The issue in this case is the proper characterisation of the Supreme Court's role in reviewing the decisions of the Chief Commissioner of State Revenue ("the Commissioner") concerning the de-grouping of companies for payroll tax purposes, pursuant to ss 97 and 101 of the *Taxation Administration Act 1966* (NSW) ("the Administration Act"). Is it an appeal in "the right and proper sense", or is it a hearing de novo?

The Appellants run a diverse array of businesses which involve; chicken meat processing, administrative services, transportation and the leasing of premises. Between 2002 and 2007 the Commissioner issued a series of assessments that grouped them together under s 16C of the Administration Act. The Appellants subsequently challenged the decision not to de-group them for any of the assessment periods.

On 1 October 2009 the Appellants' review was allowed by Justice Gzell, who held that he was entitled to re-exercise the Commissioner's discretion concerning the de-grouping.

On 4 January 2010 the Court of Appeal (Giles, Macfarlan JJA and Handley AJA) allowed the Commissioner's appeal. Their Honours held that an appeal under s 97 of the Administration Act (in respect of a decision not to de-group) is an appeal in "the right and proper sense". Accordingly, the Court must not consider the matter by way of a hearing de novo.

The grounds of appeal include:

- The Court of Appeal erred when it overruled the decision of the primary judge in *Affinity Health Limited v Chief Commissioner of State Revenue (NSW)* (2005) NSWSC 663, insofar as that decision held that the Supreme Court had, first, the power to undertake a full review on the merits of all of the decisions of the Commissioner under s 97 of the Administration Act, and secondly, the power under s 101(1) of the Administration Act to re-exercise those statutory discretions of the Commissioner which depend on his state of mind.

- The Court of Appeal erred in failing to consider whether the principles enunciated in *House v The King* (1926) 55 CLR 499 at 504-505 apply in an appeal from proceedings under section 97 of the Administration Act involving the review by the Supreme Court of a discretionary determination by the Commissioner.