IN THE DISTRICT COURT
AT AUCKLAND

CRI-2017-090-004075
[2017] NZDC 22905

MINISTRY OF EDUCATION
Prosecutor

v

CHOICEKIDS CHILDCARE LIMITED
Defendant

Hearing:	6 October 2017
Appearances:	R Gibson for the Prosecutor S Anderson for the Defendant
Judgment:	6 October 2017

NOTES OF JUDGE C J FIELD ON SENTENCING

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[1] The company ChoiceKids Childcare Limited has pleaded guilty to two charges of operating an early childhood education and care centre without holding a current licence issued under regulations made pursuant to s 317 Education Act 1989.

[2] The two charging documents allege offending between 19 June 2017 and 3 August 2017 in respect of CRN -0899 and between 4 August 2017 and 15 August 2017 under CRN -1035. The facts have been set out and acknowledged by the prosecutor and the defence. The maximum potential penalty provided for is a fine of $200 for each day on which the offence took place. The relevant period was 42 days over which the defendant company operated the daycare centre, leaving a total available maximum of $8400 as a global figure.

[3] It is the informant's submission that this case falls within the provisions of s 8 Sentencing Act 2002, in that it is said that it is within the most serious of cases for which the particular penalty is prescribed unless circumstances relating to the offender make that inappropriate. In those circumstances the Court must impose the maximum penalty. Now here there can be no argument that the centre was operating without the appropriate licence.

[4] The aggravating features referred to in the informant's submissions are of course the period over which the centre was run, the knowledge that the defendant company had of its need to comply with the regulations. In particular of course because the company operated, I am told, another seven early childhood or daycare centres and was well aware of the requirements. Further, it continued to operate an unlicensed centre after being notified of the illegal operation and instructed to cease the operation. There appears to have been some acrimonious discussions between the Ministry and Mr Davies in particular referring to a letter on 28 July, but that has been explained in the terms of the context in which it occurred and the stress under which Mr Davies was labouring at the time. However, the fact remains that the childcare centre was operated in the way described.

[5] Now this case concerns the care of young children, some very young. There has been a complaint which led to the investigation by the Ministry that the ratio of caregivers to the number of children was not effective and that the staff had been bullied into accepting the situation. That is not entirely accepted by the defendant company, but the prosecutor points out that young children cannot complain themselves and that somebody has to do so on their behalf.

[6] Further, there seems to have been an injury in August when the children were taken to the Chipmunks playcentre and a child was injured there, apparently by falling off an apparatus. There has been no suggestion of ill-treatment or injury of the children whilst at the daycare centre and had that been the case it would have been a seriously aggravating feature of the offending in terms of the consequences to the people involved.

[7] Further, the company has no prior convictions for breaches of this kind. It is that sort of feature which in my view would lead to a starting point of the maximum sentence available or something approaching to it.

[8] Absent these particular aggravating features, it does seem to me that from a starting point of, say, $200 per day and having regard to the mitigating features put forward by the defendant company in Ms Anderson's submissions, the Court could stop short of imposing the maximum available, although it will not be far from it. It seems to me that looked at in a global sense in terms of the culpability, the starting point should be a fine of $7000 which equates to approximately $165 a day or thereabouts.

[9] The defendant company of course is entitled to a 25 percent allowance for the plea. That would on my calculations amount to $1750, leaving an available fine of $5250. That will be apportioned in respect of each charging document so that the fine under CRN -0899 will be one of $3500 and for the remaining charging document $1750, a total of $5250 if my arithmetic is correct. That then in my view is the appropriate fine to be imposed in respect of each charge and it is imposed accordingly.

C J Field
District Court Judge