

**IN THE DISTRICT COURT  
AT NORTH SHORE**

**CRI-2016-044-001730  
[2017] NZDC 25619**

**MINISTRY OF HEALTH**  
Prosecutor

v

**SHEARWATER HOTELS LIMITED**  
Defendant

Hearing: 10 November 2017

Appearances: J Wilson for the Prosecutor  
J Quinn for the Defendant

Judgment: 10 November 2017

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**NOTES OF JUDGE P J SINCLAIR ON SENTENCING**

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[1] Shearwater Hotels Limited appears for sentence in relation to three charges of failing to take all reasonably practicable steps to ensure that no person smokes in a part of a licensed premises that is not an open area. Those offences have a maximum penalty of a \$4000 fine.

[2] This matter has a protracted history. On 7 December last year, Shearwater Hotels Limited was found guilty after a Judge alone trial on four charges laid under the same sections; ss 12, 17, 17A Smoke-free Environments Act 1990.

[3] On 20 January, I sentenced Shearwater to combined fines of \$2700 on all charges along with Court costs of \$130. I also imposed solicitor costs of \$850. The reasons for my guilty findings and sentencing are contained in written decisions dated 7 December and 20 January respectively.

[4] Shearwater appealed the convictions and on 13 March this year the High Court allowed the appeal in particular in relation to an interpretation of “internal area” under the Act, and quashed the convictions. The charges were referred back to this Court to determine whether the Beachfront Lane and Anzac Road areas were, in fact, internal areas. Since then, on 5 September, Shearwater has pleaded guilty and admitted three of the charges (one charge has been withdrawn). So the matter is remanded to today for sentence.

[5] Mr Quinn, representing Shearwater Hotels, has advised that he cannot pursue the matter any further as he has “run out of funds”. He urges the Court to impose a nominal fine in view of the history of this matter. The Crown submit that I re-impose or re-instate the fines I imposed in January of this year, taking into account there is one less charge to address.

[6] In my view, there is no need for me to traverse the facts or matters I took into account for sentencing. A copy of an amended summary of facts can be annexed to this decision.

[7] Mr Quinn has pleaded guilty to the charges on the basis of the lengthy summary of facts I have referred to. In my view, Mr Quinn is entitled to a discount for the guilty pleas he has entered. It has obviated the need for a further trial. Although, as the Crown has submitted, this particular situation has not been contemplated by *R v Hessel*<sup>1</sup> and therefore I cannot draw on the factors specifically referred to in that decision, in my view Shearwater Hotels is entitled to a discount of around 15 percent.

[8] On that basis, taking into account there is one less charge, I impose a fine of \$1650 across the three charges plus Court costs of \$130 and solicitor’s costs of \$850.

P J Sinclair  
District Court Judge

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<sup>1</sup> *R v Hessel* [2009] NZCA 450, [2010] 2 NZLR 298