XI Fixed Penalty Notices

Dispensing with the attendance of the defendant at a summary hearing does result in some saving of time, but the case must still go before a magistrate for his consideration. The paperwork involved can be quite considerable and, because the defendant is at most given an indication of the upper and lower limits of the possible penalty, he may wish to defend the case. Fixed penalty procedures, as the name implies, carry a fixed monetary penalty which the defendant is informed of in the summons, and unless he decides to challenge the charge or fails to pay the fine, the case is dealt with administratively and does not appear before a magistrate or justice of the peace. It is used largely for minor motoring offences.

In 1940, when a proposal was being aired in New South Wales to allow minor traffic offenders to plead guilty and pay a predetermined fine by mail, considerable protest was heard:

> Under the proposed new system the accused's contact with the majesty of the law will apparently be confined to a policeman and a pillar box. There are the following further objections to the proposed new system:-
> (1) In these cases it will diminish or do away altogether with...the publicity properly associated with the administration of justice and judicial discretion in the assessment of punishment according to the facts of a particular case.
> (2) It is calculated to encourage the belief that an offence against the law is something to be bought off with a cheque rather than something to be punished.
> (3) The convenience of sending a fine by post may tend to encourage pleas of guilty in cases where the accused person believes that he has a good defence but is not prepared to spend a day in court in order to establish it.[1]

If petty traffic offences, such as failing to stop at a stop sign or illegal parking, were viewed in the same light as other criminal offences, these arguments might have some merit, but in general, they are not seen in this light. In view of the large scale upon which contraventions of traffic laws are committed and tolerated by the public, it is doubtful whether such traffic violations, in situations which are not obviously dangerous, can ever evoke a great deal of public disapprobation, unlike more traditional crimes.[2] And, as the appropriateness of the criminal sanction and the forum in which it is imposed are, to a large extent, in direct proportion to the degree of public disapproval evoked by the contravention, the handling of these traffic offences is becoming an administrative rather than a criminal justice process.

In India, the Motor Vehicles Act, 1939, provides a procedure for certain traffic offences whereby the accused can plead guilty by post and remit a specified fine. It applies in the case of persons other than professional drivers for some offences of a minor nature, and the ticket issued by the policeman should contain the amounts of fine for the various categories of traffic offences in respect of different types of vehicles. In other Commonwealth jurisdictions, the introduction of fixed penalty schemes has been a more recent development, although their use is now being rapidly expanded as the advantages over time-consuming court proceedings become apparent.[3]

One of the real advantages of the fine system to offending motorists is that because it is an administrative process, if the penalty is paid, a conviction for the offence is usually avoided, although "demerit points" may be incurred. The British Road Traffic Regulation Act, 1967,[4] provides in subsection 80(2):

> Where a constable finds a person on any occasion and has reason to believe that on that occasion he is committing or has committed an offence to which this section applies, he may give him the prescribed notice in writing offering the opportunity of the discharge of any liability to conviction of that offence by payment of a fixed penalty under this section; and no person shall then be liable to be convicted of that offence if the fixed penalty is paid in accordance with this section before the expiration of the 21 days following the date of the notice or such longer period (if any) as may be specified therein or before the date on which proceedings are begun, whichever event last occurs.

Fixed penalty notices issued under section 80 of this Act are limited to certain offences concerned with lights, parking and waiting, non-payment of charges at street-parking places, failure to conform to prescribed routes and non-display of a current vehicle licence. The particular offences dealt with in this manner do, however, vary from area to area. According to the latest figures available, approximately three million of these notices are being issued each year in England and Wales. Unfortunately, the penalties are being paid only in a little over half the cases.[5] Where the motorist does fail to pay the fixed penalty the offence then requires to be followed up by the police and reported for prosecution in the usual way, which entails a considerable amount of work. So much so that by 1974 the fixed penalty system in England was in danger of breaking down, particularly in London. As a result provisions for vehicle owner liability were enacted in sections 1-5 of the Road Traffic Act, 1974.[6] These provide that in respect of certain fixed penalty offences,

> (a) for the purposes of the institution of proceedings in respect of the alleged offence against any person as being the owner of the vehicle at the relevant time, and
> (b) in any proceedings in respect of the alleged offence brought against any person as being the owner of the vehicle at the relevant time,
>
> it shall be conclusively presumed (notwithstanding that that person may not be an individual) that he was the driver of the vehicle at that time and, accordingly, that acts or omissions of the driver of the vehicle at that time were his acts or omissions.[7]

It is hoped that this will plug the loophole whereby vehicle owners challenge charges on the basis that they were not driving the car at the particular time alleged and thus encourage the payment of more fixed penalties. It is perhaps a little early to assess the effectiveness of these provisions, but after initial teething troubles caused primarily by overly-complex statutory forms, the system seems to be working quite well.[8]

There also exists in Britain a system of "mitigated penalties", that is, certain authorities have the power to offer the accused the chance to pay a mitigated, or reduced, penalty, in default of payment of which prosecution then ensues. For example, by virtue of section 3 of the Vehicles (Excise) Act, 1971, the Secretary of State for Transport may, in his discretion, permit the owner of a motor vehicle who has failed to take out a current road fund licence to pay a mitigated penalty. In exercising his discretion, the Secretary of State will take into account whether there has been a deliberate fraud. This power was used extensively when local authorities were the licensing authority (in 1970, 400,000 car owners were found without current licences and more than 88,000 were offered the opportunity of paying a mitigated penalty[9]). It is not known to what extent they are used by the Secretary of State now that the department has taken over from the local authorities. The power is, however, a useful one. The economic cost of prosecution must be several times greater than the cost of writing a letter demanding payment of a mitigated penalty in default of prosecution.[10]

Fixed penalty systems exist under various names. Western Australia has a "traffic infringement notice" procedure[11] as does Tasmania.[12] The procedure in New South Wales is set out in the Motor Traffic Act, 1909, as amended, in section 18. Under this section, if the offender does not pay the fixed penalty and does not appear at the time and place fixed for the hearing of the information, the court may use an ex parte procedure and make an order imposing a penalty on the defendant. Legislation was enacted in 1974 in Bermuda[13] and in 1978 in Trinidad and Tobago[14] setting up fixed penalty systems. The Canadian province of Alberta instituted a "violation ticket" procedure in the Summary Convictions Act, 1978,[15] which offers an interesting incentive for offenders to pay fixed penalties for a certain class of offences. Summary proceedings for provincial offences, which are generally of a minor, regulatory nature and criminal offences coming under federal jurisdiction, may be commenced by laying a complaint and issuing a summons by means of a violation ticket. This will specify details of the offence and the courses of action to be followed by the alleged offender. Section 22 of the Act provides:

> (1) Where authorized by the regulations or a municipal by-law, a defendant may make a voluntary payment in respect of a summons by
> (a) signing the plea of guilty in the appropriate place on the summons, and
> (b) delivering the summons together with
> (i) an amount equal to the penalty specified in the regulations for the offence, if the defendant is charged with an offence under an enactment to which Part 3 does not apply,
> (ii) an amount equal to one half of the penalty specified in the regulations for the offence, if the defendant is charged with an offence under an enactment to which Part 3 applies, or
> (iii) an amount equal to the penalty specified in the relevant by-law for the offence, if the defendant is charged with an offence under a municipal by-law,
> to the place stated on the summons within the time period prescribed by the regulations.

Thus, for those offences coming within Part 3 of the Act which are basically provincial traffic offences, if the defendant chooses to pay the "fixed" penalty, he need only pay half the specified sum.

Although the time of judges, defendants, prosecutors and witnesses is saved by using fixed penalty schemes, they can involve a significant amount of administration and paper work, particularly if the penalty notice is issued in the form of a regular summons. To avoid this, most jurisdictions have combined fixed penalties with a ticket procedure. For example, Ontario has what is called a "Uniform Traffic Ticket" which enables a motorist to be served on the spot with a summons setting out the exact charge rather than waiting weeks for a mailed summons or personal service by a police officer. This system has proved very successful and was extended in 1972, by means of the Summary Conviction Ticket, to the full range of provincial offences. This has saved police and clerical manpower by cutting through the normal mass of paper generated by any minor charge.[16]

Neither should it be ignored that the receipt of fixed penalties in itself creates work for the staff of the court into which they are paid.[17] And, as we have seen, non-payment of penalties generates work for the police, prosecutors and the courts. A few jurisdictions are attempting to mitigate these problems by instituting "demerit point" schemes. This alternative levies non-financial penalties for traffic violations, each offence being weighted by a specific number of points. If, within a given period a driver accumulates more than the allowed number of points, his licence is suspended. In 1968, such a system was introduced in British Columbia.[18] The purpose of the new system was explained by the then Attorney-General, the Hon. L.R. Peterson as follows:

> In today's affluent society, a small fine has not proven a deterrent to bad driving... For the great mass of motorists, the few dollars they have to pay as a fine does not have any meaning. But everyone values the privilege of driving, and the object of our program is to increase safety on our provincial highways through driver licence control.[19]

The demerit point scheme provides that for the commission of traffic offences other than non-moving offences and very serious offences such as dangerous driving or criminal negligence, the offender is provided with a Traffic Violation Report and instead of having to pay a fine, has points assessed against his driver's licence. The alleged violation can be disputed within one week of the issue of the Violation Report, upon payment of a deposit of ten dollars.[20] The matter is then heard before a Provincial Court judge with all the normal rules of evidence etc., applying, the only difference being that no fine is assessed if the violation is established. The judge simply forwards the Traffic Violation Report, with his findings noted thereon, to the Superintendent of Motor Vehicles, where it is added to the driving record of the individual involved. Where the violation is not challenged by the offender, the appropriate number of demerit points for the offence involved are levied against his record by the Superintendent of Motor Vehicles. When a person accumulates six points the Superintendent will issue a written warning that a further offence might lead to suspension of a driver's licence, though no further action is taken at that time. When nine points have been accumulated, the driver is given the opportunity to show just cause why his driver's licence should not be suspended. He may request a hearing which will include a review of his driving record. On the basis of this record and the hearing, the Superintendent of Motor Vehicles will decide whether the licence should be suspended or whether the driver should be placed on probation. Depending on the nature and number of offences committed, suspensions may be for periods varying from one month to three years. The number of highway traffic related court appearances between 1968 and 1975 dropped dramatically and consequently, the congestion in the lower courts of British Columbia had been lessened considerably.[21] More recently, however, British Columbia introduced a compulsory insurance scheme in which the premium varied as the square of the number of points awarded against a driver. Within one month of the introduction of this measure, the number of traffic violations contested in Provincial Court increased by 200 per cent, effectively destroying one of the major benefits envisaged for the Traffic Violation Report system.[22] It remains to be seen whether this trend can be reversed.

Substantially similar demerit point systems also exist in Queensland,[23] Tasmania[24] and Singapore.[25] One apparent disadvantage in dealing with traffic offences in this way is that the large sums previously recovered from fines no longer find their way into the consolidated fund or the public coffers. When the total cost of collecting these monies is taken into account, however, along with the wider implications of an almost impossible yet still increasing strain on the court system, the loss of revenue may be a small price to pay for the results achieved.[26]

Footnotes

[1]"Mail Order Justice", (1940), 14 Australian Law Journal 2.

[2]A.J. Middleton, "Separation of Administrative Measures from the Criminal Sanction", (1977), Crime et/and Justice 139 and B. Swanton, "Australian Police Forces" in D. Biles (ed.), Crime and Justice in Australia (Canberra, 1977), pp. 35-59 at p. 48.

[3]See for example S. Hagan and N. Osborough, "The Parking Motorist and the Road Traffic Act (Northern Ireland)", (1967), 18 Northern Ireland Legal Quarterly 177 at p. 198.

[4]c.76.

[5]Great Britain Home Office, Offences Relating to Motor Vehicles, 1976 (H.M.S.O., 1977), paras. 2.9 and 2.10. In 1972, 2,562,123 notices were issued and the penalty was paid in 1,651,765 cases; in 1976, 2,902,695 notices were issued and 1,634,623 were paid.

[6]For a more detailed discussion see P. Halnan, "Diversion and Decriminalisation of Road Traffic Offences", [1978] Criminal Law Review 456.

[7]Road Traffic Act, 1974, c. 50, section 80.

[8]P. Halnan, supra footnote 6 at p. 458.

[9]A.F. Wilcox, The Decision to Prosecute (London, 1972), pp. 103-104.

[10]P. Halnan, supra footnote 6 at p. 457. The Commissioners of Customs and Excise also make good use of similar powers to impose penalties on those who attempt to evade the payment of duty on articles they bring into the country - A.F. Wilcox, supra footnote 9.

[11]Western Australia Road Traffic Act, 1974, section 102 as amended by the Road Traffic Amendment Act, 1978.

[12]Tasmania Traffic Act, 1925, as amended by Act No. 50 of 1971.

[13]Bermuda, The Traffic Offences Procedure Act, 1974, (No. 53).

[14]Trinidad and Tobago Motor Vehicles and Road Traffic (Enforcement and Administration) Act, 1978, (No. 18).

[15]Statutes of Alberta, 1978, c. 33. Assented to May 16, 1978.

[16]"The Challenge of the Minor Offence" in Ontario, Ministry of the Attorney General, Annual Report 1975/76 (Toronto, 1978), pp. 44-47 at p. 44.

[17]J. Law, "The Grant Report", 1967, Scots Law Times (news) 233, 241 at p. 236.

[18]British Columbia Motor Vehicle Act, 1960 Revised Statutes of British Columbia c. 253, as amended, section 126A.

[19] Press release issued by the British Columbia Motor Vehicle Branch, September 23, 1968. For further discussion of this provision see J. Atrens, "Section 126A of the British Columbia Motor Vehicle Act", (1969), 19 University of Toronto Law Journal 431.

[20] The deposit will be refunded if the person appears at the hearing, but where he fails to appear, it will be forfeited as a penalty.

[21] Alberta Board of Review Provincial Courts, Administration of Justice in the Courts of Alberta (Edmonton, 1975), p. 51.

[22] Id. at p. 111.

[23] Queensland Traffic Act 1949, as amended.

[24] Tasmania Traffic Act, 1925, as amended, Part IVA.

[25] Singapore Road Traffic Act, 1974.

[26] New Zealand Royal Commission on the Courts, Report (Wellington, 1978), para. 445.