

XII Special Sitzings of the Courts

Another method of expediting normal court business which has been experimented with to a limited extent in the Commonwealth is that of having special sittings of the lower courts usually to deal with minor traffic offences. These sittings are generally 'special' in terms of time - the courts convene outside of regular court hours - but they may also be 'special' in terms of location. In Nigeria, for example, Mobile Court Edicts have set up peripatetic courts to try traffic offences throughout the states of the Federation.¹

Besides offering the opportunity to speed up the processing of these minor cases and those which are heard during regular court hours, this development also reflects a trend towards increasing the accessibility of the courts to the public.² Thus, evening court sittings allow defendants and witnesses to appear without having to take time off work. They also make full use of the available physical resources of the criminal justice system, although, it must be noted, they do demand an increase in court and judicial personnel.

A pilot scheme of three night courts was set up in New South Wales in 1976 to handle traffic cases. The scheme was designed to provide traffic offenders with better opportunities to challenge their cases in court, as it was felt many people were convicted by default or without the benefit of a plea in mitigation simply because they could not afford to absent themselves from their employment.³ A subsequent survey of the operation of these night courts was of the opinion that this experiment had not been as successful as anticipated, although specific reasons were not given.⁴

In Metropolitan Toronto, when a person receives a summons to appear in a specific day court he is given the option to apply for a night court, but this will be for reasons of his convenience only as it will not bring the case on for a hearing any sooner than scheduled. At present, the date allotted for the day court appearance will probably be several months in the future. If the defendant applies to have the case transferred to the night court, all the documents relating to his case are kept in a file until the day court hearing date. Following that date, the case is assigned to a night court date, usually one month in the future.⁵

Evening courts have on occasion been held in Scotland in exceptional cases, for example, when large numbers of accused persons have been held in custody. In some of the more distant courts, sittings are not infrequently held in the evening to fit in with local travelling arrangements.⁶

One of the more successful experiments with night courts is located in Tasmania. There plea courts have recently been introduced on a trial basis in two large county courts. These plea courts commence at 5 p.m. before justices of the peace and are provided for those cases where the first appearance is merely for the tendering of a plea. Defendants are not arbitrarily summonsed to appear at a night court but are given the choice of appearing before a day court if that would be more convenient. The purpose of the night court is to make it possible for defendants to avoid the loss of salary or wages by having to appear for plea only during the daytime and this is proving to be quite a successful project.⁷

In Malawi, the innovation has not been with night courts, but with weekend sittings. The Criminal Procedure and Evidence Code provides:

Where the presiding judge or magistrate is of the opinion that, for the purpose of avoiding delay, expense or inconvenience which in the circumstances of the case would be unreasonable, a court should be held on a Sunday, such court may so be held and no finding, sentence or order made or passed by a court of competent jurisdiction shall be reversed or altered only by reason of the fact that the same was made or passed on a Sunday.

Overall, special court sittings have not been used very widely as a method of expediting cases. Perhaps this can be attributed to extra demands this places on court personnel.

Footnotes

¹[1976] Bulletin of Legal Developments 206.

²New Zealand Department of Justice, Report of the Department of Justice 1974/75 (Wellington, 1977), p. 7 and D. Biles and B. Swanton, "The Future of Criminal Justice in Australia" in D. Biles (ed.) Crime and Justice in Australia pp. 167-187 at p. 179.

³Sydney Daily Telegraph, June 15, 1976.

⁴New Zealand, Royal Commission on the Courts, Report (Wellington, 1978), para. 860.

⁵Ontario Law Reform Commission, Report on Administration of Ontario Courts (Toronto, 1973), Part II, p. 62.

⁶Scottish Home and Health Department, The Sheriff Court (Edinburgh, 1967), Cmnd. 3248, para. 512.

⁷New Zealand Royal Commission on the Courts, supra footnote 4.

⁸Cap. 8:01, section 71(2).