

**IN THE HIGH COURT OF THE COOK ISLANDS
HELD AT RAROTONGA
(CRIMINAL DIVISION)**

CRN 339-348/11

BETWEEN

PHILIP EYRE

Informant

AND

**RAROTONGA INSURANCE
AGENCY LIMITED**

Defendant

Hearing: 20 July 2011

Counsel: Miss Henry for Informant
Mr Ngatokorua for Defendant

Sentence: 20 July 2011

SENTENCING NOTES OF C NICHOLSON J

- [1] The Defendant company has pleaded guilty to 10 charges of failing to furnish income tax returns for the financial years 2000 to 2009 inclusive. The maximum penalty prescribed is a maximum fine not exceeding \$10,000 and a minimum fine of not less than \$1,000. That relates to each charge.
- [2] For the Informant Miss Henry pointed out that the Collector wrote to the Defendant company requesting that outstanding tax returns be filed in February 2011 and March 2011. The Collector also rang the Defendant company, the last telephone conversation being on 8 April. Mr Ngatokorua, a Director of the company, then promised to have returns completed and filed by 15 April this year but that was not done, and the present charges were sworn the following month. Seven days later the company furnished the tax returns.

- [3] Miss Henry correctly submitted that the offence is a strict liability offence and that the offending has occurred over a period of 10 years. She points out the need for deterrence in sentence, both specific to the Defendant company and generally to all people. She accepts that the Defendant company pleaded guilty at the earliest opportunity when the case was first called. She submitted that the Court consider imposing a fine within the mid range for each offence, namely about \$5,000 an information.
- [4] Mr Ngatokorua appeared and made submissions, he is one of two Directors of the company, they carry on business selling insurance and their income is in commission on sales. He said there was no intention to avoid the company's tax obligations and that the company did not have professional support from accountants or lawyers, and that when it became aware that the moment had arrived and when it had to file the returns Mr Ngatokorua, with the assistance of his daughter, prepared and filed them. He pointed out that the company pleaded guilty at the first available opportunity and that the company has not previously been convicted of any offence. The income of the company is modest and it only has office equipment and furniture as assets. He asked for an order of name suppression because of the effect that publication might have on clients. He said that, so far as he could recollect, the amount of tax found to be payable when the returns were filed was somewhere in the vicinity of \$13,000.
- [5] In sentencing I take into account on the one hand the seriousness of the offence, repeated failure over a period of 10 years, and the necessity and desirability for a deterrent sentence to let people know that they must file their tax returns and face the pain of having to pay tax.
- [6] In mitigation I take into account that there was a plea of guilty at the earliest opportunity and also that the company has not previously been convicted of any offence. I also take into account the modest income and assets of the company.
- [7] I do not make an order that the company's name not be published because I consider that any harm done does not override the seriousness of the offending. So, decline the application for name suppression.

- [8] In assessing appropriate fines for each of the 10 offences I take into account there must be a minimum fine of \$1,000 for each offence, but I bear in mind the totality of what the fines will be. I consider therefore that it is appropriate to fine the company \$2,000 on each of the 10 charges and there will therefore be fines totalling \$20,000. In addition I order the company to pay Court costs of \$30 on each of the 10 charges, making a total of \$300. The company will therefore have to pay \$20,300 to the Court.
- [9] Because of the modest income of the company and its small amount of assets, I order that the fine and costs be paid by instalments of no less than \$1,500 per month. ^{First} ~~Final~~ payment 20 August 2011. 6



C Nicholson J