

**IN THE DISTRICT COURT
AT TAURANGA**

**I TE KŌTI-Ā-ROHE
KI TAURANGA MOANA**

**CRI-2021-070-000794
[2021] NZDC 16787**

COMMISSIONER OF INLAND REVENUE
Prosecutor

v

**JOSEPH MICHAEL CHAND
ANEETA KUMARI CHAND**
Defendants

Hearing: 16 August 2021

Appearances: D Phillips for the Prosecutor
J Coleman for the Defendants

Judgment: 16 August 2021

NOTES OF JUDGE T R INGRAM ON SENTENCING

[1] As everyone knows, I am here today to deal with 17 charges, one of which is a representative charge, laid against Mr Joseph Chand of failing to provide income tax returns with intention of evading the assessment or payment of tax, those charges carry a maximum penalty of five years' imprisonment and/or a \$50,000 fine. His wife, Mrs Aneeta Chand, faces 16 charges of knowingly failing to provide income tax returns, those charges carry a maximum penalty for a first offence of \$25,000. Neither defendant has prior convictions of any kind.

[2] The circumstances of the offending are unusual but not particularly complex. Mr Chand came to New Zealand with his wife many years ago and obtained

employment in a bank. His wife also obtained employment and they set about raising a family, buying property and generally conducting themselves as responsible citizens do. After a time, Mr Chand's employment ceased and he decided to obtain a law degree and qualified himself to practice as a barrister. He has successfully run a barristerial practice for many, many years including all of the time that relates to the charges which they both face.

[3] Mr Chand has suffered periods of ill health, and he suffers ill health at present, and for many years the Inland Revenue sought to have him file tax returns, both on his own behalf and on his wife's behalf. He persistently and consistently failed to do so, offering every excuse known to man. But some were genuine excuses in the sense that he genuinely suffered a bout of serious ill health, or his wife was ill. However, the reality is that for many, many years no tax returns at all were filed. About a decade ago some returns were filed but by no means all of the returns that were due.

[4] The charges that are before me today relate to the period from July 2005 to returns that were due in July of 2020. Whatever else might be said about it, in distinction to many cases that come before the Courts, the pleas of guilty by Mr Chand have been entered on the basis that he intended to evade the assessment of income tax rather than the payment of income tax. The sums involved can on the one hand be counted as \$90,000-odd, on the other hand it is clear that Mr Chand has from time to time made tax payments without furnishing the returns to the Commissioner.

[5] I have received competing submissions from the prosecutor and from defence counsel as to how to look at that. I have got a clear and straightforward view of it. I accept that the defence are correct to say that all that has happened here is that Mr Chand has failed to file 16 income tax returns over the period from 31 March 2005 to 2020 inclusive on behalf of his wife, that being the representative charge, and over the same period individual charges have been laid for that period for him. I accept that what was involved was not an intention to evade payment but an intention to evade assessment. That makes a difference because literally all the cases that I have been referred to, and all the cases within my own knowledge have all been cases where at least partly the objective was to avoid the payment of tax.

[6] The question then arises is failing to pay tax more serious than intentionally evading the assessment of the tax that is due? On the one hand it is clear because the offences are continuing offences, and they carry the same penalty whether it be with an intention to evade assessment or payment. On the other hand it was strenuously submitted on behalf of Mr Chand that in the nature of things an intention to evade payment is necessarily more serious than evading assessment.

[7] I have reflected on that aspect of matters, and I have come to the conclusion that that is not what Parliament intended me to do in making this assessment. If Parliament had intended a lower penalty for intentionally evading assessment, and a higher penalty for intentionally evading payment, Parliament would have said so. There is simply nothing before me which leads inexorably to the conclusion that one form of the offence is more serious or less serious than the other.

[8] In making that assessment I have borne steadily in mind that the tax system is not only about Government collecting revenue from its citizens, it is also about fairness between individual citizens. In my view the fairness aspect of matters is just as important as the collection of appropriate revenues. The reports of tax cases are replete with claims by people that the Commissioner of Inland Revenue has treated them unfairly. Those reports, however, invariably contain sufficient detail for the reader of the report to assess whether or not the sums assessed have been fairly assessed against such information as the Commissioner has been able to provide as to what the respective income or GST aspect of the case might happen to be. Here the Commissioner can, now, because the tax returns have just been filed within the last two weeks and all the outstanding tax has now been paid.

[9] It seems to me that, in the nature of things, many people might regard failure to pay as being more serious than failing to return. But I do not consider that that assessment appropriately takes account of the fundamental requirement for the tax system to be fair, and to be seen to be fair.

[10] I turn aside from that to mention that counsel have referred me to quite a number of cases and I have carried out my own researches. I wish I could say that I had located an authority which provides me with a clear intellectual framework for

assessment of criminality in this case. The cold hard fact of the matter is that I simply have not been able to find any case which contains anything other than a general statement of principle, all of which are well known principles and none of which effectively resolve this for me.

[11] The competing positions from the parties are the Commissioner asks for a starting point for Mr Chand as a sentence of imprisonment between two years two months and two years six months and for Mrs Chand a fine on each charge in the range from \$6,250 to \$8,750. The probation report that I have received indicates that Mr and Mrs Chand are well capable of paying a fine in any sum that might realistically be imposed in this case and the recommendation contained in the pre-sentence report is that a sentence of home detention be imposed on Mr Chand. The defence argument is that if such an approach is taken the starting point for Mr Chand should be a short period of community detention or home detention and an end fine for all matters in the region of \$6,000 for Mrs Chand.

[12] The Sentencing Act 2002 requires me to hold these defendants accountable for what they have done and promote a sense of responsibility in them. I record that I accept that they both have a proper sense of responsibility here and neither has sought to put the blame on anyone else. The key difference between the prosecution and the defence here is that Mr Chand simply says that he has no explanation other than that he simply could not face up to the task and year in, year out sought and obtained extensions of time, and was never able to bring himself to carry out the long and complex task of producing the necessary returns until prosecutions were laid, and professionals were instructed, and the job has now been completed.

[13] This is not a case where any reparation is required. I must, however, denounce the conduct of Mr Chand, in particular, as a barrister admitted to practice in the courts of New Zealand. He has known all along of his obligation, and he has wilfully failed to meet that obligation. I accept that his wife relied upon him; however, the law again is clear, people who take professional advice or rely on others nevertheless have a duty to ensure that the others, whoever they may be, carry out the task of preparing and providing the returns as the law requires.

[14] The penalties available on charges of this kind for Mr Chand are very substantial, indeed those for Mrs Chand are not inconsiderable given that the maximum penalty is a fine of \$25,000 for a first offence and \$50,000 for a second offence on the charges that Mrs Chand faces.

[15] The purpose of the tax legislation is to provide an equitable and transparent means of financing civilisation within our community. Those who do not pay their taxes live their life on the cheap. Those of us who do pay our taxes are paying for the civilisation that our society as a whole enjoys. It is no minor matter, in my view, and indeed the courts have been crystal clear over the years with their expressions of intent in relation to tax evasion; those who deliberately evade significant sums of tax can expect serious penalties up to and including lengthy terms of imprisonment, and the courts need to make a nuanced assessment of each individual case.

[16] In terms of the gravity of the offending here, it seems to me that, however one looks at it, Mr Chand's continued requests for deferral of his tax returns adds significantly to the gravity of the offending. If this were one or two or three years of returns I would not take such a serious view of it, but when I stand back and look at it, this has been persistent behaviour over many, many years by somebody who is well educated and who has a clear knowledge of what the legal obligation is. I have come to the view that it is a serious matter in Mr Chand's case. And in his wife's case I accept that she relied upon him and the appropriately lower level charges against her adequately reflect that.

[17] I need to be consistent with sentences imposed upon others and here I pause to observe that there were recently solicitors in the Waikato, two of them, both of whom received very significant sentences for failing to meet their obligations both to return and to pay tax. In those cases, the courts had taken cognisance of the effects of ill health and I consider that I am duty bound to recognise the same principle here.

[18] I am required under the provisions of s 8 of the Sentencing Act to impose the least restrictive outcome that is appropriate in accordance with the hierarchy of sentences, and I need to bear in mind any particular circumstances of an offender that mean an otherwise appropriate sentence will be disproportionately severe. In the case

of Mr Chand, I accept that he is not fit to do any sentence other than an electronically monitored sentence, if we have a starting point of imprisonment. This is not a case where community work or supervision would have any utility because of his medical circumstances.

[19] The aggravating features are obviously the significant period of time over which these matters have been left to drift. The harm that results is firstly a loss of public confidence in tax authorities in equitably and fairly ensuring that all taxpayers meet their obligations, and of course there is considerable expense involved in bringing these prosecutions before the Court.

[20] It is suggested to me that this is an abuse of trust, but it seems to me inherent in the nature of tax cases, because it applies to everybody and is inherent in the nature of the charge. It seems to me that that is not a factor of any significance in cases of prosecutions for tax obligations that lie on every single tax payer. I, accordingly, put that aspect to one side.

[21] On the one hand it could be said that Mr Chand's behaviour is premeditated, on the other hand it could be said that he simply let matters drift whilst knowing that he was in breach of his obligations, and that breach extended to his wife.

[22] I need to consider the ages of these defendants. They are both in their sixties and have limited working lives, if any working life, left to them. They are entitled to credit for their guilty plea and I accept, as I have indicated, Mrs Chand's lesser involvement than her husband's role, which included taking responsibility for preparing and filing her returns. I accept that they are remorseful and I accept that there should be some allowance for good character.

[23] When I stand back and look at these matters it seems to me, in the absence of any directly comparable case, I should simply approach the matter from first principles. I deal, firstly, with Mrs Chand. Her continued failure over the period from 2005 through to 2020 is a considerable failure over a long period of time. As I have indicated, one or two or three years I can well understand that a person in late middle age might find themselves in difficulty making their mind up about things and

undertaking the necessary remedial action. But simply the length of time here leads me to the view that collectively these are relatively serious cases. I do not consider that they fall at the top end of the range mandated by Parliament, but I have come to the view that an appropriate starting point on the fines for Mrs Chand would be \$2,000.

[24] Turning to Mr Chand, I have come to the view that an appropriate starting point there would be a sentence of imprisonment, and I fix that at two years and four months. If I was called upon to explain it in detail I can simply say no more than having regard to other tax avoidance and evasion cases, the length of time over which this has taken place, the repeated consistent reliance by Mr Chand on the goodwill of the Commissioner, and his constant failure to meet his promises to the Commissioner to provide the returns, collectively require a sentence in the region of two years, in relation to his own returns, and I would uplift that by four months, in relation to his wife, on the single representative charge that he faces. So that would take me to a sentence effectively of 28 months.

[25] I have come to the view in relation to Mr Chand that the 25 per cent reduction for plea is appropriate. I accept that he is a man of otherwise good character and I would be prepared to give him a 10 per cent reduction for that. I was asked in the written submissions from defence counsel to give credit for the fact that he has not been in court before, but that seems to me to simply be credit for good character and I am not prepared to grant any more than 10 per cent. I accept that he is remorseful and would give five per cent for that and a further 10 per cent for his health status. That brings me to a total of 50 per cent. So that will provide an end sentence of 14 months' imprisonment, and that would convert handily to a sentence of seven months' home detention. In his case I am satisfied that home detention is the appropriate sentence, particularly because of his poor health and relatively advanced years.

[26] In relation to Mrs Chand, she would not be entitled to the credit for health and I have come to the view that with credit for plea, character and remorse the fine should be reduced from \$2,000 to \$1,200.

[27] In Mr Chand's case, he will be on all these charges be convicted and sentenced to home detention for a period of seven months. The residence is 4A Mayfair Street, Tauranga. There will be standard post-detention conditions until six months after your detention end date but no special conditions.

[28] In Mrs Chand's case, on each and every one of these charges you will be convicted and fined the sum of \$1,200 and you are ordered to pay court costs of \$130.

[29] In both cases I have taken account of totality.

A handwritten signature in black ink, consisting of a large, stylized initial 'I' followed by a horizontal line and a small flourish.

Judge TR Ingram
District Court Judge | Kaiwhakawā o te Kōti ā-Rohe
Date of authentication | Rā motuhēhēnga: 27/08/2021