IN THE DISTRICT COURT
AT KAIKOURA

I TE KŌTI-Ā-ROHE
KI KAIKŌURA

CRI-2021-006-000569
[2022] NZDC 7870

WORKSAFE NEW ZEALAND
Prosecutor

v

SHARON GERTRUDE RAYNER
Defendant

Hearing:	28 April 2022
Appearances:	D Neild for the Prosecutor Defendant appears in Person
Judgment:	28 April 2022

NOTES OF JUDGE Q C S HIX ON SENTENCING

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[1] I reserve the right to edit in terms of adding headings to make the flow of the recorded judgment easier to understand and, secondly, to correct any typographical issues or grammatical issues as well. That is on the basis that any editing will not change the overall outcome of the decision.

Bean Me Up Cafe

[2] Bean Me Up is a café operating here in Kaikōura. I first became aware of it when someone told me about it and said they made good coffee there. The first time I recall seeing it was walking to the courthouse this morning. The café I saw is clearly a newer version of Bean Me Up which is the subject of the Court case we have in front of us today.

[3] I can only speculate that the business, overall, is reasonably successful having been able to weather the COVID-19 storm, moving into what look to be newer premises and also having quite a number of customers when I walked past this morning.

[4] Bean Me Up is run by Sharon Gertrude. On the documentation in front of me, she also has the last name attributed to her of "Rayner". Sharon Gertrude refers to herself as "Sharon Gertrude of the whānau Rayner". I respect her position on that. How people are referred to is something that is important to them. For the purposes of this judgment, I will refer to Sharon Gertrude in that way.

[5] The background to the Court case today is that during February 2021, a lady called Bonnie Russell visited Bean Me Up on a number of occasions. That was in relation to checking compliance with the COVID-19 rules that applied at the time.

[6] Ms Russell has told me that on those visits she talked with Sharon Gertrude. There was considerable discussion about the issue around displaying a QR code.

[7] Ms Russell said there was available to customers the ability to sign in in a handwritten form. Also, customers were able to use their cell-phone apps to record visits.

[8] In addition, Ms Russell confirmed that Sharon Gertrude indicated to her on at least one if not more visits, that customers were being encouraged to use those avenues to record visits to Bean Me Up. The contentious issue here is the fact that no QR scanning code facilities were displayed at Bean Me Up.

[9] At the outset, Sharon Gertrude explained to Ms Russell that she had personal concerns around that particular method for recording visits and, because of those personal concerns, she did not believe it was appropriate to display the codes. She emphasised the ability for alternative methods to be used.

[10] I note also that Ms Russell did concede, when questioned by Sharon Gertrude, that she was not sure whether she had signed in, whether by hard copy or on her ‘phone, on any of her visits; she is just unsure.

[11] As a result of those interactions between Ms Russell and Sharon Gertrude, a formal infringement notice was issued by way of courier. That was received in terms of the courier notice but the courier packet remained unopened.

[12] As a result of that, a further inspection was carried out by a different person, Mr David Hulston. He is an employee with WorkSafe New Zealand, as is Ms Russell. He gave evidence that he attended Bean Me Up on 16 June 2021, he took photographs of the outside of the premises, he talked about meeting with Sharon Gertrude and confirming that, as of 16 June 2021, no QR code scanning facilities were available.

[13] He also told me about a discussion with Sharon Gertrude along those lines. Further he confirmed to Sharon Gertrude that he did not record his visit himself in terms of through the hard copy or recording his visit on the app on his ‘phone.

The Charge

[14] As a result of those interactions, there is one charge before the Court. It reads that Sharon Gertrude Rayner of 50 Churchill Street 7300, Kaikōura, is charged that on or about 16 June 2021 at Kaikōura, failed to comply with a COVID-19 order, namely cl 81 of the COVID-19 Public Health Response (Alert Level Requirements) Order (No 6) 2021, particulars being a person in control of a workplace, namely Bean Me Up Kaikōura at 78 West End, Kaikōura, failed to ensure that a copy of a QR code for that workplace was displayed in a prominent place at or near the entrance of the workplace. The legislative reference is s 26(3) of the COVID-19 Public Health Response Act 2020 and s 26(4).

[15] The maximum penalty is a $1,000 fine. I note the charge is recorded as being specific, in other words it is not a representative charge.

[16] Sharon Gertrude has formally pleaded not guilty to the charge and we have conducted a judge-alone trial in the Kaikōura District Court today. In delivering a decision, I first must be conscious that there are technical rules that apply. The first is what is called the onus of proof. What that means is, when a prosecution is brought by anyone, whether that is an authority or an individual or a Government department, the onus of proving the case remains with the prosecution at all times. In other words, people that appear before the Courts are innocent until proven guilty.

[17] The second key issue is that there is a certain standard to which charges must be proved. There are different standards of proof considered in the legal system in New Zealand. For this particular type of case, the highest standard of proof is required, that is beyond reasonable doubt.

[18] There has been significant discussion through earlier cases as to what beyond reasonable doubt means. I am not going to go into any great detail on that other than to say I must be sure. In other words I must be sure beyond reasonable doubt that the charge has been proved before I can make any finding along those lines. If I cannot be so satisfied, then I must dismiss the charge.

[19] Considering the wording of the charge, there are two key elements to it that must be proved. The first is that Sharon Gertrude is a person in control of a workplace. The second element is that she has failed to ensure a copy of the QR code was displayed on 16 June 2021.

[20] In terms of the evidence I can rely on to consider those two elements, I must confine myself to considering the evidence that has come through the witness box. What I am really saying there is the only evidence I can rely on is that of Mr Hulston and that of Ms Russell, both in the questions they answered from Mr Neild and from Sharon Gertrude as well.

[21] Considering the first element of the charge, that is whether Sharon Gertrude was in control of the workplace, namely Bean Me Up at Kaikōura at 78 West End. Both Ms Russell and Mr Hulston confirmed that that is the address they went to, that

they met with Sharon Gertrude and, from their observations and discussions with her, it appeared to them that she was in control of the workplace.

[22] Through the questioning from Sharon Gertrude, she did not take any material issue with that particular aspect. She did ask other questions relating to advice that she had given to them, in particular in relation to Ms Russell around having the alternatives available and witnessing people using those alternative methods.

[23] The evidence does satisfy me beyond reasonable doubt that on 16 June 2021 that Sharon Gertrude was in control of a workplace, namely Bean Me Up, Kaikōura.

[24] In turning to the second element - that is whether there was a copy of a QR code displayed; again, through the questioning from Sharon Gertrude of both the witnesses, the fact that no QR code was displayed is not in issue. In particular, explanations were actively discussed with witnesses as to why the QR codes were not being displayed. Again, combining all that evidence, I am satisfied beyond reasonable doubt that no QR codes were displayed as set out in the charging document.

Jurisdiction?

[25] If I was to stop there, then the charges would be proved. However, Sharon Gertrude has raised significant issues around what I have interpreted as being questioning jurisdiction. That is from a number of different perspectives, but primarily Sharon Gertrude questions the ability of the Government to pass the relevant legislation in this case and, secondly, the ability of the prosecuting authority to actively prosecute this charge.

[26] I do note at the outset that Sharon Gertrude advised she does not take any issue with the Court's authority to decide the case.

[27] I have read carefully the 15 page affidavit of truth that has been filed by Sharon Gertrude and I have listened carefully to the key issues she raised. I have tried to summarise those as best I can and I have distilled them down to six alternative but related submissions.

[28] The first submission is that laws of the land can only be enforced if there has been prior consent by the party against which the law is being enforced. There is reference to having “wet ink signature contracts” before any enforcement action can be taken.

[29] Essentially, I take the submission to be that no human being cannot be forced against their own will to comply with anyone else’s rules unless they agree to it. In Ms Sharon Gertrude’s case, her position is that there must be a wet ink signature contract to any rules before she can be required to comply.

[30] The second related submission is that there is only one legal authority to create laws and that is from God. In other words, it is only God’s law that applies; people are not subject to “civil” or “corporate” law.

[31] The third submission in the affidavit of truth relates to various references to international law. In parts of the affidavit of truth, there is mention of various overseas conventions and also the Magna Carta 1297. The overall theme of that is that any laws passed, or supposedly passed, by Parliament since 1920 are not valid because of international treaties, conventions and also the application of the Magna Carta.

[32] The fourth submission I have taken from Sharon Gertrude’s information put before the Court is that there is no proof through evidence of the existence of the laws which I am being asked to apply today. I take that as being a submission that there is nothing before the Court to validate the particular section which I read out earlier under which Sharon Gertrude was charged. Secondly, that there is no lawful authority for Mr Neild to be in court today, nor is there any legal authority for WorkSafe New Zealand to be prosecuting this charge.

[33] The fifth submission I take from Sharon Gertrude is that there has been no actual injury or harm to anyone in this case. The submission there is, if there is no injury or harm, then you should not really be subject to being charged.

[34] The sixth and final submission is that Sharon Gertrude is not a legal person. Therefore, she cannot be charged.

Who has the Power?

[35] I will deal with the first three issues, that is the contract/consents, God's law and international law/Magna Carta issues in a broad sense in terms of considering it as an overall broad challenge to the jurisdiction of Parliament to create laws. So the question is who has authority to make laws in New Zealand? Is it god? Should it be by consent or is there some other way that authority is granted to someone to be able to create laws?

[36] I am no expert in this area. I have heard that one common way for establishing authority, or what some might see as mana whenua, is by way of conquest. Another is by way of treaty which is very much a common theme that is discussed around the Courts of New Zealand given the Treaty of Waitangi.

[37] I suppose, just a comment on those particular sources of authority to make law, God has and continues to be the source of authority for many jurisdictions around the world and indeed some would argue that the Queen of the Commonwealth derives her authority from God as well.

[38] In terms of the consent issue, I have considered that this ties in similarly to the tikanga concept that has also been raised. I just take a practical view on these sorts of issues. It ultimately comes down to who decides whose tikanga is right, who decides whose consent is right? I just read, by way of example in the affidavit of truth, Sharon Gertrude outlined that, at least from her perspective, she has the right to occupy any un-surveyed land. I suppose that made me think, well what happens if someone else came along and occupied her land and said: "Well, it is not surveyed, I am occupying it now." Who decides who is right? Who decides what " surveyed land" is? Who decides who the qualified surveyor is? All of those sorts of questions arise. It is the same with tikanga and tikanga is very much argued about in New Zealand in terms of the Waitangi Tribunal on a regular basis.

[39] What I am really getting at there is whether we should have a system where individuals can decide what system of justice applies to them? In other words, could we have a dual justice system or multiple justice systems where the individual,

whether that is the victim of a crime, or the perpetrator, or an innocent third-party bystander gets to decide which system is chosen?

[40] I am aware that there are people in New Zealand who promote the application of alternative systems to what is generally recognised as the current system. At least from my perspective, it becomes very impractical if we all decide we wanted to apply different systems of justice as we see fit.

[41] There are a number of previous court cases in Courts higher than this one; we are in the District Court and there are High Court decisions and Court of Appeal decisions that deal with that very issue and for that reason I am of the view that we need to have one system of justice in New Zealand.

[42] I touch briefly on conquest. Conquest is relatively common in most countries' histories. In terms of New Zealand, it made me think of where we sit today in Kaikōura. I am no expert again on this but my understanding is Ngāti Māmoe used to have mana whenua in this area. Mana whenua is having authority over the land. More recently, Ngāi Tahu has come down and, while co-existing for some time, at least one of the historic stories that I have been told about, which I am sure I will not have the details correct on; is that there were battles between Ngāi Tahu and Ngāti Māmoe. The story I heard is that on one occasion, a chief and his warriors from Ngāi Tahu sat down with Ngāti Māmoe and by sitting first and eating first, that was a signal to everyone there, including Ngāti Māmoe, that mana whenua had then passed from Ngāti Māmoe to Ngāi Tahu.

[43] What that meant was that Ngāti Māmoe no longer had governance or authority over the land. In other words they did not have mana whenua, rather Ngāi Tahu did. What that meant was that any individual that sought justice had to do it in accordance with the laws or tikanga according to Ngāi Tahu and not Ngāti Māmoe. That is just an illustration of how conquest differs from the concept of laws by consent of the individual.

[44] In New Zealand in a broader sense we have of course the Treaty of Waitangi. I of course do not profess to being any expert on that at all. Under the treaty there are

concepts of kāwanatanga and tino rangatiratanga. Under the English version, sovereignty is ceded to the Queen. Under the te reo Māori version, kāwanatanga is ceded to the Queen. Both are different concepts. Tino rangatiratanga is sovereignty, kāwanatanga is governance. Under the Māori version, governance was ceded to the Queen, tino rangatiratanga was retained to the tribes of New Zealand. Under the English version, the opposite applies.

[45] However, on a practical basis, the ways our legal system has evolved in New Zealand is the Queen of New Zealand is just that. Under the te reo Māori version, she exercises governance over New Zealand. Under the te reo Pākehā version, she exercises sovereignty. They are two very different and important concepts but our laws in New Zealand have developed with the Queen as the head of our State.

[46] I also just have to acknowledge for Sharon Gertrude that I am also aware that the Magna Carta 1297, at least one part of it still applies in the law of New Zealand. That, in the summary, says that you are entitled to a fair trial and I am fully conscious of that.

[47] In terms of the Queen's authority to make the laws of New Zealand, she appoints or basically has the final sign off on all the laws that are made by Parliament and that is called the royal assent. There is no law that is passed in New Zealand without the Queen's authority. Secondly, she appoints people to conduct business for her, being the Governor-General, who acts on the Queen's behalf and the Governor-General appoints the Judges of the land. That comes to the separation of powers point that was raised by Mr Neild.

[48] I spent a long time on that because at least, in my view, I am not able to get to the point of accepting that the ability to create laws by consent should be the basis upon which our society should run. We have got a long history of our treaty and so on, so on that basis, I am of the view that the previous court cases which have already decided on this issue in terms of the High Court and the Court of Appeal are that Parliament is under the direction of the Queen. Parliament is the arm of our Government that makes the laws.

[49] Whether those laws are correct or not is something that is able to be tested. This is not a case where the laws are being tested. It is not a case similar to the one that has just been decided where the MIQ system has been found to be flawed. This is not a case where Sharon Gertrude has taken what is called an application for judicial review in the High Court to challenge the underlying validity of the QR code system. Rather she is raising it as a defence to this specific charge here today. I need to decide the charge in accordance with the law.

Do these laws really exist?

[50] Again, I take a practical approach on this. The Legislation Act 2019 has provisions that outline that legislation is effective and can be taken as read when you read it on the website. Otherwise we'd have to have someone come to say they were in parliament when the relevant law was passed and they would have to confirm the exact content of each applicable law. That is just not practical. Rather it is my responsibility to ensure I am aware of the applicable law in terms of the relevant legal principles. In this case I have looked up specifically s 26(3) and s 26(4) of the applicable COVID-19 Public Health Response Act, it is on the official website and I have also looked up myself s 15, another relevant provision of the Criminal Procedure Act 2011. In addition, I have had referred to me the relevant laws that record that Worksafe is authorised to bring this prosecution. In my view those laws apply and the making of those laws is valid.

No Harm No Charge?

[51] The next issue I need to consider is the submission from Sharon Gertrude that there is no injury, there is no harm, therefore there should be no charge. I understand the submission. I disagree with it. The nature of this charge is that it is preventative much in the way we have laws that require people to wear crash helmets or seatbelts. The fact that they get pulled over and given a ticket for not wearing their seatbelt is designed to prevent them from having an accident. If we did not have such preventative laws, then no doubt we would have more accidents and more harm caused in the community. That is just by way of illustration. From that perspective, I am not able to dismiss the charge based on the no injury, no harm, therefore no charge basis.

Is Sharon Gertrude a Person?

[52] Finally, Sharon Gertrude says she is not a legal person. This relates to the registration of her name at birth and the name on the charging document. I understand the argument. Again, taking a practical approach, Sharon Gertrude has stood before me before; we have talked on the telephone previously and she stands again in front of me today. She has asked the witnesses questions, confirming she met with them and interacted with them at the relevant times and in the relevant ways. In my view she is a person and she is the person that is relevant to our case today. Otherwise, who else could it be?

The Result

[53] I have spent a considerable amount of time considering the jurisdiction issue. Suffice to say I am satisfied on the information that I have in front of me that there is jurisdiction to proceed with the charge. On that basis, given my earlier reasoning that the specific elements of the charge had been made out, I have found the charge proved.

[54] The next stage is to consider what the appropriate disposal of the charge is. So I will just deal with final disposition of the charge and the submission from the prosecution is that the infringement notice fee is $300; the maximum sentence is $1,000 therefore the final disposition should be somewhere between the $300 and the $1,000. From Sharon Gertrude's perspective, she is not wanting to make any submissions on final disposition.

[55] It is an unusual case because in one sense it could be seen as relatively straightforward, and some might say minor, given it has only got a $1,000 fine as a maximum sentence.

[56] On the other side of it, I have to sympathise somewhat with Sharon Gertrude in that she has exercised her right to test the charge, we are in relatively unusual times and it is a relatively unusual charge in terms of its background.

[57] I also acknowledge the fact that it is not a case of Sharon Gertrude trying to circumvent the overall intent of the legislation; she did make available alternative methods for carrying out the recording of people's visits and as Ms Russell confirmed, she observed herself, people being encouraged to use those alternative methods. It seems to me that the alternative methods being employed here were not more onerous in any significant way than people scanning in using the QR code method.

[58] Also I just have to comment that Sharon Gertrude has been consistent in her view as to her approach to this matter right from the outset and that includes her initial engagement with Ms Russell way back in February last year. She has maintained that through to today. I personally am of the view that people should be entitled to express their views and that is what she has done.

[59] I also need to observe that Sharon Gertrude has conducted herself in all my dealings with her in a very respectful, civil and entirely appropriate way and I really need to acknowledge that.

[60] Given the relatively unusual circumstances of the case, I am of the view that a finding that the charge is proved is a significant part of the penalty for Sharon Gertrude.

[61] In terms of additional penalty, I am of the view that imposing the original infringement fine is appropriate because that is what Parliament assessed as being an appropriate response at the time the legislation was originally passed. I do not wish to penalise Sharon Gertrude any further given the other issues I have discussed.

[62] On that basis I have recorded the charge is proved and a fine of $300 is imposed. I have recorded nothing or nil for court costs. That is the end of the case.

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Judge Q C S Hix
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhenga: 09/05/2022