

# 3

chapter

## Infringement Offences

### *Wellington City Council v McCreedy*

Judge Keane described the infringement offence procedure as:

*a process which enables offences of the least relative significance to be processed swiftly, efficiently, and inexpensively. To enable this to happen it abrogates minimum rights, and reverses the usual onuses. But, equally, it transforms the offence into an infringement, and no conviction is ever imposed. The transformation is not complete. The one who commits the infringement faces a liability which can be enforced like a fine. But the absence of a conviction is a distinction of real, and probably decisive, significance.*

### 3.1 Legislation

The relevant legislation is:

- RMA – ss 343A to 343D.
- Resource Management (Infringement Offences) Regulations 1999 (the Regulations). The Regulations came into force on 1 February 2000.<sup>2</sup> Infringement notices can only be issued by enforcement officers. The infringement fees range from \$300 to \$1,000.
- Summary Proceedings Act 1957 – ss 2 1, 78A and 78B.
- Summary Proceedings Regulations 1958 – regulations 15B to 15E, First Schedule, Form 10 – reminder notice and Form 10A – notice of hearing.



<sup>1</sup> [1995] DRC 536

<sup>2</sup> The infringement offence procedure is not a new procedure. Territorial authorities have used the procedure for many years for parking infringements. Infringement notices can be issued under a number of statutes including the Transport Act 1962, the Biosecurity Act 1993, the Dog Control Act 1996, Land Transport Act 1998 and the Litter Act 1979.

## 3.2 Relevant Sections of the RMA

3.2.1 The relevant sections of the Act are sections 343A to 343D.

### 3.2.2 Section 343A

Section 343A defines "infringement fee" as the amount fixed by regulations and "infringement offence" as an offence specified as such in regulations.

### 3.2.3 Section 343B

Section 343B provides:

**Where any person is alleged to have committed an infringement offence, that person may either-**

**(a) Be proceeded against for the alleged offence under the Summary Proceedings Act 1957; or**

**(b) Be served with an infringement notice as provided for in section 343C.**

3.2.4 Pursuant to s 343B, the local authority may elect to proceed summarily by laying an information (charge) under s 338 of the RMA or by way of the infringement procedure. If the local authority elects to proceed summarily then the maximum penalties which can be imposed are those prescribed in s 339 of the RMA.

3.2.5 The infringement notice procedure is not available for all the offences under the RMA. The option of issuing an infringement notice instead of prosecution is only available for 10 of the 20 offences under the RMA. Paragraph 3.4.2 lists the offences for which the infringement procedure is available. The offences for which the infringement procedure is not available include breach of an enforcement order.

3.2.6 Local authorities should consider the scale of the offending involved when deciding whether to prosecute or to issue an infringement notice. Evidence of adverse effects and/or likely adverse effects should be collected and considered carefully. In order to achieve consistency of decision making local authorities should put in place policies on when infringement notices will be issued.

3.2.7 Section 343C provides:

- That where an enforcement officer observes a person committing an infringement offence, or has reasonable cause to believe such an offence is being or has been committed by that person, an infringement notice in respect of that offence may be served on that person.
- For service of infringement notices:

**Any enforcement officer (not necessarily the officer who issued the notice) may deliver the infringement notice (or a copy of it) to the person alleged to have committed an infringement offence personally or by post addressed to that person's last known place of residence or business; and, in that case, for the**



3 Offences against the RMA are summary offences. An offence for which the defendant may not be proceeded against by indictment, except pursuant to an election by the defendant to be tried by a jury is a summary offence.

The definition of "summary offence" in s 2 of the SPA is:  
*Summary offence means any offence for which the defendant may not, except pursuant to an election made under section 66 of this Act, be proceeded against by indictment; and, where the enactment creating an offence expressly provides that it may be dealt with either summarily or on indictment, includes such an offence that is dealt with summarily.*

***purposes of the Summary Proceedings Act 1957, it (or the copy) shall be deemed to have been served on that person when it was posted.***

- That the notice shall be in the prescribed form and lists the particulars the notice shall contain.
- That where a notice has been issued, proceedings may be commenced in the District Court in accordance with s 21 of the Summary Proceedings Act 1957.

3.2.8 Section 343D provides that a local authority shall be entitled to retain all infringement fees received for notices issued by its enforcement officers.

### **3.3 Summary Proceedings Act 1957**

3.3.1 Section 21 of the Summary Proceedings Act (SPA) specifies the various options for initiating infringement offence proceedings and sets out the steps that may be taken, after issue of an infringement notice, by an informant or by the person served with a notice.

3.3.2 The words “defendant”, “informant”, “infringement fee”, “infringement notice” and “infringement offence” are defined in s 2 of the SPA<sup>4</sup>. In relation to an infringement offence for which an infringement notice has been issued:

- “Defendant” is defined as any person served with a reminder notice in respect of the offence, or any person who gives notice requesting a hearing in respect of the offence, pursuant to s 21 of the SPA.
- “Informant” is defined as the department, local body, or other authority in or by which the officer or employee who issued the notice was employed.

3.3.3 Section 78A of the SPA provides that a conviction is not imposed for an infringement offence.<sup>5</sup>

### **3.4 Issue of infringement notice**

3.4.1 The form for the infringement notice is in Schedule 2 of the Regulations. The enforcement officer must correctly identify the section of the RMA that has been contravened.

3.4.2 Schedule 1 of the Regulations sets out the sections of the RMA that give rise to an infringement offence when contravened and the infringement fee for the offence:



4 “Infringement fee”, in relation to an infringement offence, means the amount fixed as the ***infringement fee*** for the offence by or under the Act under which the offence is created.

*“Infringement notice” means a notice issued under-*

*(g) Any provision of any other Act providing for the use of the infringement notice procedure under section 21 of this Act:*

*“Infringement offence” means under any Act in respect of which a person may be issued with an infringement notice.*

5 In *Wood v Police* 18111198, Gendall J, HC Wanganui, AP 1198, Wood appealed a conviction and sentence of a \$160 fine, Court costs of \$95 and order to attend a defensive driving course. The High Court quashed the record of conviction and held that s 78A of the SPA applies and requires that a conviction not be recorded. The Court also quashed the order that the appellant attend a defensive driving course because the only penalty that can be imposed for an infringement offence is a fine and costs.

<i>Offence specified as infringement offence</i>	<i>General description of offence</i>	<i>Infringement fee for offence \$</i>
<b>Section 338 (1) (a)</b>	<b>Contravention of section 9 (restrictions on use of land)</b>	<b>300</b>
	<b>Contravention of section 12 (restrictions on use of coastal marine area)</b>	<b>500</b>
	<b>Contravention of section 13 (restriction on certain uses of beds of lakes and rivers)</b>	<b>500</b>
	<b>Contravention of section 14 (restrictions relating to water)</b>	<b>500</b>
	<b>Contravention of section 1.5 (1) (a) and (b) (discharge of contaminants or water into water or onto or into land where contaminant is likely to enter water)</b>	<b>750</b>
	<b>Contravention of section 15 (1) (c) and (d) (discharge of contaminants into environment from industrial or trade premises)</b>	<b>1,000</b>
	<b>Contravention of section 15 (2) (discharge of contaminant into air or onto or into land)</b>	<b>300</b>
<b>Section 338 (1) (c)</b>	<b>Contravention of an abatement notice (other than a notice under section 322 (1) (c))</b>	<b>750</b>
<b>Section 338 (1) (d)</b>	<b>Contravention of a water shortage direction under section 329</b>	<b>500</b>
<b>Section 338 (2) (a)</b>	<b>Contravention of section 22 (failure to provide certain information to an enforcement officer)</b>	<b>300</b>
<b>Section 338 (2) (c)</b>	<b>Contravention of an excessive noise direction under section 327</b>	<b>500</b>
<b>Section 338 (2) (d)</b>	<b>Contravention of an abatement notice for unreasonable noise under section 322 (1) (c)</b>	<b>750</b>

3.4.3 Section 343c(3) of the RMA provides that the infringement notice shall be in the form prescribed in the Regulations and shall include the summary of rights. The following must be included in the notice:

- Identification number of enforcement officer. If the enforcement officer does not have an identification number, the enforcement officer must insert his/her name.
- Name of enforcement authority.
- Full name and address of person contravening the RMA
- Section of the RMA contravened. If more than one section has been contravened, a separate infringement notice should be issued for each infringement.

- Nature of infringement. Section 343C(3)(a) of the RMA requires that the notice shall contain such details of the alleged offence as are sufficient fairly to inform a person of the time, place, and nature of the alleged offence. The author suggests that the words of the section contravened be followed eg

Section of Resource Management Act 1991 contravened: section 15(1)(b), being an offence against section 338(1)(a) of the Resource Management Act 1991.

Nature of infringement:

You discharged contaminant, namely cowshed effluent, onto land, in circumstances which may have resulted in that contaminant [or any other contaminant emanating as a result of natural processes from that contaminant] entering water, namely a tributary of the Waitekauri Stream, when the discharge was not expressly allowed by a rule in a regional plan and in any relevant proposed regional plan, a resource consent, or regulations.

- Location – where the infringement occurred
- Date and approximate time the infringement occurred<sup>6</sup>
- Fee for the infringement
- Date for payment -payment of the infringement fee must be made within 28 days after the date on which the infringement notice is posted or delivered to the recipient.
- Address at which fee may be paid
- Signature of enforcement officer who completes notice

3.4.4 The Regulations, Schedule 2, summary of rights, clause 1 informs the recipient that:

***If you pay the infringement fee within 28 days after the service of this notice, no further action will be taken against you in respect of this infringement offence. Payments should be made to the enforcement authority at the address shown on the front of this notice.***

There is provision in s 314(1)(d) of the RMA for a local authority to recover costs by application for an enforcement order. The author's view is that if an infringement notice is issued and the fee paid, that is the end of the matter. The local authority cannot take further steps to recover costs.

## 3.5 Reminder notice

- 3.5.1 If the recipient does not pay the infringement fee and does not request a hearing within 28 days of the date of service of the infringement notice, the local authority can issue a reminder notice.



<sup>6</sup> If the infringement is contravention of an abatement notice, the date and time is the date the enforcement officer inspects the site to check for compliance. The infringement notice should only be issued after the appeal period in the abatement notice and after the deadline given in the notice for compliance.

3.5.2 The form prescribed for the reminder notice is the new form 10 in the First Schedule of the Summary Proceedings Regulations 1958.<sup>7</sup> Section 21(2) of the SPA requires that the reminder notice contain the same or substantially the same particulars as the infringement notice. If the reminder notice is materially different to the infringement notice, the local authority runs the risk of the infringement proceedings failing. Once a reminder notice has been issued, the person receiving the notice has 28 days after the date of issue of the reminder notice, to pay the infringement fee.

### **3.6 Payment by instalments**

3.6.1 Section 21(3A) of the SPA provides that an arrangement can be made to pay by instalments, if:

- The reminder notice has not been filed in Court; and
- The local authority has put into place the necessary management and accounting systems to allow the defendant to pay by instalments.

3.6.2 The local authority may, but is not required to, enter into an arrangement allowing the defendant to pay by instalments. The arrangement must be entered into within six months after the date of the offence and be completed within 12 months after the date of the offence. If the defendant defaults in payment of any instalment, the local authority can enter into another arrangement for payment by instalments or serve a reminder notice on the defendant.<sup>8</sup> If a reminder notice is issued, the defendant does not have the option of requesting a hearing.

### **3.7 What happens when the defendant fails to pay the infringement fee and does not request a hearing?**

3.7.1 The defendant has 28 days from the date of service of the reminder notice to pay the infringement fee or request a hearing. If the defendant fails to either pay the fee or request a hearing, the local authority has two options:

- It can take no further action; or
- Within 6 months of the date of the offence, the local authority can file a copy of the reminder notice in Court with a record of the date and method of service of the infringement notice [or further copy of the infringement notice in Court with a record of the date and method of service of the reminder notice) and the Court fee of \$30. Where the local authority has allowed the defendant to pay the infringement fee by instalments and the defendant has defaulted in payment, the copy reminder notice/infringement notice can be filed within twelve months of the date of the offence.

3.7.2 If the local authority files a copy of the reminder notice/infringement notice in Court an order is then **“deemed to have been made”** that the defendant pay a fine equal to the infringement fee for the offence and costs of the prescribed amount (currently \$30)<sup>9</sup>. The defendant cannot file an appeal<sup>10</sup> or apply for a rehearing because there is no actual judicial decision.”



<sup>7</sup> The Summary Proceedings Regulations 1958 were amended by the Summary Proceedings Amendment Regulations 1999/1630 which came into force on 1 February 2000 and which revoke Form 10 and substitute a new Form 10.

<sup>8</sup> The reminder notice should include a record of the amount of infringement fee unpaid.

<sup>9</sup> SPA s 21(5)



### *Van Kan v Auckland City Council*

An infringement notice was issued to Van Kan. Van Kan did not request a hearing and did not pay the infringement fee. Van Kan filed an appeal in the High Court. The High Court dismissed the appeal and held that there was nothing on which Van Kan could base an appeal because:

*There has to be a "determination" of a District Court before the right of appeal arises; infringement notices not the subject of requests for hearing cannot give rise to an appeal.*

The High Court also considered whether Van Kan could apply for a rehearing under s 75 of the SPA. The Court held that s 75 of the SPA provides for a "rehearing after a defendant has been convicted on a hearing of any information or complaint". The Court held that 78B of the SPA gives limited power to correct irregularities in proceedings for infringement notices and a rehearing may only be ordered if the defendant did not receive a reminder notice or a copy of the notice of hearing, or if there had been some other irregularity in the procedure. The Court held that Van Kan had no grounds to apply for a rehearing. Barker J said:

*I can only suggest to the appellant and those who find themselves in the same situation as he, that it is absolutely imperative for a citizen wishing to defend a charge which is the subject of an infringement notice, that notice of a desire to have a hearing is given within the time limit prescribed.*

Barker J commented that there was the possibility that Van Kan could apply for a judicial review but noted that there could be jurisdictional problems with an application for judicial review.

## 3.8 Request for a court hearing

Section 21(6) of the SPA provides that the defendant can request a Court hearing before or within 28 days after service of a reminder notice. The local authority may allow the defendant extra time to request a hearing. The request must be in writing, signed by the defendant and delivered to the local authority at the address specified in the infringement notice. The defendant can either admit liability or not admit liability.<sup>13</sup>



10 The Court of Appeal in *Davies v Ministry of Transport* [1989] 3 NZLR 300, held that the appeal jurisdiction of s 115 of the SPA arises only when there has been a "determination by District Court of any information or complaint" and that expression contemplates an actual judicial decision. A fine recorded pursuant to s 21(5) of the SPA without any judicial intervention by the District Court is not a determination of an information by the District Court and does not give rise to a right of appeal under s 115 of the SPA.

11 In *Davies*, the Court of Appeal held that the defendant does not have a right of appeal if an order is made under s 21(5) of the SPA. Richardson J said:

***Indeed, the s 21 procedure was introduced to provide an automated system of dealing with the very large number of minor matters that had been going before the Court in the minor traffic offence jurisdiction under the former s 21. If the person concerned fails to respond to the infringement notice and reminder notice, the informant Ministry's computer discs then generate, through the District Court computer system, the record required under s 21(5) and the appropriate notice of fine. Nothing in that process can be characterised as a determination of an information by the District Court. What that expression contemplates is an actual judicial decision.***

12 12/5/92, Barker J, HC Auckland, AP 98/92.

13 SPA s 21(7)

### 3.9 Admission of liability

3.9.1 If the defendant admits liability, and requests a hearing, the defendant can make submissions as to penalty or other matters that the defendant wishes the Court to consider. If the defendant admits liability the local authority has two options:

- It can take no further action; or
- It can commence proceedings by filing a notice of hearing in Court together with the notice from the defendant admitting liability<sup>14</sup>. The form prescribed for the notice of hearing is form 10A in the First Schedule of the Summary Proceedings Regulations 1958.

3.9.2 If the local authority commences proceedings, the Court may order the defendant to pay a fine and will order the defendant to pay costs. There is no opportunity for either the local authority or the defendant to make oral submissions to the Court. The local authority is not required to and should not serve a copy of the notice of hearing on the defendant.



#### *Adam v Wellington City Council*<sup>15</sup>

Adam was issued with a notice for a parking infringement and a reminder notice. Adam wrote to the Council admitting liability and provided an explanation. The Council filed a notice of hearing in Court and arranged for the notice of hearing to be served on Adam. At the hearing the facts were read to the Court by counsel for the Wellington CC and the Justices read Adam's written submissions.

Adam appealed. The High Court held that the notice of hearing should not have been served on Adam. The Judge said:

*In my view it is entirely undesirable that a stated procedure should be varied unilaterally by the informant even if the byproduct of it gives an opportunity to be heard. The Act clearly in these circumstances, contemplates no opportunity of being heard other than by way of submission. To create an alternative way of proceeding is confusing and in my view unlawful; and it should not have been done.*

### 3.10 No admission of liability

If the defendant does not admit liability, and requests a hearing, the local authority has two options:

- It can take no further action; or
- It can commence proceedings by filing a notice of hearing in Court and serving on the defendant a copy of the notice of hearing.



<sup>14</sup> SPA s 21(8)

<sup>15</sup> 25/2/98, Heron J, HC Wellington, AP 18/98



### 3.11 Defences

3.11.1 Defences are set out in clause 8 of the summary of rights in Schedule 2 of the Regulations. The defence in clause 8(1) is identical to the defence in s 341 of the RMA. The defence in clause 8(3) is identical to the defence in s 340(2) of the RMA. If the defendant wishes to raise the defence in clause 8(1) it must deliver written notice to the local authority within seven days after receipt of the infringement notice.<sup>16</sup>

3.11.2 If the defendant raises a defence as set out in clause 8 or any other defence the local authority should consider the defence carefully. The local authority has two options:

- It can take no further action; or
- If the defendant has requested a hearing, the local authority can commence proceedings by filing a notice of hearing in Court and serving a copy of the notice of hearing on the defendant. If the defendant has not requested a hearing the local authority should serve a reminder notice on the defendant.

### 3.12 Circumstances

A person receiving an infringement notice may raise “**any matter relating to circumstances**” of the offence, by writing to the local authority within 28 days after the date on which the infringement notice was served or delivered to the person.<sup>17</sup> The local authority has the discretion to either accept the circumstances that are raised and take no further action, or continue with the infringement process by issuing a reminder notice.

### 3.13 Notification to defendant of no further action

3.13 In paragraphs 3.7.1, 3.9.1, 3.10, 3.11.2 and 3.12 the option of no further action is referred to. There is no statutory obligation for the local authority to notify the defendant if it decides to take no further action. However, the author’s view is that if a local authority decides to take no further action it should notify the defendant as a courtesy to the defendant.

### 3.14 Determination of infringement offence by Court

3.14.1 A Court hearing only takes place if the defendant requests a Court hearing.

3.14.2 If the defendant admits liability, the proceedings will be considered by Justices or a District Court Judge on the papers without hearing oral submissions from either party. The Court will find the defendant guilty.

3.14.3 If the defendant does not admit liability, the defendant is required to appear in Court and present his/her case to the Court. The Justices or the Judge will then make a determination. The Court may find the defendant either not guilty or guilty. If the defendant does not appear in Court on the allocated hearing date, the local authority should call evidence to prove the offence.



<sup>16</sup> Regulations, Schedule 2, summary of rights, Clause 8(2)

<sup>17</sup> Regulations, Schedule 2, summary of rights, Clause 2

- 3.13.4 If the Court finds the defendant guilty, the Court may impose a fine and will impose costs of the prescribed amount (currently \$30) and can also order the defendant to pay further costs.

### 3.15 What is the standard of proof?

The local authority is required to prove the infringement offence to the standard beyond reasonable doubt<sup>18</sup>. The standard of proof which is required of the defendant to establish a defence is on the balance of probabilities<sup>19</sup>.

### 3.16 Presumptions

- 3.16.1 A local authority is not obliged to prove the validity of the infringement notice; service of the infringement notice, reminder notice or notice of hearing; or that the infringement fee has not been paid. Section 21(12) of the SPA provides:

***In any proceedings for an infringement offence for which an infringement notice has been issued it shall be presumed, unless the contrary is proved, that-***

- (a) ***The infringement notice in respect of the offence has been duly issued, and the notice, or a copy of the notice, has been served on the defendant:***
- (b) ***Any reminder notice or copy of a notice of hearing required to have been served on the defendant has been duly served:***
- (c) ***The infringement fee for the offence has not been paid as required under this section.***

- 3.16.2 It is open to the defendant to prove on the balance of probabilities that one or more of the steps in s 21(12) of the SPA were not properly taken<sup>20</sup>.

### 3.17 Correction of irregularities in proceedings for infringement offences

Section 78B of the SPA provides that, if the defendant did not receive the reminder notice or a copy of the notice of hearing or some other irregularity occurred in the procedures leading up to the order for the fine or costs, the Court can on application of the defendant

- set aside or modify the order
- grant a rehearing
- require another copy of the reminder notice or notice of hearing to be served on the defendant
- make an order as to costs



<sup>18</sup> *Wood v Police* 18/11/98, Gendall J, HC Wanganui, AP 1/98.

<sup>19</sup> *Land v Whakatane District Council* 6/8/98, Randerson J, HC Rotorua AP 63/98

<sup>20</sup> *Police v Reeves* [1997] DCR 413, an infringement notice was issued for a speeding offence. The Court held that there was no evidence that the infringement notice was incorrect and the Police were entitled to rely on the presumption in s 21 of the SPA.

### 3.18 Errors in infringement notice, reminder notice, notice of hearing

The notice of hearing filed in Court is to be treated as an information and a copy of the notice served on the defendant is to be treated as a summons to the defendant<sup>21</sup>. If there is an error in the infringement notice, the reminder notice and/or the notice of hearing, s 204 of the SPA applies and the notices are invalid if there has been a miscarriage of justice<sup>22</sup>. If there is an error in the notice of hearing the local authority at the hearing can seek an amendment pursuant to s 43 of the SPA.<sup>23</sup>

#### Case Example

**Hall v Ministry of Transport**  
An infringement offence notice was issued to Hall for speeding. Hall did not pay the infringement fee. A reminder notice was issued to Hall. Hall made a written request for a hearing. The Ministry of Transport (MOT) filed a notice of hearing. One of the defences raised by Hall was that the infringement



21 SPA s 21(8)

22 SPA s 204:

**No information, complaint, summons, conviction, sentence, order, bond, warrant, or other document, and no process or proceeding shall be quashed, set aside, or held invalid by any District Court or by any other Court by reason only of any defect, irregularity, omission, or want of form unless the Court is satisfied that there has been a miscarriage of justice.**

23 SPA s 43:

**Amendment of information where defendant appears—**

- (1) **Subject to the succeeding provisions of this section, where the defendant appears to answer a charge to which this Part of this Act applies, the Court may amend the information in any way at any time during the hearing.**
- (2) **Without limiting the generality of the powers conferred by subsection (1) of this section, it is hereby declared that those powers shall include power to amend an information by substituting one offence (whether an indictable offence or a summary offence) for another offence (whether an indictable offence or a summary offence), and shall also include power to amend the information to an information to which Part V of this Act applies.**
- (3) **Where under subsection (2) of this section any information is amended by substituting one offence for another, then, subject to the provisions of subsection (4) of this section, the following provisions shall apply:**
  - (a) **Subject to the provisions of paragraphs (b), (c), and (d) of this subsection, the hearing shall be continued as if the defendant had originally been charged with the substituted offence:**
  - (b) **if the substituted offence is one to which section 66 of this Act applies, the defendant shall, before the hearing is continued, be entitled to elect to be tried by a jury for that offence, and the provisions of that section, with the necessary modifications, shall accordingly apply as if for the words “before the charge is gone into” in subsections (1) and (2) of that section there were substituted in each case the words “before the hearing is continued”?**
  - (c) **Before the hearing is continued, the substance of the charge as amended shall be stated to the defendant and he shall be asked how he pleads; and, if he pleads guilty, the Court may convict him or deal with him in any other manner authorised by law:**
  - (d) **Any evidence already given shall be deemed to have been given in and for the purposes of the hearing of the charge as amended, but either party shall have the right to examine or cross-examine or re-examine any witness whose evidence has already been given in respect of the offence originally charged.**
- (4) **Where under subsection (2) of this section any information is amended to an information to which Part V of this Act applies, the case shall be dealt with under that Part in all respects as if the defendant had originally been charged under that Part with the indictable offence stated in the amended information.**
- (5) **The Court may, at the request of the defendant, if it is of opinion that he would be embarrassed in his defence by reason of an amendment made or proposed to be made under this section, adjourn the hearing of the case.**

24 [1991] 2 NZLR53 (CA)

notice was invalid because it did not indicate that Hall's rights to dispose of the matter by paying the fee continue until 28 days after service of a reminder notice. The form did not comply with s 42A(7)(g) of the Transport Act, which requires infringement notices to contain a summary of the provisions of s 21(10) of the SPA. The MOT had in fact used the form prescribed by the Transport (Infringement Offences Notices) Regulations 1987 but there was a mistake in the form. Hall did not claim that there had been any miscarriage of justice. He did not say that the infringement notice misled him. He did not pay the infringement fee and exercised his right to request a hearing. Hall's defence that the infringement notice had an error in it was a defence on a technical ground.

The Court of Appeal held that the infringement notice had defects but, there being no miscarriage of justice, s 204 of the SPA precludes it or the proceeding from being held invalid.

The Court of Appeal also held that s 78B of the SPA only applies if the defendant is deemed, on the filing of a reminder notice, to have been ordered to pay a fine and costs, or if the defendant has been so ordered on a hearing following a notice of hearing. The Court held that s 78B cannot be invoked before an order adverse to the defendant has been made or is deemed to have been made. The Court said that s 78B:

*... is interesting as revealing an appreciation by Parliament that irregularities could well occur in implementing the rather complicated infringement notice procedure. It does not purport to supersede s 204, but gives a useful specific power, which a District Court Judge may exercise if the irregularity does not come to light until after an order has been made. If an irregularity is drawn to notice earlier, s 204 is available and it would be absurd to insist on waiting until the s 78B stage.*



### Case Example

#### ***Greenfield v Police***<sup>25</sup>

Greenfield appealed a fine of \$60 for speeding. Greenfield argued that the notice of hearing had a number of errors in it. The High Court agreed that there were three errors in the notice of hearing. The first error was that the registration number of the motor vehicle was incorrect, the second was that the date of issue of the infringement notice was incorrect and the third was that the date of the offence was incorrect. However the Court held that there was no miscarriage of justice and the notice of hearing was not invalid because the information in the infringement notice and the reminder notice was correct and therefore Mr Greenfield could not have been in any doubt as to what was alleged against him.



## 3.19 Are the infringement fees mandatory fines?

The leading decisions on whether infringement fees are mandatory fines are *Interfreight Ltd v Police*<sup>26</sup> and *Osment v Police*.<sup>27</sup> In the light of these decisions, the author's view is that the infringement fees specified in the Regulations are not



<sup>25</sup> 25/1/99, Patterson J, HC Auckland, AP 216/98

<sup>26</sup> [1997] 3 NZLR 688 (CA)

<sup>27</sup> 11/9/98, Laurenson J, HC, Rotorua AP 65/98

mandatory and the Court has discretion to impose a fine of a lesser amount than the prescribed fee because:

- (a) The reminder notice in the Summary Proceedings Amendment Regulations 1999, form 10 does not include a note relating to RMA offences which is similar to the note on overloading offences.
- (b) Local authorities have the option of prosecuting under s 338 of the RMA or using the infringement notice procedure
- (c) Submissions can be made on the penalty.

  
Case  
Example

### *Interfreight Ltd v Police*

The Court of Appeal held that overloading infringement fees set out in Part III of the Second Schedule of the Transport Act 1962 are mandatory because:

- (a) Section 69B(2)(b) of the Transport Act states what the penalty for an overloading offence shall be. Prima facie it lays down a mandatory penalty. Section 69B(2)(b) provides:

*The penalty for the offence shall be the appropriate overloading infringement fee or the total of those fees calculated in accordance with Part III of the Second Schedule of this Act.*

- (b) The reminder notice includes the note:

*NOTE: If the offence alleged against you is an OVERLOADING OFFENCE, you should not make written submissions as to penalty as the penalty for the offence is fixed and may not be reduced by the Court.*

The Court of Appeal rejected the argument that the defendant's right to request a hearing is futile if the defendant can not challenge the penalty. The Court of Appeal held s 21 of the SPA is a general provision. The specific provision in s 69B(2)(b) overrides the general provision in s 21. The Court held that the option in the summary of rights in the infringement notice to make submissions as to the offence is to allow the defendant an opportunity to challenge the calculation of the infringement fee or contend that the overloading was not to the extent alleged.

  
Case  
Example

### *Osment v Police*

The High Court held that the infringement fees for excess weight offences and distance recorder offences are not mandatory because:

- (a) An excess weight offence is not an "overloading offence" as defined in s 69B of the Transport Act.
- (b) The Police do not have to use the infringement procedure for excess weight offences. The Police have to use the infringement procedure for overloading offences under s 69B of the Transport Act.
- (c) The question of penalty is open to submission.

### 3.20 Costs

- 3.20.1 The Court must order the defendant to pay a prescribed fee which is currently prescribed at \$30 if<sup>28</sup>:
- (a) The defendant admits liability and the informant requests a hearing.
  - (b) The defendant does not admit liability and requests a hearing and the Court finds the defendant guilty.
- 3.20.2 If the Court finds the defendant not guilty, the Court can order the local authority to pay costs. Section 21(8) of the SPA provides that if the notice of hearing is filed within six months of the date of the offence, the Costs in Criminal Cases Act applies.



**Points  
to Watch**

#### *Police v Ellis*<sup>29</sup>

The defendant, Mrs Ellis was issued with an infringement notice about 41 days after the date of the alleged offence. The defendant's husband who is a Barrister, wrote to the Police about one week after the issue of the reminder notice and asked the Police to withdraw the infringement notice. Mr Ellis told the Police that the 41 day delay between the date of the offence and receipt of the notice by Mrs Ellis was too long and potentially prejudicial to her defence because *"It is hard to recall if you were speeding and if you have a defence that long ago, e.g. you accelerated out of the way of a potential accident, Police or other emergency vehicle."* Mr Ellis referred the Police to decisions where the Court has dismissed infringement notice proceedings because of delays. The Police replied with a letter which the Judge described as *"a knee-jerk standard response generated by computer, rather than a considered reply dealing with the quite proper concerns raised by Mr Ellis"*. The letter from the Police stated:

*Please be assured that your letter has been read in full and has been given due consideration. It has been decided that the notice should not be waived in this instance.*

A notice of hearing was issued by the Police and the proceedings were adjourned once by consent and on the second occasion, were adjourned despite Mr Ellis' objection. Mr Ellis provided the prosecution with lengthy legal submissions. The Judge said:

*It has indeed been something of a revelation to consider the body of jurisprudence which has built up in recent years on the topic of speeding offences. By 30 May a further 8 pages of closely reasoned additional submissions had been prepared in readiness for the hearing. On 30 May however the expected confrontation failed to take place. The prosecution tamely sought and was granted leave to withdraw the charge. Not a shot was fired in anger and in particular the challenge to the speed camera regime was not resolved.*

The Police withdrew the charge because they discovered an error in the reminder notice. There was no identifying name or officer identification number on the notice.

Mr Ellis applied for costs of \$5,000 plus \$146 disbursements against the Police.



<sup>28</sup> SPA s9 and Regulation 15C of the Summary Proceedings Regulations 1958.

<sup>29</sup> 31/7/97, Judge Dalmer, DC Wellington, CRN 6085009178



Section 5(1) of the Costs in Criminal Cases Act provides that where an information is withdrawn, the Court may order that the defendant be paid such sum as it thinks just and reasonable towards the cost of his/her defence. There is no presumption for or against granting of costs. The Judge considered the circumstances in s5(2) to which the Court shall have regard in deciding whether to grant costs and in what amount<sup>30</sup>. The Judge found that a costs award was justified.

Section 13(3) of the costs in Criminal Cases Act allows the Court to exceed the maximum scale of costs, if satisfied having regard to the special difficulty, complexity or importance of the case, payment of greater costs is desirable. The Judge considered that the case was neither difficult nor complex nor was it of any special importance as far as criminal law is concerned. The Judge ordered the Police to pay costs according to the scale of fees payable under the Costs in Criminal Cases Regulations 1987 of \$678 plus disbursements of \$146.

### **3.21 Recovery of Fine and Costs**

- 3.21.1 The Court registrar will send notice of the fine to the defendant. The defendant has 28 days after the date the fine is imposed to pay the fine.<sup>31</sup> The Court can allow further time for payment and payment by instalments.
- 3.21.1 If the defendant has not paid the fine 21 days after the date of imposition of the fine and if the Court has not made an order extending the time within which the defendant has to pay the fine or allowing payment by instalments, the Court registrar will send the defendant a further notice of the fine informing the defendant that if the fine is not paid within 28 days after the date on which it was imposed, and no arrangement has been entered into for an extension of time or for payment by instalments, then enforcement action may be commenced by an order to seize property, or an attachment order or a deduction notice.<sup>32</sup>
- 3.21.3 If the defendant does not pay the fine, the registrar may issue a warrant to seize property; or make an attachment order attaching any salary or wages payable or to become payable to the defendant; or issue a deduction notice requiring a bank to deduct the amount due from a sum payable or to become payable to the defendant.<sup>33</sup> A Court bailiff executing a warrant to seize property may, instead of seizing any motor vehicle, immobilise the vehicle, pending payment of the unpaid fine.<sup>34</sup>



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30 Refer 8.9

3 1 SPA s 80

3 2 SPA s 85

3 3 SPA s 87

3 4 SPA s 94B

### **3.22 Advantages and disadvantages of infringement notices**

The advantage of the infringement notice procedure is that it is swift, efficient and inexpensive unless challenged. The only disadvantage is that the procedure can become expensive if the defendant requests a hearing and either does not admit liability or raises one of the defences as set out in clause 8 in the summary of rights.

### **3.23 Flowcharts and Appendices**

The summary of the infringement offence procedure on page 17/3 is adapted from a chart kindly provided by Kim Nankivell of the Waitakere City Council. The procedure for issue of infringement notices and commencement of proceedings is set out in flowcharts on pages 17/3 and 18/3. The prescribed forms for an infringement notice, reminder notice and notice of hearing are set out in the appendices.

### **3.24 Statistics**

The success of the infringement offence procedure under the RMA can only be assessed after Councils have used the procedure for twelve months or so. It will be helpful if each Council keeps statistics and provides these statistics to Peter Webb of MfE. MfE will include questions along the following lines in its Annual Survey:

- The total number of infringement notices issued.
- The number of occasions when the fee is paid within 28 days of issue of the infringement notice.
- The number of occasions when the fee is paid within 28 days of issue of the reminder notice.
- Does the Council accept payment by instalments?
- The number of times arrangements are made to pay by instalments.
- The number of times liability is admitted.
- The number of times liability is denied.
- The fine imposed when liability is admitted – (Is the fine less than the fixed fee in the Regulations?).
- The number of times there is a defended hearing and the defendant is found guilty.
- The number of times there is a defended hearing and the defendant is found not guilty.
- The fines imposed when liability is denied and the defendant is found guilty
- The number of applications under s78B of the SPA.



- In your view is the infringement procedure a good procedure? [May be more than a yes or no answer.]
- Any other statistics which you regard as relevant

Note: Information for the above bulleted items should be recorded for the periods:

- 1 February 2000 to 30 June 2000; and
- 1 July 2000 to 30 June 2001.

**Summary of Infringement Offence Procedure**

1a	Notice Issued - 28 days to pay	NFA												
1b	Fee paid Deflt raises circumstances	NFA; or Step 2												
1c	hearing requested - liability admitted - submissions to Ct	SP10A LAC with deflt's notice admitting liability	To J in chambers	Order to pay										
1d	hearing requested - liability denied	SP10A LAC, serve copy on deflt	Defended hearing	G-order to pay/NG										
1e	No respon													
1f	Deflt requests payment by instalments	Informant agrees to payment by instalments; or Informant does not agree to payment by instalments - Step 2	instalments until paid in full - step 2 default or enter into another arrangement to pay by instalments. Deflt cannot request a hearing if arrangement entered into to pay by instalments.											
1g	Deflt raises s341 and/or s 340(2) defence	NFA; or Step 2												
Step 2	SP10 issued - 28 days to pay	NFA												
2a	Fee paid	NFA												
2b	Deflt raises circumstances	NFA; or Step 2												
2c	hearing requested - liability admitted - submissions to Ct	SP10A LAC with deflt's notice admitting liability	To J in Chambers	Order to pay										
2d	hearing requested - liability denied	SP10A LAC, serve copy on deflt	Defended hearing	G-order to pay/NG										
2e	No response	step 3		Order to pay										
Step 3	SP10 LAC													
3a	Collections recover fee + enf. Costs	NFA		Defended hearing										
3b	Application by deflt under s 78B of the Summary Proceedings Act	To J in chambers	<ul style="list-style-type: none"> <li>• order set aside</li> <li>• order modified</li> <li>• hearing or rehearing granted</li> <li>• LA directed to re-serve SP10 or SP10A</li> <li>• order as to costs</li> </ul>											
<table border="1"> <tbody> <tr> <td>Deflt = Defendant</td> <td>NG = Not Guilty</td> </tr> <tr> <td>G = Guilty</td> <td>SP10 = Clean Under Notice Form 10 of Summary Proceedings Regulations</td> </tr> <tr> <td>J = Justices or District Court Judge</td> <td>SP10A = Notice of hearing Form 10A of Summary Proceedings Regulations</td> </tr> <tr> <td>LA = Local Authority</td> <td>LAC = Lodged at Court</td> </tr> <tr> <td>NFA = No Further Action</td> <td></td> </tr> </tbody> </table>					Deflt = Defendant	NG = Not Guilty	G = Guilty	SP10 = Clean Under Notice Form 10 of Summary Proceedings Regulations	J = Justices or District Court Judge	SP10A = Notice of hearing Form 10A of Summary Proceedings Regulations	LA = Local Authority	LAC = Lodged at Court	NFA = No Further Action	
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