

**IN THE DISTRICT COURT  
AT KAIKOURA**

**I TE KŌTI-Ā-ROHE  
KI KAIKŌURA**

**CRI-2022-028-000026  
[2022] NZDC 24357**

**KAIKOURA DISTRICT COUNCIL**  
Prosecutor

v

**SHARON GERTRUDE RAYNER**  
Defendant

Hearing: 2 December 2022

Appearances: T MacKenzie for the Prosecutor  
Defendant appears in Person

Judgment: 2 December 2022

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**NOTES OF JUDGE Q C S HIX ON SENTENCING**

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[1] Sharon Gertrude Rayner has two charges before the Court today. She prefers to be called Sharon Gertrude. The charges are that between 2 December 2021 and 14 April 2022 at Kaikoura, she knowingly sold food from a food business known as Bean Me Up that did not comply with the requirement of the Food Act 2014, namely the requirement to operate under the applicable risk-based measure being a food control plan.

[2] The particulars of the charge are that on multiple occasions she operated a food business known as Bean Me Up and sold food from that food business from a premises at 78 Westend, Kaikoura and or from a mobile cart (registration [deleted]) and/or from

a van (registration [deleted]). The maximum sentence available to the Court under that charge is two years imprisonment and/or a fine not exceeding \$100,000.

[3] The other charge is that between 2 December 2021 and 14 April 2022 at Kaikoura, failed to comply with a direction given under s 305 of the Food Act 2014, namely a notice of direction dated 2 December 2021 served on the defendant on 2 December 2021 by a food safety officer, [Officer A], directing the defendant to immediately cease preparation, production, processing, sale and distribution of food and to provide evidence of registration and verification of a template food control plan in accordance with the Food Act 2014. The particulars are continuing to operate a food business known as Bean Me Up and sell food from that food business from a premises at 78 Westend, Kaikoura and/or a mobile cart (registration [deleted]) and/or from a van (registration [deleted]). The maximum sentence available on that charge is one of \$50,000 in terms of a fine.

[4] The background circumstances are set out in a summary of facts. Before I refer to those summary of facts though, I do record that the matter went to formal proof on 26 August 2022, both charges were found proved after evidence was heard.

[5] The summary of facts on file reflects the findings made on that day. The summary records that the purposes of the Food Act 2014 are to essentially achieve the safety and suitability of food for safety. It is also to maintain a confidence in the New Zealand food safety regime and also to provide for risk-based measures that minimise and manage risks to public health, protect and promote public health and provide certainty for food businesses in relation to how the requirements of the Act will affect their activities. It also requires a person who trades in food to take responsibility for the safety and suitability of that food.

[6] Section 19 of the Act requires territorial authorities to, amongst other matters, carry out enforcement of the Act. The Local Government Act 2002 declares the Kaikoura District Council is a territorial authority.

[7] Section 28 of the Act says that a person who trades in food and whose business is in a food sector to which a risk-based measure applies, must operate that business in accordance with the applicable risk-based measure.

[8] Section 21(3)(a) of the Act says that a food business in Schedule 1 of the Act must operate under a food control plan. Schedule 1 of the Act includes cafes. Section 232(1)(a)(iii) of the Act makes it an offence to knowingly or recklessly sell food that does not comply with an applicable requirement of this Act.

[9] Sharon Gertrude is the operator of a food business in the township of Kaikoura. The trading name is Bean Me Up or Bean Me Up Kaikoura. Bean Me Up operates from three sites, being the café premises at 78 Westend, Kaikoura, secondly a mobile cart (registration [deleted]), next a van (registration [deleted]). Bean Me Up sells various café style food, including hot beverages and baked goods. The requirements of the Food Act 2014 apply to Sharon Gertrude's operation, including the requirement to operate under verified food control plans.

[10] She has previously complied with her obligations under the Food Act 2014 by completing applications to register multi-site food control plans with the council. The most recent food control plans were completed by Sharon Gertrude as operator and registered with the Council from 8 September 2021 to expire on 8 September 2022. She was named as the operator for the following businesses in those food control plans being:

- (a) Bean Me Up Kaikoura.
- (b) Bean Me Up Kaikoura Cart, [registration deleted].
- (c) Bean Me Up Kaikoura Cart, [registration deleted].

[11] All food businesses were registered as located at 78 Westend, Kaikoura.

[12] On 29 November 2021 Sharon Gertrude emailed the council stating that she wished to surrender her food control plan registrations. Pursuant to s 71 of the Act, the food control plan was deregistered by the council.

[13] On 1 December 2021 a staff member of the Council advised Sharon Gertrude in an email:

Good afternoon Sharon, I have surrendered KKR00096 Bean Me Up Kaikoura's food registration from 30 November 2021 as requested. Please be aware for your food premise to legally operate a current food registration is required under the Food Act 2014. I have informed the Council's food safety officer and regulatory manager of this surrendering of registration. If you have any further queries please do not hesitate to ask.

[14] Sharon Gertrude has then continued to operate the food businesses and sell food without a food control plan on a near daily basis.

[15] On 2 December 2021 a food safety officer, [Officer A], visited the premises and observed that Sharon Gertrude was operating and selling food without a food control plan. On that date he delivered a notice of direction under s 305 of the Act. The notice of direction required her to:

- (a) Immediately cease all operations involved in preparation, production and processing of food from Bean Me Up Kaikoura.
- (b) Immediately cease the sale and distribution of food. This includes and is not limited to, supplying food to the public.
- (c) Provide evidence of registration of a template food control plan for the food businesses that you are or intend to be trading.
- (d) Provide evidence of acceptable verification of the template food control plan for the food businesses that you are or intend to be trading.

[16] [Officer A] advised Sharon Gertrude on that visit that she needed to register a food control plan. She said to him that she "was out of the system", "would not contract with the government", and "would continue to operate and will not pay any fines". The café business has been observed to be selling food without a food control plan regularly since the notice of direction was served.

[17] The café business has been specifically visited by [Officer A] and other contracted or delegated regulatory personnel and staff for the Council on 9 December 2021, 15 January 2022, 24 February 2022, 8 March 2022, 31 March 2022 and 14 April 2022. On each occasion the sale of food has been observed. As at the commencement of this prosecution, Sharon Gertrude continues to operate the food business selling food without a food control plan and in breach of the notice of direction.

[18] In interactions with the Council she has previously written that she: “does not consent”, “does not contract”, “is not a legal person”, that the Council “does not have jurisdiction”, and that “statutory regulations only apply with my consent”. It is not known to the prosecution whether she has any previous convictions.

[19] The charges came before the Court first on 27 May 2022. There was no appearance by Sharon Gertrude. Proof of service was sighted and a warrant to arrest was issued. She appeared later that morning and advised the Court that she was innocent to all matters. Deemed not guilty pleas were entered. The matter came before the Court again on 15 July 2022. There was no appearance on that day. On 26 August 2022 there was again no appearance. The matter proceeded by formal proof as I have previously indicated.

[20] The charges, both of them, were found proved with a PAC report and appendices directed. A minute was also dictated and directions made for the minute to be given to Sharon Gertrude, as well as all the other interested parties.

[21] The matter now comes before the Court for final disposition in terms of the appropriate sentence.

[22] I have asked Sharon Gertrude whether she wishes to apply for legal aid. She has declined that. I have also asked if she wishes to use the services of a duty lawyer. She has declined that also. I have asked her a number of times whether she wished to take some time to have a pre-sentence report prepared. She has repeatedly declined to provide an answer to that question on the basis that she advises that there are preliminary issues to be resolved, namely she wishes to resolve the defence she wishes

to raise to the charges. That is, in simple terms, the lack of jurisdiction combined with the other defences raised in terms of lack of legal personality, lack of consent, lack of contracting and so on.

[23] I just have to say by way of background, I have dealt with a previous case in a different context with Sharon Gertrude, where all of those matters were discussed in considerable detail and I made a formal finding against her in that regard. The opportunity to raise those again was at the hearing scheduled on 26 August. It is a case where Sharon Gertrude has simply refused and declined to engage with the process at every turn and I note in particular, that the matter was scheduled to be called yesterday. It was called and there was no appearance. A warrant was issued again for Sharon Gertrude's arrest. I understand she was duly arrested and is now before the Court this morning.

[24] In terms of dealing with the matter, it is a case where I do not see any other alternative other than to proceed with formal sentencing today. I have asked Sharon Gertrude a number of times as to what her position is and she maintains the issues around being *sui juris*, *manawhenua*, lack of contracting and so on. It seems clear to me that we are not going to make any progress in terms of getting any practical resolution that might be of assistance to everyone involved, and when I say that, the purpose of my memorandum which was issued back in August, was to try to encourage some sort of meaningful dialogue so that we could look to avoid potentially what I would see as the worst outcome for this case. In the circumstances I just cannot see any other alternative but to proceed with sentencing today, so I am going to do that.

[25] In terms of proceeding with the sentencing, Sharon Gertrude has read, from what I can tell, an affidavit of truth. I thought that was the one I previously read in the earlier court case but clearly it is not because it does refer to other people. The sentiment of it is exactly the same though in terms of denying jurisdiction as well as sovereignty. I have just been told it is the same one but there are references to it being addressed to other people. I have also come across a bill of lading but that does not seem to be the same document but seems to have a similar sentiment as well. The issue for me is that the correct avenue for detailed consideration of that was at the hearing which Sharon Gertrude did not attend in August. In any event, I note the issues

on that I am fully aware of having dealt with the matter in a detailed and lengthy hearing previously.

[26] In terms of the appropriate sentence to impose, it is a case where I am not aware of anything from Sharon Gertrude's perspective that indicates what she believes the appropriate sentence to be other than to state that there should be no sentence at all because of the jurisdiction and sovereignty issues that she has raised. The other information I have received is in the detailed written submissions from the prosecution. They say it is an exceptional case. All other previous cases have involved people who have been validly licensed but have fallen below the standard required in terms of the quality of the systems in place.

[27] This is the only case that the prosecution is aware of where someone has actively decided to not only deregister; but continue to conduct their business directly in defiance of the applicable laws.

[28] In relation to considering the appropriate sentence, the prosecution start at half the maximum sentence available. In my view that is somewhat high.

[29] I take into account the following factors:

- (a) The nature of the operation such that it is, only it seems to me relatively minor or small in the scheme of things compared to examples such as nationwide chains.
- (b) There is no actual evidence of any harm being caused to anyone or any evidence of poor quality of food generally, nor is there any evidence of poor practice. That is against a background of at least my personal knowledge is that Bean Me Up has been operating for a period of time now and the only issues that I am aware of in terms of non-compliance, are regulatory matters rather than quality of food matters. The other side of that is Sharon Gertrude has always conducted herself with dignity and respect before the Court.

- (c) The other matter I take into account, is that on a practicable basis any other penalty short of imprisonment in my view is just not going to be practical or effective. Sharon Gertrude has already said she is not going to pay a fine. She has never engaged effectively with the Court system on a practical basis, so I cannot see any utility in taking up time in terms of imposing a non-custodial sentence as I am satisfied that any such sentence would not be complied with.

[30] On that basis it is a case of determining the length of the imprisonment sentence. While the prosecution say 12 months, it is a first offence. Taking into account all the other matters I have referred to, I have come to a decision that the appropriate sentence of imprisonment is two months. I impose that on the charge that carries a maximum sentence of two years. There is no utility in imposing post-release conditions so there is no standard or special conditions imposed.

[31] The other matter, which is a fine only, again there is no utility in imposing a fine as that would just take up resources in trying to chase it and effectively it has been incorporated in that sentence on the other matter. I have recorded a conviction and discharge on the fine only matter.

[32] That is the end of your case today Sharon Gertrude.

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Judge Q C S Hix

District Court Judge | Kaiwhakawā o te Kōti ā-Rohe

Date of authentication | Rā motuhēhēnga: 12/12/2022