

Caught in a time warp - Mr JG Russell, The Great Tax Avoider of Old¹

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CONFERENCE PAPER**

ABSTRACT

Tax is a social construct that can be studied through many and various disciplinary lenses. In seeking to understand almost any aspect of taxation, we need to bear in mind that it is much more than the study of the revenue law itself. McKerchar writes ‘Legal researchers may be well qualified to study the meaning of the letter of the law, but find that they are not quite so equipped to study how people respond to the law.’² She adds that ‘Research is about discovery... [and] is rarely about truth, because realistically there is no single absolute truth.’ However, McKerchar concedes that ‘perhaps the one absolute truth is that people are very complex beings.’³ This paper focuses on the practical issues that arose from a single case study⁴ researching into the life of Mr JG Russell, the creator of New Zealand’s most prolific tax avoidance template that has led to over three decades of litigation.

Looking backwards, Inland Revenue, naively thought the Russell template litigation would have been fully resolved in the 1990s, however it has morphed into being somewhat of a ‘tardis’ for Inland Revenue. It has proven to be a much bigger tax compliance issue than first thought, and certainly has lasted considerably longer than ever imagined. Looking forward, the tax dispute between Inland Revenue and Mr Russell is in its final stages, with bankruptcy likely. Mr Russell was a guest at the University of Canterbury on two occasions, the purpose primarily being for the recording of in-depth interviews capturing his life story. Looking backwards it appears that the capturing of this narrative history was timely as it has been reported that Mr Russell is suffering from the onset of dementia.⁵ Mr Russell also addressed University of Canterbury students by way of seminar on both Christchurch visits, a unique experience for both cohorts.

The duration of the author’s research of Mr Russell spanned over three years and it is naïve to think that relationships do not develop over such a period of time. The author has seen Mr Russell in a different light to that portrayed in the media and by Inland Revenue. One

¹ Mr Bruce Grierson, acting for the taxpayers in *Case R25*, described Mr Russell as “The Great Tax Mitigator” and “The Old Master of Tax.” Mr Mike Ruffin, counsel for Inland Revenue suggested that “The Master Tax Avoider” was more apt.

² McKerchar, M. *Design and Conduct of Research in Tax, Law and Accounting*, Thomson Reuters (2010) at [1.50]

³ McKerchar, M. *Design and Conduct of Research in Tax, Law and Accounting*, Thomson Reuters (2010) at [1.90]

⁴ Yin, R.K., *Case Study Research: Design and Methods* (3rd ed, Sage Publications, Beverly Hills, 2003).

⁵ New Zealand Herald, ‘Battle to bankrupt man with \$485m IRD bill continues’, J Ellingham, June 2015.

observation is that Mr Russell is caught in a tax avoidance ‘time warp’, living in a ‘pre-*Challenge*⁶ world, unable to accept judicial interpretation of tax avoidance law that has long since moved on. Issues that arose from this study included validation of data presented by Mr Russell, and being aware of researcher bias developing over time. In addition the research raised issues around future access to material, as aspects of the final study had to be redacted indefinitely.

1.0 INTRODUCTION

On 19 November 2015 at 10:35am Mr John George Russell was formally declared bankrupt. Inland Revenue’s so called ‘public enemy number one’ told the *New Zealand Herald* only a few weeks prior to his bankruptcy that he would not challenge the bid to bankrupt him, in essence raising the white flag.⁷ Mr Russell saw no reason to turn up to the proceedings saying ‘It’s a fait accompli really.’⁸ In an earlier September decision Associate Judge Hannah Sargisson signalled the end of the ‘fight’ and stated that Mr Russell’s situation was of his own making.

Comments made by readers to the *New Zealand Herald* November 2015 article ‘\$500m man calls it quits in battle with IRD’⁹ were in general in support of Inland Revenue’s actions to take the final step of bankruptcy. Many of those readers would simply see Mr Russell’s actions as being no more than a taxpayer successfully delaying tax collection of funds ultimately belonging to the taxpayer and society in general.

It would be a shame for history to regard Mr Russell merely as ‘The Master Tax Avoider’.¹⁰ After over three decades of litigation and tax dispute what is Mr Russell really like as a person? What motivated him to continue in this tax battle for so long? Although his father had originally wanted him to be an engineer and take over running the farm in Hamilton he ended up in accounting classes by mistake and this set his course in the commercial world for what was to follow. Mr Russell mentioned to me early in the interview process his school¹¹ motto from all those years ago. The school motto was ‘Dare to be True’ with Mr Russell stating that he always remembered that motto and had endeavoured to take it on board personally throughout his life. If Mr Russell has been true to himself throughout his life a different viewpoint may be held by Inland Revenue staff having dealings with him and his template activities over the years.

⁶ *Commissioner of Inland Revenue v Challenge Corporation Limited* (1986) 8 NZTC 5,219 (PC).

⁷ Bankruptcy declared for \$500m IRD battler’, *The New Zealand Herald*, Hamish Fletcher, 19 November 2015.

⁸ Bankruptcy declared for \$500m IRD battler’, *The New Zealand Herald*, Hamish Fletcher, 19 November 2015.

⁹ \$500m man calls it quits in battle with IRD, *The New Zealand Herald*, Hamish Fletcher, 6 November 2015.

¹⁰ Mr Grierson, acting for the taxpayers in *Case R25*, above n 48 described Mr Russell as “The Great Tax Mitigator” and “The Old Master of Tax.” Mr Ruffin, counsel for Inland Revenue suggested that “The Master Tax Avoider” was more apt.

¹¹ Fairfield School, Hamilton.

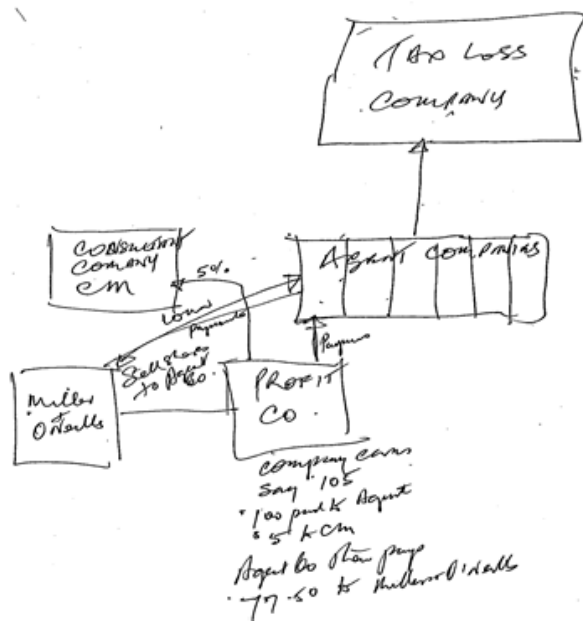


Figure 1: The Russell Template

This paper considers practical issues that arose from a single case study researching the life of Mr J G Russell. Unlike the newspaper commentators who may have only had a cursory read of the activities of Mr Russell, the researcher spent considerable time with Mr Russell interviewing him about his life story, his past, his goals and his perceptions of his battle with Inland Revenue and other authorities over the last 30 years. Mr Russell's life in many respects has been consumed by the tax 'battle' and in his own words at one stage mentioned to the researcher that:¹²

I have spent most of my life for the last 25 years on this...well quite frankly, you would have to say when you look at it...it has been a complete waste of time really...well not a complete waste of time, but it's largely been a waste of time because there has been an enormous input of energy but a very light impact has occurred...

I have interviewed Mr Russell in his home, had him visit our University of Canterbury campus and engage with our students, have seen him in the courtroom setting and interacting with his family and friends. I never intended to discuss the merits of his tax template but simply wanted to capture his story, what motivated him and his reasons for devoting over 30 years of his life to his cause. I would imagine a tax avoidance debate of sorts would have led to a very short interview time being granted by Mr Russell. People are people with different views of the world and Mr Russell is no exception. Mr Russell is certainly 'old school', explained best by the example that he has only had an email address since late 2010!

¹² Interview with Mr J G Russell, Hodson, at University of Canterbury, 28 July 2011.

This paper is about how the research into Mr John Russell came about, from the inception of researching him as a topic to the court visits with him, to seeing him at his home. It is not a common thing to interview one of New Zealand's most prolific tax avoidance personalities. To spend several years getting to know Mr Russell has been enlightening.

My research began as a look at the 'black letter' law contribution of Mr Russell and his tax template creation to New Zealand jurisprudence. Prior to speaking to Mr Russell I had been aware that he had unsuccessfully sued (but sued nevertheless) for defamation. I was initially cautious and organised a 'meet and greet' at his home in early 2010. There is no other individual who has been involved in a tax dispute for such a long period of time in New Zealand, and I would suggest even internationally there would be difficulty in locating a taxpayer dispute exceeding 30 years. That is what makes Mr Russell unique, as very few people would have the stamina or the ability to engage (ultimately in litigation) for such a long period.

If Mr Russell's legal arguments lacked merit or were of a frivolous or vexatious nature, they may have received their 'mortal blow' several years ago. This would suggest that there was some merit to Mr Russell's arguments, and as a game player one trait is to have a mastery of the law.

2.0 CASE STUDY RESEARCH

Lamb¹³ argues that tax is not a discipline in itself but rather a multidisciplinary field of research, or clustering of research interests. Tax is a social construct that can be studied through many and various disciplinary lenses. In seeking to understand almost any aspect of taxation, we need to bear in mind that it is much more than the study of the revenue law itself. A socio-legal approach is supported by Cane and Kritzer.¹⁴

A difficulty with case study research is that the researcher cannot be regarded as a neutral independent observer. The social reality must be interpreted by the researcher and, thus, case studies represent interpretations of the social reality. There can be no such thing as an 'objective' case study.¹⁵

Research is about discovery. McKerchar writes that "[research] is rarely about truth, because realistically there is no single absolute truth."¹⁶ It is virtually impossible to find unambiguous explanations for human behaviour. McKerchar concedes that "perhaps the one absolute truth

¹³M Lamb, "Interdisciplinary Taxation Research – An Introduction" in M. Lamb, A. Lymer, J. Freedman and S James (eds), *Taxation: An Interdisciplinary Approach to Research* (Oxford University Press, Oxford, 2005) as cited in Margaret McKerchar, *Design and Conduct of Research in Tax, Law and Accounting*, (Thomson Reuters/Lawbook Co., Sydney, 2010) at [1.50].

¹⁴ Peter Cane and Herbert M. Kritzer, *The Oxford Handbook of Empirical Legal Research*, (Oxford University Press, Oxford, 2012) at 1018.

¹⁵ *Research Method and Methodology in Finance and Accounting*, Ryan, Scapens and Theobald, 1993 at page 125 and 126.

¹⁶ McKerchar, above n 2, at [1.90].

is that people are very complex beings.”¹⁷ Research shapes who we are and the society we live in. While research in tax, law and accounting can still be scientific, it would perhaps more accurately fall into the category of social science since tax, law and accounting are social constructs rather than elements of nature.¹⁸

A case study allows a researcher to perform a comprehensive analysis of a contemporary phenomenon within its real life context. Case studies are the ideal method for the ‘how’ and ‘why’ type research questions to be asked.¹⁹ From an ontological perspective the researcher agrees that reality is socially constructed, rather than objective and external to the subject and the researcher.²⁰ It is impossible to be separated from the subject under study, and reality can only be objectified through human interaction when people engage and ascribe meaning to it. From an epistemological perspective it is the researcher’s belief that the researcher is part of the knowledge discovery process. Consequently, the researcher believes that the knowledge created is based on the researcher’s own subjective interpretation of the social world as coloured by their own views, personal experiences, existing knowledge and beliefs.

Narrative research examines the experiences of individuals as told in stories.²¹ Clandinin and Connelly describe narrative research as a way of understanding the world based on the view that life is ‘filled with narrative fragments that are enacted in storied moments of time and space.’²² Narrative research seeks to interpret or make meaning of an individual’s life experience, both over a period of time and as a whole.²³ Where stories are told in person, the relationship between the teller and the researcher is very important. The teller, in this case, Mr Russell, places a great deal of trust in the researcher who, in turn, assumes a great deal of responsibility.

McKerchar states that a story told in narrative research has three important characteristics that need to be understood. Firstly, the story as told to the researcher may contain elements of both fact and fiction as it is recollected from the perspective of the teller and may possibly be ‘muddled’.²⁴ Secondly, the story is usually told in a specific social context and for a

¹⁷ McKerchar, above n 2 at [1.90].

¹⁸ McKerchar, above n 2 at [1.120].

¹⁹ R.K. Yin, *Case Study Research: Design and Methods* (3rd ed, Sage Publications, Beverley Hills, 2003) at 26.

²⁰ Wai Fong Chua, “Radical Developments in Accounting Thought” (1986) 61 *The Accounting Review* 601.

²¹ P. Liamputtong, *Qualitative Research Methods* (2nd ed, Oxford University Press, Melbourne, 2005) at 111 as cited in McKerchar, above n 2, at [5.180].

²² D.J. Clandinin and F.M. Connelly F. M, *Narrative Inquiry: Experience and Story in Qualitative Research* (Jossey-Bass, San Francisco, 2000) at 17 as cited in McKerchar, above n 2, at [5.180].

²³ McKerchar, above n 2 at [5.180].

²⁴ McKerchar, above n 2 at [5.190].

particular purpose.²⁵ It is not necessarily the ‘whole truth and nothing but the truth’. It is ‘truth’ as perceived (or at least conveyed) by the teller and to a lesser degree what is interpreted by the researcher in the exchange. McKerchar writes that “even if there does appear to be evidence (implicit and/or explicit) of causal relationships in the story told, given these two important characteristics, the researcher needs to exercise care in the formulation of meaning”.²⁶ Thirdly, the story told is effectively retold by the researcher, so the end result is a collaborative piece of work that combines views from the life of the individual (or subject), as the story is relived, with those of the researcher.²⁷ In retelling the story the researcher needs to be mindful of any relevant ethical considerations, including the sensitivity of the story and who may be hurt in the telling.²⁸

It is important to mention my own personal bias. In the telling of events to me I have interpreted what has been said naturally with my own bias. I have sought to clarify every statement made where a legal case has been referred to, and to analyse material from more than one source. I have developed a friendship with Mr Russell, and appreciate his sense of humour. I have attempted to always balance what has been said to me by Mr Russell with factual material [such as case law, or other documentation]. I have attempted to maintain professional distance.

3.0 LOOKING BACKWARDS – INTERVIEWING MR RUSSELL

*“...once a story is told, it cannot be called back. Once told, it is loose on the world. So you have to be careful with the stories that you tell. And you have to watch out for the stories that you are told.”*²⁹

Minichiello et al³⁰ explain the primary focus of an in-depth interview is to understand the significance of human experience, as described from the interviewee’s perspective and interpreted by the interviewer. Patton³¹ describes this as finding out what is going on in someone’s mind. Some of this interpretation will be based on what was said, but the researcher has to also observe and interpret what was not said, using clues such as body

²⁵ J. Elliott, *Using Narrative in Social Research: Qualitative and Quantitative Research* (Sage Publications, London, 2006) at 15 as cited in McKerchar, above n 2, at [5.190].

²⁶ McKerchar, above n 2, at [5.190].

²⁷ D.J. Clandinin and F.M. Connelly, *Narrative Inquiry: Experience and Story in Qualitative Research* (Jossey-Bass, San Francisco, 2000) at 71 as cited in McKerchar, above n 2, at [5.190].

²⁸ McKerchar, above n 2 at [5.190].

²⁹ T. King, *The Truth about Stories: A Native Narrative* (Anansi Press, Toronto, 2003) at 10.

³⁰ V. Minichiello, R. Aroni and T. Hays, *In Depth Interviewing* (3rd ed, Pearson Education, Sydney, 2008) at 11 as cited in McKerchar, above n 2, at [6.320].

³¹ M.Q. Patton, *Qualitative Research and Evaluation Methods* (3rd ed, Sage, Thousand Oaks, 2002) at 341 as cited in McKerchar, above n 2, at [6.320].

language, eye contact, reactions, innuendo and so forth. Liamputtong and Ezzy³² describe a good interview as resembling a good conversation with a two way flow of dialogue where the interviewer asks questions, actively listens, responds and encourages the interviewee to open up and share more of their experiences.

A formal style of interview, as advocated by Patton,³³ is where the interviewer builds rapport, but remains neutral in respect of the content of what is being discussed. Fontana and Frey³⁴ argue that neutrality is not only unnecessary, but almost impossible for the interviewer to achieve.

Liamputtong³⁵ emphasizes the importance of setting the scene and building trust for the interview and to allow the interviewee to talk at length and to choose where to begin and which parts of the story to emphasise. This came naturally with Mr Russell. It was also prudent to reflect back after the substantive interviews and check that the main responses and interpretations were understood. Mr Russell was very patient and clear in telling his story.

My interviews sought to capture Mr Russell's story from his early beginnings, to his success and the ultimate failure of Securitibank,³⁶ then the journey from the start of Commercial Management business to the final days of template related litigation some three decades later. Over the last three decades post *Challenge*³⁷ attitudes towards tax avoidance have changed markedly.

4.0 PERCEPTIONS OF MR RUSSELL

The Russell litigation has created numerous judgments and it is relatively easy to grasp the points made in a court decision from a legal perspective. What has been examined by way of the Russell litigation has been the case after case arguments both procedurally and substantively over the past three decades.

³² P. Liamputtong, and D. Ezzy, *Qualitative Research Methods* (2nd ed, Oxford University Press, Melbourne, 2005) at 55 as cited in McKerchar, above n 2, at [6.320].

³³ M.Q. Patton, *Qualitative Research and Evaluation Methods* (3rd ed, Sage, Thousand Oaks, 2002) at 365 as cited in McKerchar, above n 2, at [6.350].

³⁴ A. Fontana and J. Frey, "The Interview: From Neutral Stance to Political Involvement" in N. Denzin and Y. Lincoln (eds), *The Sage Handbook of Qualitative Research* (3rd ed, Sage, Thousand Oaks, 2005) at 696 as cited in McKerchar, above n 2, at [6.350].

³⁵ P. Liamputtong, *Qualitative Research Methods* (3rd ed, Oxford University Press, Melbourne 2009) at 47 and 52 as cited in McKerchar, above n 2, at [6.360].

³⁶ Securitibank played a major role in the development of New Zealand's money markets in the 1970s. It collapsed in December 1976 due to over exposure to the property market. It was New Zealand's largest corporate collapse at the time.

³⁷ *Commissioner of Inland Revenue v Challenge Corporation Ltd* [1987] AC 155 (PC). *Challenge* was the first New Zealand tax case that involved an arrangement that deliberately sought to take advantage of two specific provisions in the Income Tax Act 1976, which governed the carry forward and offsetting of tax losses between groups of companies.

Over the past few years my research has been met with varying responses. I had initially discussed the idea of contacting Mr Russell with my University of Canterbury tax colleagues. We had taught the Russell template related cases for many years at the University of Canterbury and it always intrigued me as to what motivated Mr Russell to keep battling Inland Revenue and I wondered what Mr Russell was really like. An impression can easily develop from a distance, just by reading the many cases to build up an opinion of someone clever by way of delay, yet one may wonder whether there is also an element of frivolity or vexatious attitude in existence too. After spending time with Mr Russell it was very apparent that he does not display narcissistic tendencies, as one may have expected; rather Mr Russell appears to firmly believe in his tax positions taken and viewpoints on the legal merits of tax avoidance.

For students the opportunity to meet New Zealand's perhaps most well-known tax avoider was very well received. I had asked students to email me their various questions prior to Mr Russell's seminar and was inundated by way of response. One student in particular held Mr Russell in awe and wanted to know what advice he would give to young people starting out in their careers. It was apparent that the students warmed to Mr Russell, even though the majority, if not all disagreed with his tax stance. For the 2011 cohort many tax students commented that Mr Russell's address 'Reality and Inland Revenue' was a course highlight for them. Mr Russell is very much 'old school' in his approach to talking to the students, he had prepared meticulously and thoroughly appreciated the student engagement.

Mr Russell's lifestyle always appears to have perplexed Inland Revenue. He clearly does not seek a life of lavish spending and flashy living, rather our interviews were conducted in his lounge room with second hand organs and draylon fabric covered lounge suites. The house appeared to be in need of maintenance. Mr Russell and his wife were extremely hospitable towards me in their home. I have read many comments about Mr Russell's tax exploits and comments in the media online. Many comments are of a negative nature with a lot of comments showing an ignorance of the nature of tax avoidance as opposed to tax evasion.

The 'starting point' for many of the comments are negatively framed 'labelling' Mr Russell from the start. As part of my research I wanted to meet others that had spent time with Mr Russell, such as some of his template clients. I was fortunate to have the opportunity to interview a retired judge who has sat on many Russell cases and gain his insight into Mr Russell's integrity. This will form the basis of a future paper to be completed as ongoing research. It is clear that those who have spent time with him hold a different opinion to that generally portrayed in the media.

5.0 LOOKING BACKWARDS – BEYOND TAX

Perhaps what is little known about Mr Russell by most people absorbed purely in a ‘tax world’ is that Mr Russell became both a Chartered Secretary and a qualified accountant.³⁸ Mr Russell was by his own description a very able management accountant having worked for such firms as R B Swann & Co³⁹ (a large accounting firm at the time), L J Fisher & Co Ltd,⁴⁰ Lamson Paragon (NZ) Ltd⁴¹ and Butland Industries Ltd⁴². These three companies were in quite different industries: building and construction, printing and food manufacturing. Mr Russell felt he had gained a lot of knowledge from his early employment and on reflection considered the printing industry to be the most fascinating. Prior to establishing the entities that led to the Russell tax template Mr Russell had presided over the Securitibank group of companies.

Mr Russell was Managing Director of Securitibank, an entity that forged the beginning of the New Zealand money market and merchant banking. The formation of Securitibank followed with Mr Russell being their first employee. After receiving only minimal training for two weeks in Australia he began operating out of a small one room office in central Auckland, assisted by a lone typewriter. Securitibank ultimately collapsed in 1976, being New Zealand’s largest corporate collapse at the time. Mr Russell was 41 years of age at the time of the

³⁸John Russell attended night school at Hamilton Technical College and finished his professional qualifying exams. This took about three years in total. He valued the benefit of mixing theory with the practical day to day experience he was gaining. Learning how it should be done with what was really being done in the world was invaluable to him. He was always very interested in cost accounting and became a member of the New Zealand Society of Accountants (now Chartered Accountants Australia New Zealand).

³⁹RB Swann & Co was a large accounting firm, dealing mainly with farming clients. They had 19 branches with a very large branch in Hamilton where John Russell was employed. They had 50,000 clients and had developed a type of mass production technique (all the cashbooks were pre-printed) in relation to preparing accounts, being able to produce a set of accounts for a farmer at the time for 11 pounds. John learned a lot from his time there and was employed for about two years. It was a time of over full employment (1949). John Russell was very competent at his job earning 5 pounds a week at the time, twice the going rate.

⁴⁰ John Russell was initially employed as a cost accountant, then accountant, and then took on the role as company secretary. L J Fisher & Co Ltd manufactured Decramastic tiles for roofing applications. The Decramastic roof tile had its origins from World War 2 when United Kingdom airfields were coated with a tar and camouflaged with different coloured ground up rocks to look like grassy fields. The inventor of that process came out to live in New Zealand. Lou Fisher saw a wonderful opportunity for this type of application in the New Zealand building industry. The main products of LJ Fisher & Co Ltd were structural steel and aluminium windows, which were a very recent invention when Mr Russell started working there.

⁴¹ Lamson Paragon (NZ) Ltd was a printing company using the latest types of printing techniques at the time. The machines were a pre-runner to the modern computer. Mr Russell was the cost accountant. The business produced stationery for sprocket punch stationery with no competition therefore essentially being in a monopoly situation. During our interview on his early life Mr Russell mentioned that he had purchased one of the first calculators in New Zealand and paid £1,500 pounds for it at the time. It was approximately 300mm by 600 mm in size with neon tubes for the figures. Mr Russell estimated it was about 98 per cent correct!

⁴² Butland Industries Ltd was a privately owned by the Butland family. One of their food brands was ‘the Crest’ brand. Many of the product lines were later sold to Unilever. The company had 120 salespeople. They produced both canned and packaged food items. Mr Russell was employed at Butland Industries Ltd for about 18 months gaining considerable experience both in the cost accounting and insurance area. He decided to then look at employment in the building industry.

collapse. The *Challenge* tax avoidance case involved a company called Merbank⁴³, this was originally a Securitibank entity set up by Mr Russell personally.

Mr Russell travelled the length of New Zealand promoting the Securitibank business and stated that what they were doing with respect to the bills market:⁴⁴

*“...what was happening really is we were stretching the rules...we were within the rules but they were really being stretched...without people doing that you don’t get any development...”*⁴⁵

In some ways the above quote summarises Mr Russell’s actions over the past three decades. In a tax avoidance sense the 1970’s had very few tax avoidance cases through the courts with *Challenge* being somewhat of a turning point. In *Challenge* the lower courts agreed with the taxpayer as did Inland Revenue, at least initially as indicated by correspondence generated by Inland Revenue approving the transaction. The Privy Council overturned the lower court decisions. Mr Russell is in many ways in a ‘pre-*Challenge*’ mind set discounting judge made law as also indicated in his ‘Submissions of Applicant in Support of Application for Leave to Bring Civil Appeal’ dated 1 June 2012 where he stated ‘This problem has arisen because of the current penchant for judge made law to be regarded as superior to Parliament’s laws’, essentially not recognising the ‘glosses’ that have to be considered when applying section BG 1 Income Tax Act 2007.⁴⁶

With regard to the template, the Receiverships Act 1993⁴⁷ and the Companies Act 1993⁴⁸ Mr Russell has had an impact where the law had to be modified to counteract his activities. He has the ability to view the law in a slightly different way to others and can see arguments that others do not. This is also recognised in a comment made by James Coleman⁴⁹ that Mr Russell presents ‘novel legal arguments based on a poor set of facts.’

6.0 THE INTERVIEWS

I have been provided with a remarkable opportunity to be able to interview someone with not only a good memory but with over 32 years of litigation/template events over that time period. I realised quite early on when I first met Mr Russell that at the age of 76 he was probably a bit different to if I had met in soon after the collapse of Securitibank and when he was settling up the template structure as a man aged in his 40s.

With regard to the JG Russell interviews, I was quite fortunate as Mr Russell was so easy to interview. He explained things slowly and sometimes would want to talk for hours,

⁴³ An abbreviation for Merchant Bank.

⁴⁴ Interview with Mr J G Russell, University of Canterbury, 27 July 2011.

⁴⁵ Interview with Mr J G Russell, Hodson, at University of Canterbury, 28 July 2011.

⁴⁶ This comment was made in relation to section 99(4) Income Tax Act 1976.

⁴⁷ Receiverships Act 1993.

⁴⁸ Companies Act 1993.

⁴⁹ James Coleman is a New Zealand specialist tax lawyer based in Wellington.

sometimes over five or six hours a day. I would usually plan a couple of days in Auckland to spend with Mr Russell. Liamputtong and Ezzy conclude that 90 minutes' duration is common for a study consisting of single interviews.⁵⁰



I recorded all of our conversations at his home by way of voice recorder, and on one occasion in 2011 flew Mr Russell to Christchurch for some formal recordings in a University of Canterbury recording studio over several days. I did have a series of tentative questions to be covered in all interviews but allowed plenty of flexibility for tangents of conversation (and there were plenty!). As noted previously Fontana and Frey (2005), p 696) argue that neutrality is not only unnecessary, but almost impossible for the interviewer to achieve.

Qualitative research is not about seeking one absolute truth, but a portrayal of an experience, culture or phenomenon that is acknowledged as subjective. This research sought to gain the experience of a taxpayer and his interaction with a powerful revenue authority (Inland Revenue) over a period of thirty years. I have sought to get a taxpayer perspective.

I never wanted to discuss the merits of tax avoidance with Mr Russell and in part I think this is why the interviews progressed well. Mr Russell knew I was genuinely interested in his story, in fact he said to me on more than one occasion stated that he was surprised that anyone would be interested in his life story, certainly not the traits of a narcissistic personality.

7.0 VENDETTA AND JUDICIAL BIAS ALLEGATIONS

Mr Russell had raised an allegation of a vendetta being conducted against him by Inland Revenue as well as judicial bias. In *Case U16* (1999) 19 NZTC 9,168 (NZTRA) Judge

⁵⁰ McKerchar n2 at [6.330]

Barber noted during the course of the hearing, that he felt the attitude of Inland Revenue towards Mr Russell “*lacks maturity and needs polishing*” and that he often felt that Inland Revenue officers were quite unhelpful to Mr Russell, sometimes hostile and sometimes flippant.

He stated further that:

‘such attitudes do not assist resolution of tax disputes whether between the department and Mr Russell or his many clients. I appreciate that Mr Russell’s interpretation of revenue laws, particularly, in terms of tax avoidance, and his general strategies and the extent of his tax advisory business, are *thorns in the side of the department* and relate to enormous unpaid taxes overall; but *treating him as an enemy of the State* does not expedite resolution.’

Vendetta has never been established in the Russell litigation and Mr Russell was given ample court opportunity to raise points of the issue.

Mr Russell has also raised the argument of judicial bias. Again this was dealt with quite swiftly. The notable procedural challenge undertaken by Mr Russell was to seek to have Judge Barber recuse himself from hearing litigation surrounding his personal tax affairs (Track E personally assessing Mr Russell). Judge Barber had previously sat on many of Mr Russell’s client’s template related cases, but not Mr Russell’s personal tax affairs. Essentially Mr Russell’s key allegations in his statement of claim were that over a period of 17 years Judge Barber as the Authority, had heard over 65 of the template cases and made findings that Mr Russell was a ‘tax avoidance specialist’, has an obsession with saving tax and has a mental block which affects his judgment. Mr Russell submitted that the outcome of his own tax case could be ‘predicted now.’ Ultimately Mr Russell appealed to the Court of Appeal,⁵¹ where the court acknowledged that there was a basis for the taxpayer’s objection to Judge Barber rehearing the case. However, the Court of Appeal determined that it did not need to decide whether the Judge should have recused himself because of the view it took, that any basis for challenge had been overtaken by the High Court rehearing the merits of the challenge to the tax assessment. There was no question of the decision by Wylie J in the High Court being tainted by bias. The Supreme Court⁵² gave the final word on this issue rather succinctly, declaring that in the circumstances, the Court of Appeal was correct to regard the taint as overtaken by the substantive appeal.

8.0 REDACTION

My research into Mr Russell and his template finished as a thesis totalling 403 pages. As stated above in retelling the story, the researcher needs to be mindful of any relevant ethical considerations, including the means by which the story is to be recorded, the anonymity of the teller, the sensitivity of the story and who may be hurt in the telling (Clandinin and Connelly (2000) p 177). My research raised issues in relation to secrecy and redaction. Some of the material I had been privy to were Taxation Review Authority transcripts where Mr

⁵¹ *Russell v Taxation Review Authority* (2009) 24 NZTC 23,284 (HC).

⁵² *Russell v Taxation Review Authority* [2011] NZSC 96 (2011) 25 NZTC 20,077.

Russell would cross examine various Inland Revenue witnesses, in particular around the topic of the ‘Russell Team’ that was set up to coordinate engagement with him. The Taxation Review Authority is an anonymous forum and likewise the transcripts, although making for very interesting reading also should not identify any particular person. Although my research in final form was embargoed for an initial period of two years due to the sensitive information contained in it, it was while redacting the thesis that it became apparent under New Zealand copyright law any material is usually made available 50 years after the author’s death. This raised the issue that certain material in a tax context should never be made available to the public, a good example being the tax records of any taxpayer. As the Taxation Review Authority is anonymous it is logical that any material contained in the TRA transcript is also not to be made available in any context. This issue had not been raised before by the University of Canterbury library staff who wished to develop a strategy for dealing with similar issues in the future based on my research. I also had access to internal Inland Revenue documents and reports that had been passed to me by Mr Russell. Some of these reports themselves had been heavily redacted by Inland Revenue prior to them being admitted in court proceedings. The various reports gave me an insight from Inland Revenue’s perspective as to the seriousness of Mr Russell’s activities from their perspective.

9.0 CONCLUSION – LOOKING FORWARDS

It is easy to label taxpayers and hold prejudged perceptions of them. A revenue authority staff member deals primarily in validating or judging the tax affairs of taxpayers. A revenue authority staff member may initially view a taxpayer such as Mr Russell in a negative light. My initial view point of Mr Russell was neutral, although I warmed to his wit and humour almost immediately. I have seen him as an individual rather than labelled into a particular category. It has been a privilege to have been able to conduct the in-depth interviews and research into Mr Russell’s life. Mr Russell contributed to his various workplaces prior to and including the Securitibank days in a very positive way. Likewise his early days, as a farm accountant helping out his friends and family is also an early indication of his ability far beyond the ambit of tax. Mr Russell is also known for his pro bono work in the community.

McKerchar states that ‘in spite of there being different approaches to questioning, there does seem to be consistency in the view that the questions themselves should be open-ended, not leading, and that care should be taken in finishing the interview and expressing appreciation. Liamputtong and Ezzy⁵³ state that ‘the interviewer should be aware of the privilege that has been afforded to them.’ I was always appreciative of Mr Russell letting me into his own home, meeting his wife, meeting his daughter and grandson who were supporting him in *Russell v Commissioner of Inland Revenue* [2012] NZCA 128, and allowing me to sit in the court with him observing the way he presents his case.

What has kept Mr Russell going for so long fighting the Inland Revenue on behalf of his clients and himself? One possible motivation is the fact that he had advised his clients on the

⁵³ P. Liamputtong, and D. Ezzy, *Qualitative Research Methods* (2nd ed, Oxford University Press, Melbourne, 2005) at 55 as cited in McKerchar, above n 2, at [6.320].

benefits of the template and that he believes his tax position and gave his word to his template participants. Mr Russell is a man of integrity by his own standards and it has been stated that he is a very devout Christian. This integrity view may be at odds to the viewpoint held by Inland Revenue in general, although only a handful of Inland Revenue staff would have had personal contact with Mr Russell.

With respect to Mr Russell he has perhaps carved his own unique groove in the world of tax and even broader, in a general business sense in a New Zealand context. Mr Russell made it very easy to record his conversations both in the formal setting in Christchurch where I would have a list of subject topics and merely ‘prod’ at the odd time to have him tell his story. Mr Russell almost knew how much weight to give to each topic covered, and it was the topics close to his heart such as the alleged vendetta where he became quite animated at times. McKerchar⁵⁴ raises a very good point stating ‘it must always be remembered that you are being told what the interviewee wants to tell you and that, for various reasons, it may not always be true.’ With regard to every comment made during the interviews with Mr Russell I sought to validate his comments from another source.

Some of the cases referred to in conversation with Mr Russell were years old by the time I met with him. I was always amazed at the level of recall he had of the earlier events. There were one or two instances where there may have been a muddling of events but compared to the swathes of litigation spanning so many years it could only be expected that in a verbal interview with no notes, questions and discussion flowing, that one or two omissions or oversights could be expected.

One has to wonder what the fortunes of Mr Russell would have been had he not formulated the template and started the particular litigation ‘battle’ surrounding it but had chosen a different line of work post Securitibank. A comment was made to me by a retired judge that Mr Russell could have contributed so much to the New Zealand business world instead he became obsessed with a tax viewpoint that has consumed over 25 years of his life. It is in the author’s opinion that had Mr Russell taken another path post Securitibank that he would have had a vastly different future rather than having his time consumed in what is essentially a zero sum ‘game’.

Now that he has ‘almost’ retired Mr Russell has about 3,000 books stored ready to read. John Grisham novels are among his favourite. In 2001 he mentioned in an interview, that the reason he likes the John Grisham novels is because they denigrate lawyers. He would like to take a few formal professional lessons to play the organ because he is self-taught. He stated that both he and Melva his wife of over 60 years would have no trouble filling in time; they would attend more plays and cultural events. In relation to the years of litigation he said “The litigation side is interesting – it keeps your mind going – you need something to keep your mind agile as you get older.”⁵⁵ The litigation certainly has done that for him. Mr Russell in closing comments stated that “Inland Revenue have never been able to get a handle on me not

⁵⁴ McKerchar n2 at [6.380].

⁵⁵ Interview with Mr J G Russell, Hodson, at University of Canterbury, 28 July 2011.

being motivated by money.”⁵⁶ I asked Mr Russell what his main legal contribution was. He replied with a grin that his main contribution to the legal profession was in fact ‘monetary’.

The last time Mr Russell gave an address to students at the University of Canterbury was on the 31st July 2014. His address was headed ‘Reality and Inland Revenue’. It was clear from his address that Mr Russell is a man of conviction. It would be difficult to see why anyone would engage in ‘tax wars’ for such a long period of time over their lifetime at such great personal cost. From discussion with Mr Russell and with others that have had interaction with him over many years the overriding theme has been that he is a man holding on to his own standards of integrity.

Mr Russell did make various offers to Inland Revenue in satisfaction of his tax debt including offering to pay \$1,000 per week until the day he died. Essentially these offers were rejected on the basis that the offers were not realistic and would not maximise recovery under section 6A (3) of the Tax Administration Act 1994, and the \$1,000 per week until death offer was open ended and would not achieve any level of certainty. A settlement of this type would also send a signal to a body of taxpayers that delay can ultimately prove beneficial as only a small pittance of the true tax debt would have been recovered under Mr Russell’s proposal. The Official Assignee is now able to investigate fully Mr Russell’s affairs and establish whether there is a ‘big pot of gold’ stashed away by Mr Russell.

⁵⁶ Interview with Mr J G Russell, Hodson, at University of Canterbury, 28 July 2011.