



ANALYSIS

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1993, No. 47

An Act to amend the Summary Proceedings Act 1957

[23 June 1993]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Summary Proceedings Amendment Act 1993, and shall be read together with and deemed part of the Summary Proceedings Act 1957 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on the 1st day of September 1993.

2. Interpretation—Section 2(1) of the principal Act is hereby amended by adding to the definition of the term “infringement notice” (as substituted by section 2(3) of the Summary Proceedings Amendment Act 1987 and as amended

by section 21 of the Weights and Measures Amendment Act 1991) the words “or section 58 of the Civil Aviation Act 1990 or any provision of any other Act providing for the use of the infringement notice procedure under section 21 of this Act.”

3. Issue of summons or warrant for attendance of witness—Section 20 (4) of the principal Act is hereby amended by inserting, before the words “is satisfied that”, the words “or Registrar”.

4. Who may serve documents on defendant—Section 25 (1) of the principal Act (as substituted by section 7 of the Summary Proceedings Amendment Act 1987) is hereby amended by repealing paragraph (a), and substituting the following paragraph:

“(a) Any sworn or non-sworn member of the Police:”.

5. Who may serve documents on persons other than defendant—Section 27 of the principal Act is hereby amended by omitting the word “constable”, and substituting the words “sworn or non-sworn member of the Police”.

6. Proof of service—Section 29 (1) of the principal Act is hereby amended by omitting the word “constable”, and substituting the words “sworn or non-sworn member of the Police”.

7. Order for taking evidence of defence witness at a distance—(1) Section 31 (1) of the principal Act is hereby amended—

(a) By inserting, before the words “on the application of the defendant before the hearing”, the words “or Registrar”:

(b) By inserting, before the words “or the Court” where they secondly occur, the words “or the Registrar”.

(2) Section 31 (1A) of the principal Act (as inserted by section 2 of the Summary Proceedings Amendment Act 1964) is hereby amended—

(a) By inserting, before the words “on the application of the informant before the hearing”, the words “or Registrar”:

(b) By inserting, before the words “or the Court” where they secondly occur, the words “or the Registrar”.

8. Order for taking evidence of persons about to leave country—Section 32 (1) of the principal Act is hereby amended—

- (a) By inserting, before the words “may, on the application of”, the words “or Registrar”:
- (b) By inserting, before the words “is satisfied that”, the words “or the Registrar”.

9. Evidence to be given on oath—The principal Act is hereby amended by repealing section 60, and substituting the following section:

“60. Except where this Act otherwise provides and subject to the Oaths and Declarations Act 1957, every witness at the hearing of any charge shall be examined on oath.”

10. Powers of Court when defendant does not appear—Section 61 of the principal Act is hereby amended by adding the following paragraph:

- “(c) If the offence charged is not one in respect of which the defendant is liable on conviction to a sentence of imprisonment, evidence of a fact or opinion which would be admissible if given by direct oral evidence, shall also be admissible if given by way of an affidavit.”

11. Power to correct irregularities in proceedings for infringement offences—(1) Section 78B (2) of the principal Act (as substituted by section 11 of the Summary Proceedings Amendment Act 1987) is hereby amended—

- (a) By inserting, after the words “District Court Judge”, the words “or Registrar”:
- (b) By inserting, after the words “the Judge”, where they secondly occur, the words “or, subject to subsection (3) of this section, the Registrar,”:
- (c) By inserting, after the words “the Judge” where they thirdly occur, the words “or Registrar”.

(2) Section 78B of the principal Act is hereby amended by repealing subsections (3) and (4), and substituting the following subsections:

“(3) Where a Registrar exercises power under subsection (2) of this section, the Registrar shall not have authority to set aside or modify the order under subsection (2)(c) of this section.

“(4) Where a Registrar exercises a power under paragraph (d) or paragraph (e) of subsection (2) of this section, the order

made or deemed to have been made against the defendant shall cease to have effect.”

12. Statement of means—The principal Act is hereby amended by repealing section 82 (as substituted by section 14 of the Summary Proceedings Amendment Act 1987), and substituting the following section:

“82. (1) Where a Court, on the determination of an information or complaint, proposes to order that the defendant pay a fine, the Court shall, unless satisfied on the basis of information before the Court that the defendant has the financial ability to pay the fine or fines or that any document held in the Court contains a sufficiently accurate statement of the defendant’s means, order that the defendant supply a statement of means before imposing the fine.

“(2) The Court may require such statement of means to be given orally or completed in writing.

“(3) For the purpose of having any statement of means given or completed, as the case may require, a Court may direct that a person be detained in the custody of the Court for such time, not exceeding 2 hours, as may be necessary to complete the statement of means.

“(4) The failure of any Court to make an order under subsection (1) of this section shall not affect the validity of any other order of the Court.

“(5) The provisions of this section shall not prevent a Court making an order that the defendant pay a fine where—

“(a) The defendant is not present in Court; or

“(b) The fee or fine payable is fixed by law.”

13. Order for immediate payment of fine—(1) Section 83 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Where a fine is to be paid and—

“(a) The Court is satisfied that the defendant has sufficient means to pay the fine immediately; and

“(b) Either—

“(i) The defendant has no fixed place of residence;
or

“(ii) The Court is satisfied that, by reason of the gravity of the offence, the character of the defendant, or other special circumstances, the fine should be paid immediately,—

the Court may order the defendant to pay the fine immediately.”

(2) Section 83 (2) (b) of the principal Act (as so substituted) is hereby amended by omitting the word “Direct”, and substituting the words “Subject to subsection (3A) of this section, direct”.

(3) Section 83 of the principal Act (as so substituted) is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) A District Court Judge shall not issue a warrant of commitment under this section unless—

“(a) The defendant has had the same opportunity for legal representation as is available to a defendant who is liable to a full-time custodial sentence under section 10 of the Criminal Justice Act 1985; and

“(b) The defendant is before a District Court Judge.”

14. Action where fine remains unpaid—(1) Section 88 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by inserting, after subsection (3), the following subsection:

“(3A) Where a District Court Judge exercises any power conferred by subsection (3) of this section and considers it appropriate to do so, he or she may also make an order under subsection (9) of this section for the return of the defendant.”

(2) Section 88 of the principal Act (as so substituted) is hereby amended by repealing subsection (8), and substituting the following subsections:

“(8) Where a District Court Judge makes any order (other than a direction for the issue of a warrant of commitment) under this section, the Judge may postpone the issue or defer the operation of the order for such period and subject to such conditions as he or she may direct.

“(9) Where a District Court Judge makes any order (other than an order that directs the issue of a warrant of commitment) under this section, and considers it appropriate to do so, he or she may also issue an order for the return of the defendant; but the order shall not be executed until such time as the defendant ceases to comply with any of the conditions of the order, including (without limitation) the making of periodic payments due under an attachment order.

“(10) An order for the return of the defendant issued under subsection (9) of this section may be executed by a bailiff.

“(11) Where a fine is being paid by attachment order, no order issued under subsection (9) of this section for the return

of a defendant shall be executed until such time as the Registrar has confirmed with the employer that no periodic payment or payments have been made and the reason why no such payment or payments have been made.

“(12) Where a defendant is detained pursuant to an order issued under subsection (9) of this section, the provisions of subsection (2) of this section shall apply.”

15. Rights of representation and appeal—Section 89 (2) of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by inserting, after the expression “section 88 (3) of this Act”, the words “or is imprisoned pursuant to a warrant of commitment issued under that provision”.

16. Defendant on substituted sentence to be discharged on payment of fine—Section 91 of the principal Act is hereby amended by adding the following subsection:

“(5) On completion of a term of imprisonment or any sentence referred to in any of subsections (1) to (4) of this section, the fine in respect of which the term of imprisonment or the sentence was imposed shall be deemed to be remitted.”

17. Seizure and delivery of property—Section 94 (3) of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by omitting the word “Any”, and substituting the words “Without limiting anything in section 94B of this Act, any”.

18. Immobilisation of motor vehicles—The principal Act is hereby amended by inserting, after section 94A (as inserted by section 67 of the Motor Vehicles Securities Act 1989), the following section:

“94B. (1) Any bailiff or constable executing a warrant to seize property may, instead of seizing any motor vehicle, immobilise the vehicle by attaching to the vehicle any device designed for the purpose, pending the payment of the unpaid fine.

“(2) No vehicle shall be immobilised pursuant to subsection (1) of this section unless—

“(a) At the time of its immobilisation, it is on private property; or

“(b) At the time of its immobilisation, it is in a public place and the bailiff is satisfied that immobilising the vehicle will not cause undue inconvenience to other persons.

“(3) Where any motor vehicle is immobilised pursuant to subsection (1) of this section, any bailiff or constable—

“(a) May at any time seize the vehicle:

“(b) Shall, on the direction of a Registrar, seize the vehicle;— and section 94 (5) of this Act shall apply accordingly.

“(4) Where, 14 days after the date of the immobilisation of any motor vehicle pursuant to subsection (1) of this section, the fine remains unpaid, the Registrar shall direct a bailiff or constable to seize the vehicle.

“(5) Every person commits an offence and is liable on summary conviction to a fine not exceeding \$1,000 who, without reasonable excuse, tampers with, removes, or attempts to remove a device attached to a vehicle pursuant to subsection (1) of this section.”

19. Sale of seized property—Section 95 of the principal Act (as substituted by section 14 of the Summary Proceedings Amendment Act 1987) is hereby amended by omitting the words “on the orders of”, and substituting the words “or in such other manner as may be directed by”.

20. Restriction on imprisonment—(1) The principal Act is hereby amended by repealing section 106E (as substituted by section 14 of the Summary Proceedings Amendment Act 1987), and substituting the following section:

“106E. (1) A District Court Judge shall not sentence a defendant to periodic detention under this Part of this Act for non-payment of a fine unless—

“(a) A statement of means has been completed by the defendant; and

“(b) The Judge has considered the statement of means; and

“(c) The Judge is satisfied that all other methods of enforcing the fine, other than the issue of a warrant of commitment, have been considered or tried and that they are inappropriate or unsuccessful.

“(2) Subject to section 83 of this Act, a District Court Judge shall not direct the issue of a warrant of commitment for the imprisonment of the defendant under this Part of this Act for non-payment of a fine unless—

“(a) A statement of means has been completed by the defendant within the immediately preceding 14 days; and

“(b) The defendant has had the same opportunity for legal representation as is available to a defendant who is

liable to a full-time custodial sentence under section 10 of the Criminal Justice Act 1985; and

“(c) The defendant is before a District Court Judge; and

“(d) The defendant’s last completed statement of means has been considered by the District Court Judge; and

“(e) The warrant of commitment can be executed immediately; and

“(f) The Judge is satisfied that all other methods of enforcing the fine have been considered or tried and that they are inappropriate or unsuccessful; and

“(g) The Judge is satisfied that the defendant has the means to pay the fine.

“(3) Before a District Court Judge directs that a warrant of commitment be issued under section 88 (3) of this Act, he or she may direct that a warrant for the defendant’s arrest be issued to have the defendant brought before a District Court Judge to enable the defendant’s financial ability to pay the fine to be assessed.

“(4) Where a defendant is arrested pursuant to subsection (2) of this section, the provisions of section 88 (2) of this Act shall apply.

“(5) In assessing the defendant’s financial ability to pay the fine, a District Court Judge shall take into account—

“(a) The Court’s assessment of the defendant’s ability to pay the fine (whether based on the defendant’s statement of means or otherwise) when the fine was imposed; and

“(b) Any change of circumstances since that original assessment was made; and

“(c) The defendant’s current financial position.

“(6) If a District Court Judge directs that a warrant for the defendant’s arrest be issued pursuant to subsection (3) of this section, a Registrar may issue the warrant.

“(7) Nothing in subsection (1) or subsection (2) of this section shall apply in the case of a defendant who, at the time of the sentence being imposed, is already undergoing a sentence of detention in a penal institution.”

(2) Notwithstanding anything in this Act or in any other enactment, in the case of any warrant of commitment issued not less than one month before the date of commencement of this section, but not executed before that date, the following provisions shall apply:

(a) The warrant shall not be executed unless the defendant is brought before a District Court Judge under section 106E (3) of the principal Act and the Judge is satisfied

that the provisions of section 106E (2) of that Act have been met:

- (b) A warrant shall not be invalid in any case by reason only that paragraph (a) of this subsection is not complied with in that case, nor shall any person be civilly liable in respect of such execution of the warrant:
- (c) Every defendant who is imprisoned on the basis of such a warrant shall be brought before a District Court Judge in accordance with paragraph (a) of this subsection.

(3) Notwithstanding anything in this Act or any other enactment, any warrant of commitment issued less than one month before the date of commencement of this section, but not executed before that date, may be executed as if this Act had not been passed.

21. Transmission of notice of appeal to High Court—

(1) Section 117 (2) of the principal Act is hereby amended by omitting from paragraph (d) and also from paragraph (g) the word “A”, and substituting in each case the words “Subject to subsection (3) of this section, a”.

(2) Section 117 of the principal Act is hereby amended by adding the following subsection:

“(3) Where an informant appeals against sentence only, the Registrar shall not be obliged to send to the High Court Registry—

“(a) The documents referred to in subsection (2) (d) of this section (other than the notes on sentencing); or

“(b) The documents referred to in subsection (2) (g) of this section,—

unless otherwise directed by the presiding High Court Judge; but the Registrar shall, in all such cases, send to the High Court Registry the notes on sentencing.”

22. Presentation of case by party in custody—Section 130 (3) of the principal Act is hereby amended by inserting, after the words “on a question of law only”, the words “or of any appeal made under section 115D of this Act”.

23. Resumption of sentence or order on determination of appeal—(1) The principal Act is hereby amended by repealing sections 137 to 137D, and substituting the following section:

“137. (1) Where, under any determination in respect of which either party appeals, a District Court has—

“(a) Sentenced the defendant to supervision or periodic detention or community service or a community programme; or

“(b) Made a non-association order in respect of the defendant—

and when the appeal is determined neither the sentence nor the order, as the case may be, nor the conviction upon which it was imposed is set aside, the term of the sentence or the order as specified by the District Court or as varied by the High Court, as the case may be, shall be resumed—

“(c) On the date specified by the Court that determines the appeal; or

“(d) If the Court fails to specify such a date, as from the date the appeal is determined.

“(2) Where, under any determination in respect of which either party appeals, the District Court has—

“(a) Sentenced the defendant to supervision or periodic detention or community service or a community programme; or

“(b) Made a non-association order in respect of the defendant—

and the appeal is not prosecuted and a District Court Judge or Justice or Justices certify that it has not been prosecuted, the term of the sentence or the order as specified by the District Court shall be resumed—

“(c) On the date specified by a District Court Judge to whom the certificate is submitted; or

“(d) If a District Court Judge fails to specify such a date, as from the date of the certificate.

“(3) Where, under any determination in respect of which either party appeals, a District Court has—

“(a) Sentenced the defendant to supervision or periodic detention or community service or a community programme; or

“(b) Made a non-association order in respect of the defendant—

and the appeal is dismissed for non-prosecution and the Registrar of the High Court certifies that it has been dismissed for non-prosecution, the term of the sentence as specified by the District Court shall be resumed—

“(c) On the date specified by a District Court Judge to whom the certificate is submitted; or

“(d) If a District Court Judge fails to specify such a date, as from the date of the certificate.

“(4) Where the defendant has been sentenced to periodic detention and subsection (1) or subsection (2) or subsection (3) of this section applies, the Court that determines the appeal or, as the case may require, the District Court Judge to whom the certificate is submitted shall, in addition to specifying the date on which the sentence resumes, specify the date and time at which the defendant is required to report to the periodic detention centre on the first occasion after the resumption of the sentence.

“(5) In any case to which subsection (1) or subsection (2) or subsection (3) or subsection (4) of this section applies, the Registrar shall notify the Manager Community Corrections of the district in which the sentence is to be served and the defendant, if he or she is not present in Court at the time the appeal is disposed of in accordance with this section, of—

“(a) The date on which the sentence or order is to resume; and

“(b) In the case of a sentence of periodic detention, the date and time at which the defendant is to report to the periodic detention centre.”

(2) The following enactments are hereby consequentially repealed:

(a) Section 18 of the Summary Proceedings Amendment Act 1973:

(b) Section 32 of the Criminal Justice Amendment Act 1980:

(c) Section 2 of the Summary Proceedings Amendment Act 1981:

(d) So much of the First Schedule to the Criminal Justice Act 1985 as relates to sections 137 to 137c of the principal Act:

(e) Section 4 of the Summary Proceedings Amendment Act 1989.

24. If evidence sufficient defendant may be committed for trial or for sentence—Section 168 of the principal Act is hereby amended by repealing subsection (1A) (as inserted by section 11 (5) of the Summary Proceedings Amendment Act 1980), and substituting the following subsection:

“(1A) Where proceedings are adjourned under subsection (1) (b) (i) of this section, then,—

“(a) Notwithstanding section 319 of the Crimes Act 1961; but

“(b) Subject to section 318 of that Act and section 142 of the Criminal Justice Act 1985; and

“(c) Subject to any High Court bail determination that is for the time being in force in respect of the defendant,—

the defendant shall be granted bail only if the Court so directs; and, where the defendant is granted bail under this subsection, the provisions of Part II of this Act relating to bail shall apply accordingly.”

25. Order for taking evidence of defence witness—

(1) Section 174 (1) of the principal Act is hereby amended—

(a) By inserting, before the words “on the application of the defendant before the preliminary hearing”, the words “or Registrar”:

(b) By inserting, before the words “, or, as the case may be,” the words “or Registrar”.

(2) Section 174 (1A) of the principal Act (as inserted by section 22 (2) of the Summary Proceedings Amendment Act 1973) is hereby amended—

(a) By inserting, before the words “on the application of the informant before the preliminary hearing”, the words “or Registrar”:

(b) By inserting, before the words “, or, as the case may be,” the words “or Registrar”.

26. Power to take statement of person dangerously ill—

Section 175 of the principal Act is hereby amended—

(a) By inserting in subsection (1), before the words “or Justice” in both places where it occurs, the word “, Registrar,”:

(b) By inserting in subsections (2), (3), and (4), before the words “or Justice”, the word “, Registrar,”.

27. Child complainant’s evidence may be given by videotape—Section 185CA of the principal Act (as inserted by section 5 of the Summary Proceedings Amendment Act (No. 2) 1989) is hereby amended by repealing subsection (1), and substituting the following subsection:

“(1) Notwithstanding anything in Part V or section 185c of this Act, at any preliminary hearing to which this Part of this Act applies, the evidence of the complainant may be given in the form of a videotape if—

“(a) Either—

“(i) The complainant is under the age of 17 years;

or

- “(ii) It is apparent to the Court from viewing the videotape, or from some other admissible evidence, that the complainant is mentally handicapped; and
- “(b) The Court is satisfied that the videotape has been made, and is identified, in the prescribed manner and form.”

28. Amendment to Evidence Act 1908—Section 23c of the Evidence Act 1908 (as inserted by section 3 of the Evidence Amendment Act 1989) is hereby amended by repealing paragraph (b), and substituting the following paragraph:

“(b) Either—

“(i) The complainant has not, at the commencement of the proceedings, attained the age of 17 years; or

“(ii) The complainant is of or over the age of 17 years and is mentally handicapped.”

This Act is administered in the Department of Justice.
