

IN THE HIGH COURT OF NEW ZEALAND  
DUNEDIN REGISTRY

Ap. 101, 103, 104, & 105/86

**LOW  
PRIORITY**

BETWEEN COLIN ALEXANDER FIELDWICK

Appellant

A N D

WALKER

GALLAGHER

McLAREN and

HERIMAN

Respondent

Hearing: 12 March 1987

Counsel: J.A. Walker for Appellant  
No appearance for Respondents

Judgment: 24 MARCH 1987

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JUDGMENT OF HARDIE BOYS J

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With the consent of the Solicitor-General pursuant to s 115A of the Summary Proceedings Act 1957 the appellant on behalf of the Dunedin City Council has brought these four appeals against sentence as test cases. In each instance, the respondent was the owner of a motor vehicle which in May 1986 was parked in either a reserved or a restricted area. A parking infringement offence notice was issued in accordance with s 42A of the Transport Act 1962. The infringement fee of \$20 (prescribed for "any other parking offence" in Part I of the Second Schedule to the Act) was not paid. And so a notice of traffic prosecution was issued under the summary procedure prescribed by s 21 of the Summary Proceedings Act 1957. Only two of the respondents

acknowledged the notice, but they did not proffer any explanation. Three of the files were placed before two Justices of the Peace acting under s 21(13) on 12 November 1986, and the fourth before another two Justices on 14 November. In the first three cases, the fines imposed were \$15 in the two which involved parking in a reserved area, and \$20 in the one which involved parking in a restricted area. In the fourth case, which was a reserved area charge, the fine was \$6. In all four cases there was also an imposition of costs, \$16.50 in the first three and \$16.30 (presumably an error) in the fourth. The maximum fine in each case is \$500. The amount of the costs is the filing fee, plus G.S.T., prescribed by the Second Schedule to the Summary Proceedings Regulations 1958. This fee is not payable by the Council at the time the notice of prosecution is filed (Summary Proceedings Act, s 207(3)) but under both s 78A(1)(c) of the Summary Proceedings Act and s 4(3) of the Costs in Criminal Cases Act 1967 (which applies to minor traffic offences: Summary Proceedings Act s 78A(2)) it may in the Court's discretion be imposed on the defendant.

Although use of the infringement offence procedure is optional (s 42A (2) of the Transport Act) it is greatly to be encouraged, for otherwise the District Court would be overwhelmed. For example, in Dunedin some 90,000 infringement notices are issued each year. Even so, in 10,000 cases a year the infringement fee is not paid and traffic prosecutions are accordingly instituted. The cost to the Council of undertaking these enforcement measures is substantial. I was given an estimate of \$25 for prosecution costs alone. The enforcement authority receives the whole

infringement fee, if paid (Transport Act, s 43(2)(a)) but only 90% of any fine (Public Finance Act 1977, s 103). It does not of course receive the sum ordered to be paid for costs. That goes to the Public Account: s 208 of the Summary Proceedings Act. Naturally the Council considers that it should not be out of pocket when it undertakes the enforcement measures for which it is responsible. And so these appeals are brought in order to obtain a direction from this Court as to the principles which ought to be applied in the imposition of fines when failure to pay the infringement fee necessitates the institution of a traffic prosecution.

Mr Walker submitted that two principles should apply. The first is that the fine should not be less than the infringement fee unless the defendant puts forward an explanation such as to justify a reduction. The second is that, again in the absence of a reason to the contrary in the particular case, the fine should be greater than the infringement fee; so as to act as an effective sanction and to promote effective enforcement.

I have no difficulty with the first proposition. It is plainly wrong that those who fail to take the opportunity to pay promptly, and so put the enforcement authority and the Court to considerable time and expense, should be treated more leniently than those who do take that opportunity (cf the views expressed by Quilliam J in Ministry of Transport v Froggatt [1972] NZLR 904-907). The fact that costs are imposed in addition to the fine is irrelevant. They are simply a recovery of what is probably only part of the Court's administration cost in the matter and it is in general right that a person whose failure to pay the infringement fee

has necessitated that cost being incurred should be required to make some reimbursement.

I have however some difficulty with the second of Mr Walker's propositions. For the nature of the parking offence is not altered by the failure to pay the infringement fee, nor is it thereby rendered any more serious an offence. Further, it is not an offence to fail to pay the fee, although that was originally the case (see the now repealed s 194A(8) of the Transport Act, inserted by s 27 of the Transport Amendment Act 1968). Thus to increase the penalty solely by reason of failure to pay the fee would be to admit extraneous and irrelevant consideration. The failure certainly involves the incurring of administrative expenses, which it is right that the offender should be required to pay, but that is a separate matter. If the present system, which recoups the Court but not the enforcement authority in this respect, is unfair to the enforcement authority, then that is a problem for the Legislature. (Whether or not s 78A(c) of the Summary Proceedings Act already gives the Court power to order additional costs payable to the enforcement authority is beyond the scope of the present proceedings.)

I am therefore not willing to declare that as a matter of principle the fine must in general exceed the infringement fee. The amount of the fine in each case is a matter within the discretion of the Court. Mr Walker drew attention to s 42A(7) of the Transport Act, which provides that the fact that the infringement fee has been paid is not a defence to a prosecution if payment was made after the date on which the prosecution could be instituted. He submitted that this provision is a recognition that the fine should be higher

than the fee. I agree that it may be said to recognise that the fine may be higher; but equally it may recognise that once there has been default in payment of the fee, the defendant should be liable for the costs of the resulting prosecution.

Mr Walker did not suggest that the fines imposed in the particular instances selected for these appeals should be increased. The offences all took place many months ago and the fines have probably been paid by now. Accordingly the appeals are all dismissed. On the question of principle raised my view is that in the absence of an explanation that provides good reason, the fine should not be less than the infringement fee; but otherwise the amount of the fine is in the discretion of the Court.



Solicitors:

Brent Haggitt & Co, Dunedin, for Appellant