it. Whether or not the judgment of Chisholm J constitutes a res judicata on this issue, it was bold, to say the least, of Telecom to argue invalidity in the Tribunal. It was equally bold for the Tribunal to uphold, in relation to the 1998 valuation, an argument which Chisholm J had regarded as being not even arguable.

Our evaluation

[39] We agree with William Young J that the tribunal misconceived its function and powers. The tribunal is a judicial body with limited jurisdiction. As befits a body the majority of whom are valuers, the tribunal's jurisdiction under the Rating Valuations Act is limited to valuing land. The tribunal is not competent (in the legal sense) to undertake the sort of analysis which a High Court judge would undertake on an application for review under the Judicature Amendment Act 1972. Parliament has not given the tribunal, for obvious reasons, the powers that the High Court enjoys in dealing with judicial review applications. The tribunal does not have power to make declarations. Nor does it have power to order that the valuations of local authorities are invalid or nullities. The tribunal is not sitting in an appellate role. Still less is the tribunal sitting as a quasi-High Court. The tribunal's function was simply to assess the value of Telecom's infrastructural assets, objections having been referred to it by Telecom.

[40] In fairness to Telecom and its legal advisors and the tribunal, however, we want to make clear that we have some sympathy for the position in which they found themselves. There were parts of Chisholm J's judgment which, at least on one reading, would appear to have sanctioned the course which Telecom and the tribunal followed. In truth, and with respect, Chisholm J's reasoning was internally inconsistent. Telecom and the tribunal followed one part of the reasoning; the High Court in the judgment under appeal emphasised another strand of the reasoning.

[41] It is worth recording that, at the hearing before Chisholm J, it was Mr Smith on behalf of Telecom who expressed doubt as to whether the tribunal had jurisdiction "to resolve *validity* issues": see [33] of Chisholm J's judgment; emphasis in the original. Mr Palmer, on this appeal the council's junior counsel but at the hearing before Chisholm J the council's sole counsel, apparently did not share Mr Smith's doubts. According to Chisholm J's judgment, Mr Palmer considered the legislative scheme to be wide enough to empower the tribunal to resolve issues of validity as well as issues of correctness: at [33].

[42] In one part of Chisholm J's judgment, His Honour appears to have accepted Mr Palmer's argument. At [36], Chisholm J expressed the view that the statutory objection procedure was wide enough "to provide a mechanism for all issues arising from rating valuations, *including validity issues*, to be resolved" (emphasis in the original). And later in that same paragraph, His Honour said:

> Given that structure I cannot accept that Parliament intended to withhold issues of validity from the Tribunal. As Mr Palmer said, the statutory objection process is well placed to resolve such issues, along with other issues of law which are plainly within the jurisdiction of the Tribunal.

[43] Later in the judgment, however, Chisholm J expressed the view that "the pleaded defects [could] be cured by the objection process": at [45]. And His Honour expressly rejected the view that a finding of invalidity could give rise to a rating hiatus. His Honour said at [38]:

> Mr Smith floated the idea that a finding of invalidity [in the judicial review proceeding] might give rise to a hiatus where no rates would be payable. He did not elaborate. I cannot accept that proposition. The purpose of the legislation is to ensure that the District Valuation Roll includes information in relation to each separate property within the district which will enable rates [to] be levied.

[44] His Honour summarised his judgment as follows (at [46]):

> The Land Valuation Tribunal will have the necessary power to resolve the validity issues raised by the application for judicial review. Apart from that the statutory objection procedure will be capable of curing the pleaded defects. Under those circumstances the statutory objection procedure represents the more appropriate forum. While it is understandable that Telecom felt compelled to bring the judicial review application, any further steps in that proceeding would amount to an abuse of process.

[45] At least on one reading, His Honour's views were inconsistent. His Honour appears to have considered that the statutory objection procedure would be capable of curing any defects in the council's processes to date, with the consequence that the application for review proceedings should be struck out or stayed. On the other hand, His Honour appears to have considered that the tribunal had power to consider the "validity" issues Telecom wanted to raise. But what could *the tribunal* do about those if it concluded they had merit and were deserving of a remedy? The remedy presumably might be either a finding that the council's valuations were nullities or an order that the council should recommence the process, this time doing it lawfully. But the tribunal has no power to grant such remedies.

[46] We have not overlooked the fact that His Honour relied in part on what he saw as an analogy with the scope of objections permitted under income tax legislation. Under the relevant tax legislation, it has been held that objections as to the validity of assessments may be made to and determined by a Taxation Review Authority: *Golden Bay Cement Co Ltd v Commissioner of Inland Revenue* [1996] 2 NZLR 665 (CA) at 671-672; *Miller v Commissioner of Inland Revenue* [2001] 3 NZLR 316 (PC) at 329. It appears from Chisholm J's judgment that Mr Smith had argued before Chisholm J that the statutory regime governing income tax objections was different from the statutory regime for fixing value of land for rating purposes: at [35]. Chisholm J accepted that the statutes were differently worded, but saw the distinctions as reflecting merely "a different legislative technique". The end result, he thought, was the same.

[47] With respect, we disagree with Chisholm J's conclusion; we agree with the argument Mr Smith apparently advanced on that occasion. There are significant differences between the two statutory regimes which render the analogy false.

[48] A Taxation Review Authority is a District Court Judge or a barrister and solicitor of seven years' standing (the same qualification as required for appointment as a District Court Judge or a High Court Judge). Traditionally, the authority is a specialist in tax law. Assessments of income tax are effectively demands to pay money. It is accordingly logical that every possible objection to that demand should take place in the one forum, particularly given the fact that Parliament has expressly

provided that assessments cannot be disputed in any court or in any proceedings except in objection proceedings: Tax Administration Act 1994, s 109, and previously Income Tax Act 1976, s 27. The powers of the authority include a power to "cancel" an assessment. It was the presence of that power which led this court in *Golden Bay* to conclude that validity challenges could be made under the objection procedure: at 672.

[49] That is to be contrasted with the position concerning the valuation of land under the Rating Valuations Act. These are the significant differences. First, when a local authority gives notice of a valuation, it is not making any demand for payment. It is quite true that the valuation will later be used for rating purposes; but the fixing of the value of land does not of itself amount to or lead to a demand for money. Rates assessment notices (admittedly based at least in part on the land valuations fixed) come later and can be at that time the subject of challenge as to validity: see now the Local Government (Rating) Act 2002, s 60 and see previously the Rating Powers Act 1988, s 138.

[50] Secondly, it is very significant that objections to land valuations are first referred to a registered valuer. It is inconceivable that Parliament intended a registered valuer to deal with anything but valuation challenges: all the reviewing valuer is investigating is whether the value is correct. If the land owner is dissatisfied with the reviewing valuer's decision, then the objection – the same objection – is referred to the Land Valuation Tribunal, a body whose majority membership comprises registered valuers. Again, it is inconceivable that Parliament intended registered valuers to come to grips with "validity" challenges of the sort advanced by Telecom in this case.

[51] Thirdly, there is no provision in the Rating Valuations Act to the effect of s 109 of the Tax Administration Act or s 27 of the Income Tax Act 1976.

[52] Fourthly, the tribunal does not have power to "cancel" a valuation in the same way that the authority has power to "cancel" a tax assessment. It was that power to "cancel" which was an essential step in this court's reasoning as to the scope of objections permitted under income tax legislation. Contrary to the view

expressed by Chisholm J, we do not consider that s 37 of the Land Valuation Proceedings Act confers power on the tribunal either to "cancel" a valuation or to ascribe a "nil value" to land which obviously does not have a nil value.

[53] For these reasons we hold that the analogy with objections to tax assessments is flawed.

[54] Telecom for some reason decided not to appeal Chisholm J's decision. Instead they decided to run with that part of Chisholm J's decision which appeared to give them some comfort. The tribunal too appears to have been persuaded that it was in order for it to investigate the "invalidity" arguments.

[55] Unfortunately, that approach was flawed. What should have happened, Telecom having elected not to appeal Chisholm J's decision, is that the tribunal should have concentrated on its sole function, namely valuing Telecom's infrastructural assets as at 1998 and 2001. Telecom's attacks on the 1998 and 2001 valuations would have had some relevance, but that relevance would be limited to the weight to be accorded to those valuations.

[56] Thus, while the approach of Telecom, adopted by the tribunal, was wrong, we can understand why Telecom may have considered that course open to it. We also observe that there has been a change in stance on the council's part. It was after all the council which argued before Chisholm J that "invalidity" issues could be argued before the tribunal. It appears that the council changed tack only after they received the tribunal's first decision, eventually arguing before us the opposite case to that which the council had advanced before Chisholm J. It was now Mr Kirkpatrick, not Mr Smith, who was arguing that the tribunal "should not have been [considering the alleged deficiencies in the 1998 valuation process] at all": the council's submissions at [23]. As it turns out, Mr Kirkpatrick was right.

[57] For the reasons given, we hold that the appropriate forum for Telecom's "invalidity" arguments was the High Court on an application for review. Telecom may think, on reading this judgment, that they made a mistake in not appealing Chisholm J's judgment. Indeed, in the course of argument before us, Mr Smith

raised the possibility of seeking to lift the stay imposed by Chisholm J or seeking special leave to appeal out of time against Chisholm J's decision. We make no comment on either possibility, apart from noting that, even if the application for review had run its course, it would not have been likely to yield Telecom any advantage. In that regard, we agree entirely with William Young J in the decision under current appeal.

[58] The following outcomes were possible. First, Telecom may not have been able to substantiate the attacks it made on the processes leading up to the 1998 and 2001 valuations.

[59] Secondly, even if Telecom showed that the processes leading to the valuations were defective, it is highly likely that the High Court would have held that a hearing de novo before the tribunal would cure any deficiencies and that the High Court would have simply declined relief in its discretion under the Judicature Amendment Act 1972, s 4(3): *Slipper Island Resort Limited v Number One Town and Country Planning Appeal Board* [1981] 1 NZLR 143 (CA) at 145; *Smith v Waikato County Council* (1983) 9 NZTPA 362 (HC); *McNaughton v Tauranga County Council (No 2)* (1987) 12 NZTPA 429 (HC); *Commissioner of Inland Revenue v Dandelion Investments Limited* (2001) 20 NZTC 17,293 (HC) at [57]. We accept that those cases involve in the main appeals in circumstances where it was argued natural justice had been denied at first instance. But in our view, the principle holds good by analogy. Indeed, it could be said the principle applies a fortiori here given that the tribunal's hearing is de novo with none of the restrictions normally inherent in an appeal process.

[60] Thirdly, it is possible that the High Court would have ordered the council's valuer to revalue the infrastructural assets. We know that would not have been to Telecom's advantage because we know, on the basis of evidence Telecom itself put before the tribunal at the preliminary hearing that, if anything, the council's valuer *seriously undervalued* Telecom's infrastructural assets as at 1 September 1998.

[61] What is not possible is that the High Court would have allowed a result whereby no values would be entered on the district valuation roll. We agree with

William Young J that such a result – which is, as it happens, the result to which the tribunal came – would be "discordant with the scheme and the purpose of the legislation". Such an order would result in a district valuation roll which did not comply with the Act and with rules made under it. It would lead to inconsistencies and unfairness between Telecom and the other ratepayers of Christchurch. There is no discretion as to whether land goes on the roll. If it qualifies (as the Telecom network does), it must be included in the district valuation roll as a matter of law. Neither the council nor the tribunal nor a court has power to exempt it.

[62] Just as unlikely would be an order that the council enter on its district valuation roll a "nil" value, one of the remedies which Telecom had sought. No one for one moment considered that the infrastructural assets had no value. The High Court could not possibly countenance making an order that a value be entered on the roll which was patently incorrect.

[63] For these reasons, we consider that the application for review proceeding was doomed, at least in the sense of providing Telecom with a remedy of practical advantage. We think this is what Chisholm J had in mind. He clearly considered that the objection process would "cure the pleaded defects": at [43]. We take that to mean that the objection process would lead to a value being struck in accordance with the approved valuation methodology.

[64] The tribunal's decision that the 1998 valuation was a nullity and invalid was made without jurisdiction. As William Young J held, the valuation was valid. It is now for the tribunal to resume its hearing of Telecom's objections and to reach a determination of the appropriate values of the infrastructural assets as at 1998 and 2001.

[65] We mentioned to counsel in the course of argument that we might call for further submissions if we were to decide that the tribunal had no power to rule on the validity of the valuation. On reflection, we do not find it necessary to do so.

Costs in the High Court

[66] The High Court awarded the council costs on a 3C basis. The parties had agreed before the hearing in the High Court that costs in the High Court would be settled on a 2B basis. That agreement was either not brought to the High Court's attention or overlooked by it when it fixed costs.

[67] By consent, this part of Telecom's appeal is allowed. So far as High Court costs are concerned, we substitute for the order made an order that Telecom is to pay the council costs on a 2B basis, together with disbursements (including travel and accommodation expenses of counsel) to be fixed by the registrar of the High Court at Christchurch.

Costs on this appeal

[68] We order Telecom to pay costs to the council in respect of the appeal to this court in the sum of $6,000, together with reasonable disbursements, including travel and accommodation costs of counsel. These should be agreed by counsel but, if agreement cannot be reached, they are to be fixed by the registrar.

Solicitors:
Russell McVeagh, Wellington, for Appellant
Simpson Grierson, Auckland, for Respondent