

IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY

10/4 AP 39/92

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BETWEEN FRANCIS D. STRYKER

APPELLANT

A N D DEPARTMENT OF  
STATISTICS

RESPONDENT

Hearing: 20 March 1992

Counsel: Appellant in person  
M. Goodwin for Respondent

Judgment: 20 March 1992

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**ORAL JUDGMENT OF ANDERSON J**

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This is an appeal against conviction and sentence brought in respect of two prosecutions for minor offences laid pursuant to s.43(1) of the Statistics Act 1975. The matters relate to failures to comply with requirements to complete census forms. When the matter was called before me this morning the appellant did not appear and the appeals were struck out. I did note that the case was not called at 10 o'clock but because of other Court commitments was called almost an hour later. Sometime later in the morning Mr Stryker appeared and explained that he had been unable to come to the Court earlier from his address in Panmure. I was prepared to deal with his presence as an implied request for reinstatement of the appeals, and that is the way the matter has proceeded.

Mr Stryker's grounds of appeal are set out in writing. They indicate first that he feels he is being charged twice for the same offence which is totally unfair; that he has relevant personal particulars noted in a great variety of public records and that information would be available to the Statistics Department from these various sources. He indicates that his income is approximately \$135.00 per week from which he meets significant family commitments.

I interpret the grounds of appeal and the effect to be as follows:-

1. There is either a duplication of offences or inadequate evidence to support two offences for relatively similar matters;
2. That any non compliance with the request, though wilful, is excusable on the grounds of the amount of personal information already available to public authorities; and
3. Having regard to the appellant's very poor financial circumstances, the fine and costs imposed in each case is either clearly excessive or inappropriate, such being an appeal against sentence.

Mr Stryker also adds in a letter to the Registrar of the District Court at Otahuhu, although not repeated in his letter to this Court on appeal, that there is no clause in the Treaty of Waitangi that requires him to give information to anyone. I note in passing that there is also included in the letter to the Registrar of the District Court at Otahuhu, omitted from the written grounds of appeal to this Court, an offensive reference to bodily samples and a violent incident in recent New Zealand history.

Dealing with the issue of the relationship between the spirit and terms of the Treaty and a citizen's obligations pursuant to the Statistics Act 1975, counsel for the respondent referred me to *Kaihau v Inland Revenue Department* [1990] 3 NZLR

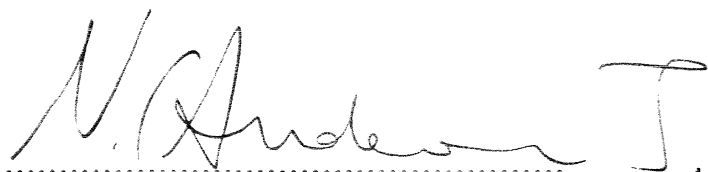
344. Reference might also have been made to *Kohu v Police (No 2)* 5 CRNZ 194. These cases and others indicate that in certain areas at least of general administration, the Treaty cannot effectively be invoked.

In the particular circumstances of this case there is some substance to the claim that the appellant has effectively been charged twice for the same offence. There are, of course, different obligations on persons in their personal capacity and persons appearing to be an occupier or otherwise in charge of a dwelling. It is sufficiently indicated by the summary of facts on the minor offence notice that Mr Stryker had obligations in his personal capacity which he did not meet. I have reservations about whether the summary of facts on the matter involving Mr Stryker's alleged capacity as an occupier or person in charge to be led to the view that relief should be granted on this appeal. I have not had the benefit of legal submissions on behalf of Mr Stryker. I regret to note that such submissions as I have had have not been legally helpful at all, but the regime of prosecution and conviction in relation to minor offences is a fast track criminal procedure and where the opportunity to involve oneself in due process is altered, minimum standards of compliance with procedure should be insisted upon. Section 20A of the Summary Proceedings Act 1957 requires the summary of facts to be such as to fully and fairly inform the defendant of the allegations against him. I doubt in this case whether the summary of facts on the information relating to an occupier or person in charge does fully and fairly inform Mr Stryker of the essential factual ingredients sufficient to found criminal liability. I make no final determination on this issue because of implications in other cases in the absence of submissions by counsel on behalf of one of the parties to the appeal. I intend to deal with that information by way of discharge without conviction and remission of any penalty.

As far as the other information is concerned, I am not satisfied that the appellant has discharged the onus of the appeal but it is plain that the amount of the

fine is excessive having regard to his particular difficult personal financial situation as disclosed to this Court but as not apparent in the determination of the minor prosecution.

Accordingly, in relation to the appeal against conviction on CRN 1048025139 the appellant is discharged without conviction and accordingly the fines and costs are quashed. In relation to CRN 1048025140 the appeal does not succeed. The order for costs will remain. The fine is reduced to \$25.00.

A handwritten signature in cursive script, appearing to read 'N.C. Anderson J.', written over a dotted line.

N.C. Anderson, J.

Solicitors for Appellant: In person

Solicitors for Respondent: Crown Solicitor, Auckland



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