

**IN THE DISTRICT COURT  
AT AUCKLAND**

**CRI-2017-004-009574  
[2018] NZDC 12633**

**INLAND REVENUE DEPARTMENT**

Prosecutor

v

**VIKTOR BARIKOV**

Defendant

Hearing: 19 June 2018  
Appearances: C Van Der Meuw for the Prosecutor  
A Cherkashina for the Defendant  
Judgment: 19 June 2018

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**NOTES OF JUDGE P A CUNNINGHAM ON SENTENCING**

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[1] Viktor Barikov, you appear today to be sentenced in relation to two charging documents which each contain six tax periods during which you aided and abetted a company, VB Construction Limited which is now in liquidation, to knowingly apply or permit the application of the amount of a deduction of withholding tax for a purpose other than to payment to the Commissioner of Inland Revenue. This involved PAYE Kiwi employee deductions, KiwiSaver, KiwiSaver employee deductions, KiwiSaver employer contributions, superannuation contributions in the sum of \$53,752.20 between 30 September 2015 and 20 July 2016 and a further \$72,975.37 in relation to the period of 31 July 2016 until 20 January 2017.

[2] On each of the two charging documents the maximum penalty is five years' imprisonment or a fine not exceeding \$50,000. The total amount is \$126,727.57 excluding interest and penalties. There is a difference as between the Commissioner of IRD and your lawyer Ms Cherkashina, as to the appropriate starting

point. The Inland Revenue Department submit that a starting point in the vicinity of 18 months is appropriate and your position is that something less than that commencing at around 12 months starting point is contended for.

[3] I have read the cases supplied by both the Commissioner and by your lawyer. There is no tariff sentence guidelines for this type of offending and, in my view, the way to reach a starting point is to carefully identify the aggravating features and that is assisted by reading the summary of fact. The company VB Construction was incorporated with you as the sole director and shareholder and it carried on the business of construction.

[4] You registered the company with the Inland Revenue Department as an employer on 25 June 2014. You filed monthly schedules from June 2014 and, for the first 11 months, the amounts were paid on time and there were two months in 2016 where amounts were paid on time as well as in December 2015. But then payments stopped occurring or insufficient money was paid to cover the amount payable to the department for that particular month. You had control of the company and, effectively, held the monies in trust for the commissioner with payments due on the due date.

[5] The summary says that between January and September 2016, in more than one telephone conversation, you was told by the Inland Revenue of the importance of making these payments by due date and told it was a criminal offence not to do so but you kept on failing to make them. Importantly, in my view, is that during the period of time you paid yourself wages in the sum of \$121,151 and took just short of \$25,000 in drawings in total, that is about \$20,000 more than the amount that was owed to the department in PAYE and other payments.

[6] I have been told this morning that with the exception of you there was only one other employee who was in the KiwiSaver scheme. So that person, as well of course yourself, will have lost the employee contributions that should have been made. Knowing that has altered slightly my position on the starting point. However, at the same time you made sure that you were kept in funds at the expense of monies owed to the Commissioner of Inland Revenue.

[7] I agree with the aggravating feature of this being a breach of trust. Employers hold those funds in trust for the department. The offending took place over a 17 month period. This is not a victimless crime because it is the community at large who is the victim. This was not a temporary slip, it was something that you were quite clearly told about and chose not to follow the advice. It is apparent from what is in the pre-sentence report that you were out of your depth in terms of running the company and attending to the administrative and financial management of the company including your obligations to the Revenue.

[8] I can also see from the pre-sentence report that there were considerable financial pressures at home. You and your family are from Russia and your wife's [family member] was having to receive treatment for a life threatening condition out of the country which the family, including you, were paying for. Taking the aggravating features into account I am going to adopt a 16 month starting point. From there you are entitled to a discount for your guilty plea and I also take into account the fact that today you have offered to make reparation. From what your lawyer has told me you really were not in a position to make reparation before because there have been problems with another company since incorporated.

[9] There has been some discussion today about whether it should be home detention or community detention. I am of the view that it needs to be home detention. However, it is important that you are able to keep working. There has been some discussion about that with the probation officer who is in Court today and on her advice I am satisfied that it is very likely that the Probation Service will be able to make arrangements to enable you to keep working. However, if that is not possible I reserve leave to bring the matter back before me for a review of sentence.

[10] So, the sentence will be as follows: You will be sentenced to six months' home detention and that is to be served at your home address of [address deleted] and there will be the conditions that are set out on page 5 of the pre-sentence report. That is to commence today so you need to go straight home after you have had the papers served on you and wait for the probation officer and the electronic monitor company to arrive.

[11] You are also required to make reparation in the sum of \$126,727.57 payable at the rate of \$300 per week and that is to commence on 17 July 2018, so in a months' time.

P A Cunningham  
District Court Judge