

Court-imposed fines: A survey of Judges

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Foreword

Fines are the most widely imposed penalty in the New Zealand courts. For many minor offences, and in particular traffic offences, a fine is the only available option. In 2001, 33% of all charges resulting in a conviction had a fine imposed as one of the sentences. This report presents the findings from a survey of District Court Judges, undertaken before the commencement of the Sentencing Act 2002. It examines how court-imposed fines were being imposed at the time and in particular judicial attitudes towards fines and judicial practice in the imposition of fines.

Results showed that Judges consider fines to be a crucial sentencing tool. They are a useful sanction for first time and minor offenders and are considered particularly appropriate for traffic offenders. However, Judges also expressed concern at the number of people coming before the Courts who could not afford to pay a fine. One of the contributing factors was considered to be the accumulation of unpaid infringement fees. People's inability to pay fines was seen to be one of the main disadvantages of fines and one of the main reasons why fines are not imposed more often.

New Zealand's sentencing system determines the amount of the fine primarily by reference to the seriousness of the offence, with some adjustment for the offender's means. The results of the research certainly show that New Zealand Judges are attempting to reflect the reality of unequal wealth in their sentencing decisions. However, results also show that Judges are more likely to impose an alternative sentence upon unemployed offenders than to adjust the fine downwards. One of the main reasons given for this was the need to ensure consistency in sentencing. Judges felt constrained by how the public perceive vastly different levels of fines for the same offence.

Lack of adequate information, particularly regarding the means of the offender, was considered to be an important factor limiting Judge's ability to adjust the amounts of fines imposed. About two-thirds of the Judges said they would never or only seldom ask for a written statement of means. Time pressures were clearly one of the main reasons why this was the case.

This research was undertaken in the context of policy work on the Sentencing Act 2002. The Act includes a presumption in favour of fines where the purposes and principles of sentencing make a fine appropriate. The findings of the research were designed to contribute to the refinement of the Act and implementation of the legislation. They will also provide useful baseline information against which to monitor the Sentencing Act 2002.



Warren Young
Deputy Secretary

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Executive Summary

All District Court Judges were sent a postal survey on court-imposed fines in September 2001. Seventy-nine percent responded to the survey which was followed-up by in-depth interviews with ten Judges.

The overall aim of the research was to examine how court-imposed fines are being imposed. More specifically the research was designed to identify judicial perceptions of fines and to assess perceptions of people's ability to pay fines. It also aimed to identify factors involved in determining the amount of fines imposed for offences, and practices and policies which were limiting the imposition of fines and the ability to adjust the amounts of fines imposed.

Three-quarters of the Judges who responded to the postal questionnaire had worked as a Judge for five years or more and 79% indicated that at least three-quarters of their work was in the criminal jurisdiction.

Fines are the most commonly imposed sanction in the New Zealand courts. In 2001, 33% of all charges resulting in a conviction had a fine imposed as one of the sentences. Traffic and miscellaneous offences were the most likely to result in a fine in 2001 (55% and 62% respectively). The median fine in 2001 was \$300.

Judicial perceptions of fines

Judges were asked to indicate what they considered to be the main advantages and disadvantages of fines as a sentence. They were also asked what they were trying to achieve when sentencing an offender to a fine.

Over a third of Judges indicated that one of the main advantages of fines were that they are a quick and a simple sanction. Comments referred to the immediacy of punishment and also the ease with which both offenders and victims understand fines. A third of Judges commented that fines were an appropriate and acceptable sanction in many cases, particularly for minor or first-time offenders, or traffic offenders. Around a quarter of the Judges indicated that one of the main advantages of fines was their cost-effectiveness, and a similar proportion mentioned the ability to direct all or part of the fine to the victim.

There were a wide range of responses to the question asking Judges to list the disadvantages of fines. Most commonly (33%) Judges mentioned the limited means of many offenders and consequently their inability to pay fines. A quarter of Judges indicated that where offenders do not have the means to pay a fine, it becomes ineffective as a sentence. Other disadvantages included the impact that fines can have on families and difficulties with enforcement.

Most Judges who were interviewed agreed that their main aim when imposing fines was simply to punish and several indicated that fines were effective in achieving this aim.

Factors influencing the imposition of fines

Judges were presented with four hypothetical scenarios each describing a specific offence. These were ‘possession of cannabis’, ‘common assault’, ‘driver exceeding specified alcohol limits’ and ‘dangerous driving’. Judges were first asked what amount of fine would be their starting point for the particular offence described in the scenario.

The median fine for ‘possession of cannabis’ was \$150, for ‘common assault’ and ‘dangerous driving’ the median fine was \$500 and for ‘driver exceeding specified alcohol limits’ it was \$600. Consensus among Judges in amount of fines imposed was greatest for the offences of ‘possession of cannabis’ and ‘driver exceeding specified alcohol limits’. There was a large degree of variation between Judges in the amount of fine imposed for both ‘common assault’ and ‘dangerous driving’ reflecting in part the uncertain circumstances surrounding the offence described in both these scenarios. For example, in respect to ‘common assault’, Judges indicated that injuries to the victim and provocation would have a significant impact on the amount of fine imposed.

Secondly, Judges were asked to consider what factors they would take into account in increasing or decreasing the amount of the fine, or in their decision to give an alternative sentence. They were provided with a list of factors that included previous convictions, age, whether the offender had pleaded not guilty and the offender’s employment status and income.

A prior criminal history, if unrelated to the offence, made little difference to the amount of fine imposed by the Judge. However, the situation was very different where the offender had two or more previous convictions for the same offence. In this case, Judges were most likely to increase the fine (in the case of ‘possession of cannabis’) and consider another type of sentence for all other offences.

Age had little impact on the amount of fine the Judge would impose, with most Judges saying that they would not change the fine regardless of whether the offender was younger or older. The majority of Judges indicated they would increase the fine where the offender pleaded not guilty. However, a plea of guilty is a mitigating factor (rather than a plea of not guilty being an aggravating factor) and Judges pointed out that they would give a discount from the starting point for a plea of guilty rather than increase the fine for a plea of not guilty.

‘Possession of cannabis’ was the only offence where the majority of Judges did not consider the offender’s lack of employment to be a relevant factor in the amount of fine imposed. For all other offences around half of the Judges said they would consider another type of sentence for an offender who was on the unemployment benefit. No doubt this is due to the very different amounts of fines imposed for ‘possession of cannabis’ (\$150) compared to the other offences where the median fine was \$500 or \$600. Across all scenarios only about one in five Judges said they would decrease the fine where the offender was on the unemployment benefit.

Only a minority of Judges indicated that they would increase the fine where the offender had an above average income. This was consistent across the four offences, although Judges were most likely to increase the fine for an offender with above average income convicted of ‘common assault’ (23%) and least likely in the case of an offender convicted of ‘driving with excess breath alcohol level’ (2%).

Over half of the Judges (56%) said that the means of the offender would have a great deal of influence on the amount of the fine they would impose, and a further 31% said it would have a moderate influence on the amount of the fine. In response to a question asking Judges what factors would influence them to impose a sentence other than a fine, two-thirds mentioned the means of the offender or their ability to pay the fine.

Judges were also asked more specifically whether there were any particular financial or family circumstances that would lead them to impose a sentence other than a fine. Two out of five Judges said they would not impose a fine where the offender had dependants. A similar proportion would tend not to fine where the offender was on a benefit or low income.

Current practices and policies

Information needs

Judges were asked in the questionnaire to consider a range of information that may be available to them when sentencing someone to a fine. This included, for example, the offender’s criminal record and information on their outstanding fines, income, assets and expenditure. They were also asked to indicate firstly how important this information was when sentencing someone to a fine, and secondly, how adequate the information was.

Judges considered the offender’s criminal record and information on their outstanding fines to be the most critical when sentencing someone to a fine. Four out of five Judges said that this information was ‘almost always necessary’ and nearly all said it was necessary in at least most cases. However, also important was information on the offender’s income and employment status, with 66% and 55% of Judges respectively saying that this was ‘almost always necessary’ and around 90% saying it was necessary in at least most cases.

Information on the offender’s income was clearly of most concern to the Judges. While nearly all Judges said that this information was necessary always or in most cases, only half of the Judges said it was ‘adequate in most cases’. Information on the offender’s employment status was also an area of concern with only 60% of Judges saying that it was adequate in at least most cases.

Half of the Judges indicated that they would seldom request a written statement of means and 31% said they would sometimes request a written statement of means. Time pressures were clearly one of the main reasons why Judges did not request a written statement of means but other reasons included that the fine was too small to warrant a written statement of means or that the offender indicated that they could pay a fine.

Judges who were interviewed indicated that written statements of means were only necessary when there was some doubt as to the person's ability to pay a fine.

Court costs

Ninety-eight percent of Judges said they would impose court costs in almost all cases where they impose a fine. Analysis of the Law Enforcement System supported this finding showing that in 2000, 94% of charges where a fine was imposed were also ordered to pay court costs. This compares with reparation where only 18% of convicted charges also had court costs imposed in addition to the reparation.

Court costs are currently set at \$130. Several Judges expressed concern at the extra burden that this placed upon offenders and considered the standard rate of \$130 to be excessively high.

Instalments

Fines are payable within 28 days of imposition unless an order is made for payment by instalments. The time to pay must not exceed 18 months from the granting of the extension. Most Judges who were interviewed were in favour of people paying fines by instalments. However, some Judges expressed concern that the time period to pay should not be too lengthy or the instalments set too low.

Perceptions of people's ability to pay

Fifty percent of Judges said they would impose an alternative sentence in more than half of cases because the offender could not afford to pay the fine they would usually impose. Judges who were interviewed indicated that economic factors were the biggest contributor to the decrease in the use of fines in the last two decades.

Half of the Judges who were interviewed indicated that they did not have an amount of fine they would not go above in the case of a person who was unemployed; rather it was dependent on personal circumstances. However, a couple of Judges said they would be very unlikely to fine someone who was unemployed.

Other issues

The Sentencing Act 2002 includes a stronger presumption in favour of fines than the Criminal Justice Act 1985. It also provides that the court must take into account the financial circumstances of the offender and whether this would have the effect of either increasing or decreasing the fine.

Judges were divided in their views on the impact that this Act would have on current practice. Some Judges indicated that the Act would have little difference to what is in fact already current practice because they are already imposing a fine whenever possible. Other Judges were reluctant to see fines used more widely.

1 Introduction

1.1 Background

This report presents the findings of research examining judicial perceptions of fines as a sanction and current judicial practice relating to the imposition of fines. The research was designed to contribute to the on-going work arising out of the review of the sentencing framework and in particular the Sentencing and Parole Reform Bill¹. It was also intended that the research would contribute to the implementation of the new legislation.

Fines are the most widely imposed penalty in New Zealand courts. For many minor offences, and in particular traffic offences, a fine is the only available sanction. In 2001, 33% of all charges resulting in a conviction had a fine imposed as one of the sentences. Offenders who have committed an offence of low seriousness and who have a limited offending history have a higher probability of receiving a monetary penalty (Triggs, 1999).

1.2 Current policy

At the time of this research, the general principles governing the imposition of fines by sentencing Judges were contained in sections 26 to 28 of the Criminal Justice Act 1985. The Courts had a general discretion to impose a fine up to the maximum prescribed in legislation for the particular offence. For imprisonable offences for which no fine was prescribed, the Court could impose a fine of any amount, except where this was expressly disallowed. Where no maximum fine was prescribed, the fine imposed could not exceed \$4,000 if imposed by a District Court Judge² and \$400 if imposed by a Justice of the Peace or Community Magistrate³. There was no limit on the amount of fines in the High Court.

When deciding the amount of a fine to impose, the Court was required to take into consideration the means and responsibilities of an offender, to the extent that they were known, as set out in Section 27 (1) of the Criminal Justice Act 1985. The Courts interpreted this to mean that the fine must be within the limits of an offender's ability to pay (Ministry of Justice, 2000, Review of Monetary Penalties in New Zealand). Section 82 of the Summary Proceedings Act 1957 provided that the sentencing Court was obliged to obtain a statement of the offender's means before imposing a fine, unless it was satisfied on the basis of the information before it that the offender had sufficient

¹ This Bill has now been passed as the Sentencing Act 2002 and Parole Act 2002.

² This has been increased to \$10,000 under the Sentencing Act 2002.

³ However, where a person is found guilty on indictment in a District Court, or pleads guilty after committal to a District Court for trial, a judge may fine up to a maximum of \$10,000 where there is no maximum is prescribed by statute.

means to pay a fine and the information was accurate. Such a statement could be oral or in writing⁴.

Section 28 of the Criminal Justice Act specified that all or part of a fine may be paid as compensation to victims of offences occasioning physical or emotional harm, provided the offence was unprovoked.

A fine could be imposed in combination with reparation, with a disqualification from driving, with any one kind of community-based sentence, a combined sentence of periodic detention and supervision, or a full time custodial sentence or suspended custodial sentence.

1.3 Use of fines in New Zealand Courts

Data from the Law Enforcement System was analysed for all convictions resulting in a fine in 2001. The purpose of this analysis was to provide descriptive data on the use of fines in New Zealand courts. In particular, ranges of amounts of fines for types of offences were examined along with demographic characteristics of people receiving fines. A brief summary of these findings is presented here, but readers requiring more details are referred to Appendix 5 for a full report of the findings of this analysis.

In 2001, 33% of all charges resulting in a conviction had a fine imposed as one of the sentences. Traffic and miscellaneous offences were most likely to result in a fine in 2001 (55% and 62% respectively).

Seventy-one percent of convictions involving careless driving, 61% of convictions involving driving with excess alcohol, 47% of convictions involving driving causing death or injury and 44% of convictions involving reckless/dangerous driving resulted in a fine in 2001.

Eighty-two percent of convictions involving offences under the Dog Control Act 1996, and 70% of tax-related and 85% of liquor-related offences resulted in a fine. Seventy-six percent of convictions involving fisheries-related offences resulted in a fine.

Over half of convictions for offensive language and disorderly behaviour resulted in a fine in 2001. Drug offences also commonly resulted in a fine; 46% of convicted charges for possession/use of cannabis resulted in a fine. A third of convictions for minor assault resulted in a fine in 2001.

The median fine imposed in 2001 was \$300. The lowest median fine for a specific offence was \$150, imposed for possession or use of cannabis and failure to answer bail. Traffic offences tended to have the highest median fine - the median fine for driving with excess alcohol was \$600 and was \$500 for driving causing death or injury.

⁴The Summary Proceedings Amendment Act 1987 (section 14) introduced this requirement of the court to obtain a statement of means before imposing a fine (unless satisfied that the offender had the means to pay) but it originally only applied to fines in excess of \$250. This monetary threshold was removed by the Summary Proceedings Amendment Act 1993.

Men were slightly more likely than women to receive a fine (33% compared to 29%). The percentage of convicted charges involving NZ European that resulted in a fine (34%) was considerably higher than the percentage for Māori (22%). Offenders aged 40 years or more were more likely to receive a fine than offenders of other ages.

1.4 Sentencing and Parole Reform Bill

The Ministry of Justice undertook a review of the sentencing framework, the outcome of which was the Sentencing and Parole Reform Bill. This Bill has now been passed as the Sentencing Act 2002 and the Parole Act 2002 both of which came in to force on 30 June 2002.

The Sentencing Act includes a stronger presumption in favour of fines as the sentence of first resort than was present in the Criminal Justice Act 1985. A fine will generally be considered in every case unless this is inconsistent with sentencing principles or other sentencing guidance in legislation, or it would clearly be inadequate in the circumstances.

However, the Court must also take into account the ability of the offender to pay the fine. Section 14 (1) of the Sentencing Act states that even if it would be appropriate to impose a fine, the Court may decide not to if it is satisfied the offender does not or will not have the means to pay. Under Section 40, the Court may increase or decrease the amount of the fine to reflect the financial circumstances of the offender⁵.

Section 41 of the Sentencing Act sets out circumstances in which it may be necessary to obtain a declaration of financial capability. Where the fine is less than \$100 the Court may assume the offender has the means to pay unless evidence is presented to the contrary. If the Court considers a fine of \$100 to be appropriate but is uncertain about the offender's ability to pay, it may direct the offender to make a declaration as to his or her financial capability.

1.5 Scoping exercise

A small scoping exercise was undertaken in March and April 2001 to identify issues and questions which might be addressed in a larger study. The aims of the scoping exercise were firstly to identify what factors Judges were taking into consideration when imposing fines and fixing the amount of the fine. The second aim was to identify the information

⁵ Sentencing Act 2002 Section 40:

Determining amount of fine

- (1) In determining the amount of a fine, the court must take into account, in addition to the provisions of sections 7 to 10, the financial capability of the offender.
- (2) Subsection (1) applies whether taking into account the financial capacity of the offender has the effect of increasing or reducing the amount of the fine.
- (3) If under an enactment an offender is liable to a fine of a specified amount, the offender may be sentenced to pay a fine of any less amount, unless a minimum fine is expressly provided for by that enactment.
- (4) If a court imposes a fine in addition to a sentence of reparation, it must, in fixing the amount of the fine, take into account the amount payable under the sentence of reparation.

currently available to Judges and what additional information would assist Judges when deciding whether to impose a fine and the amount of the fine.

As part of the scoping exercise, researchers undertook a search of court files and held discussions with a Judge, probation officers, collections and court staff and duty solicitors. A proposal was developed based on the issues and information gaps raised in the scoping exercise (see Appendix 1 for a summary of the findings).

The scoping exercise showed that there were three main factors that Judges took into account when deciding whether to impose a fine. Firstly, whether the fine is appropriate for the offence, secondly whether the offender has the means to pay the fine, and thirdly the offender's previous history, particularly with respect to the payment of previous fines. However, the extent to which the means of the offender has an impact on the amount people are being fined was unclear. There was some suggestion that certain offences have informal tariffs limiting Judges' ability to decrease the amount of the fine.

The scoping exercise also raised several other concerns regarding current court practice and issues with respect to offenders' ability to pay fines. The research outlined in this report addressed the issues raised in the scoping exercise.

1.6 Literature on fines

Despite the fact that fines are the most commonly imposed sanction by the Courts there is a paucity of research about this sentence. Shaw (1989) states that it is 'almost as if the everyday nature of the fine (and for that matter, the relatively undistinguished nature of the crimes for which it is usually imposed) has discouraged the interests of academics and research workers'.

Much of the research that has been conducted on fines has addressed issues of enforcement. A Home Office publication by Mackie et al (2003) reports the results of research which evaluated methods for improving the collection of fines and highlights the main findings of a number of pilot projects which were run to determine better practice. Brown et al (1985) conducted an extensive evaluation of fines enforcement in New Zealand. They examined the disposition of a sample of fines at 12 months following imposition. They also canvassed the views of court registrars and staff involved in the enforcement of fines. The report concludes with a number of recommendations concerning the enforcement of fines.

While not extensive, there has been some research on judicial attitudes to fines and on the ways in which fines are adjusted to take into account the means of the offender. Cole, Mahoney, Thornton & Hanson (1987) conducted a survey of a national sample of Judges in the United States in the general and limited jurisdiction courts. In addition to asking Judges about the composition of their caseloads, their sentencing practices, and enforcement and collection procedures in their courts, the postal questionnaire asked Judges about their attitudes towards the use of fines. The research showed that Judges were favourably disposed towards fines, but that this did not seem closely linked to their actual sentencing practice. One of the reasons for this could be that Judges were clearly concerned about whether and how to use the fine for offenders with limited means.

Nicholson (1994) presented a comprehensive review of the use of fines in Scotland. While examining issues relating to enforcement and fine default she also examined attitudes to fines and the imposition of fines. She indicated that one of the main advantages of fines is their cheapness of implementation and flexibility of use. However, despite such worthy attributes, Nicholson goes on to state that there are a number of drawbacks which limit the effectiveness of fines. Again the major drawback is not the fine itself, but 'its use in a society of unequally divided wealth' (p.6).

Nicholson also discussed issues relating to fixing the level of the fine and in particular the requirement to take into consideration the means of the offender in setting the level of the fine. She refers to research by Young (1989) who interviewed sheriffs⁶ in three cities in central Scotland. The aim of the research was to examine sheriffs' perceptions of fines as a punishment; factors involved in determining the actual sums fined for a variety of offences; and their views on the common methods of paying fines. He found that sheriffs do adjust the fine to reflect the means of the offender, but within very narrow limits. Any movement upwards or downwards is limited by the stress on formal equality and by the impact of the general 'going rate'. The use of instalments was also seen as another approach to taking into account the means of the offender. Instead of lowering the fine, the period of time over which the fine was paid was extended. However, some Judges would neither lower the fine or extend the repayment period but would give alternative sentences. While conducted some time ago, Softley (1978) found in his study in the UK that unemployed offenders were less likely than others to be fined.

1.7 Issues the research does not address

There are several issues that this research did not specifically set out to address. These include issues related to infringement fees, reparation, and the enforcement of fines. However, these issues were raised by a number of respondents and because of their overlap with the imposition of court fines they are referred to in this report.

The infringement notice (or instant fine) system in New Zealand provides for punishment without formal prosecution. Instead of a sentence being imposed by a Judge, a notice or ticket is issued on the spot or through the post by the prosecuting authority. Most people who come into contact with this system receive tickets for motor vehicle offences, such as parking or speeding offences, no car registration or warrant of fitness. There is no discretion in these circumstances for the enforcement authority to vary the fee according to the financial circumstances of the offender. Issues relating to the infringement fee system are considered in a recent paper by Wilson (2001) which explores the impact of the use of infringements and evidence of 'net-widening'. 'Net-widening' is in evidence when offences which were previously seldom punished when they were the subject of formal prosecution are now being detected and dealt with by infringement notices.

Reparation was introduced in the Criminal Justice Act 1985. The 1985 provisions limited reparation to loss of, or damage to property. In 1987 the legislation was amended to

⁶ The sheriff court is the main criminal court in Scotland.

provide for reparation to be imposed in order to compensate victims of offences for emotional harm suffered through or by means of the offence. The sentence of reparation has already been the subject of extensive research by Galaway and Spier (1992). In addition Knaggs (1996) examined the types and sources of written information available to Judges relating to reparation and reasons for not imposing reparation in property offences.

Part III of the Summary Proceedings Act sets out the principles governing the enforcement of court-imposed fines. This part of the Act also applies in respect of the enforcement of reparation and fines imposed by way of infringement notices that are lodged with the Courts following non-payment. The Courts have available numerous enforcement measures where a fine is not paid. These include issuing a warrant to seize property, deductions from bank accounts and making an order attaching wages, salaries or benefits. As discussed earlier, an extensive evaluation of fines enforcement was undertaken by the Department of Justice in 1985 (Brown et al) although the legislation has changed considerably since the research was undertaken.

1.8 Outline of the report

Chapter 2 of the report outlines the methodology used. Subsequent chapters present the findings of both the questionnaire and interviews with Judges. Chapter 3 examines judicial attitudes towards fines as a sentence. It presents Judges' perceived advantages and disadvantages of fines and also the aims of fines as a sentence. Chapter 4 examines the factors which Judges take into account in their decision to impose a fine and the amount of the fine. Chapter 5 presents information on current practices and policies relating to the imposition of fines. It presents Judges' perspectives on their information needs, court costs and payment of fines by instalments. Chapter 6 examines Judges' perceptions of people's ability to pay fines and Chapter 7 discusses other issues relating to fines. Finally Chapter 8 presents the overall conclusions of the report. Each of the research objectives will be examined in this concluding chapter.

2 Methodology

2.1 Introduction

All District Court Judges were sent a postal survey on court-imposed fines in September 2001. The questionnaire was followed-up by in-depth interviews with 10 Judges.

An advisory group was set up to inform the development of the research and related issues that arose during the course of the project. The group included Ministry policy staff and the Ministry's Director, Māori. Representatives from the Department for Courts, including the Collections Unit and the Department of Corrections were also on the advisory group.

2.2 Research Objectives

The objectives of the research were to:

- identify judicial perceptions of fines as a sanction
- identify factors involved in determining the amount of fines imposed for a variety of crimes and offences
- identify current practices and policies which are limiting the imposition of court-imposed fines and limiting the ability to adjust the amounts of fines imposed
- assess judicial perceptions of people's ability to pay fines.

2.3 Postal Questionnaire

The Chief District Court Judge wrote to each of the District Court Judges informing them of the research and asking for their co-operation. Eighty-seven District Court Judges were sent a postal survey on court-imposed fines in September 2001. This number comprised all District Court Judges in New Zealand (excluding those Judges involved in the development of the questionnaire) and included Judges with a warrant to sit in the Youth Court. Judges who were listed as only having a warrant to sit in the Family Court were not included in the survey. However, five Judges subsequently wrote in to say that they did not sit in the General Jurisdiction and had limited experience with fines. These Judges were removed from the total sample.

If Judges had not returned the questionnaire within two weeks they were sent a reminder letter and a replacement questionnaire. This was followed-up with a phone call asking the Judges' secretaries to remind them about the questionnaire. From the total sample of 82 eligible Judges, 65 responded to the survey giving a response rate of 79%.

The questionnaire was designed around the research objectives and developed in consultation with policy staff and two Judges in the Wellington region. In addition, overseas research was reviewed in the process of developing the questions. The questionnaire was piloted with one Judge. Judges involved in the development and

piloting of the questionnaire were not asked to take part in the main survey. (See Appendix 2 for a copy of the questionnaire).

2.4 Interviews

The second phase of the research involved in-depth interviews with a small sample of Judges who had responded to the questionnaire. The purpose of these interviews was to further explore issues raised in the postal survey and to supplement questionnaire responses with more in-depth information. An interview schedule was developed based on the objectives of the research and needs of policy staff and also on issues raised in the responses to the questionnaire (see Appendix 4 for a copy of the interview schedule).

From the 65 Judges who responded to the questionnaire, 18 were selected (from five District Courts) to take part in the interview phase of the research. Ten Judges subsequently agreed to be interviewed. Where Judges agreed, interviews were taped.

Information from the interviews with Judges has been used to supplement responses to the postal survey and both have been combined in the same chapter. Where the source of the information comes from the interviews with Judges this has been clearly specified. In all other cases readers can assume the information is derived from the Judges' responses to the postal survey.

2.5 Ethical Issues

The research was conducted in accordance with the Association of Social Science Research Code of Ethics (1996) and the proposal was reviewed by the Justice Sector Ethical Review Group.

All Judges participating in the research were informed that the research was voluntary and that while the findings would be published, individuals would not be able to be identified in the final report.

Informed consent was obtained from each of the Judges before they were asked whether they agreed to being interviewed (see Appendix 3). The informed consent sheet outlined that the research was voluntary, they could refuse to answer any of the questions during the interview, and they could stop the interview at any time. They were also informed that the information they provided was confidential and that it would be stored in a secure environment. Permission was sought from Judges both to tape the interview and to use quotes. They were informed that identifying information would be removed from quotes before they were included in the report. If they agreed to be interviewed they were asked to sign the informed consent sheet.

2.6 Survey analysis

Responses to the closed-ended questions were loaded into an Excel spreadsheet, and frequency tables and cross tabulations were produced using the SAS® system⁷. Ten

⁷ SAS is a registered trademark of SAS Institute Inc., Cary, North Carolina, USA.

percent of all questionnaire responses were verified to ensure that the data had been entered correctly.

The questionnaire contained several open-ended questions which were transcribed. Where Judges had agreed for interviews to be taped, these were also transcribed. A package for the analysis of qualitative data, NVivo4⁸, was used to analyse the responses to the open-ended questions and responses to the in-depth interviews.

2.7 Description of sample

At the end of the questionnaire Judges were asked to indicate how long they had worked as a Judge and what proportion of their work was in the criminal jurisdiction. The results of these questions are presented below.

Table 2.1 shows the majority of Judges had been in that position for five or more years. None of the Judges who responded had worked as a Judge for less than a year.

Table 2.1 Length of time worked as a Judge

	No. ¹	%
Less than 1 year	0	0
1 year to less than 2 years	5	8
2 years to less than 5 years	12	19
5 years or more	47	73
Total	64	100

Note:

1 One Judge did not respond to this question.

Judges were also asked to indicate the approximate proportion of their work that is in the criminal jurisdiction. Two thirds indicated that about three-quarters of their work was in the criminal jurisdiction. Four out of five Judges said that at least half or more of their work was in the criminal jurisdiction.

Table 2.2 Proportion of work in the criminal jurisdiction

	No. ¹	% ²
Less than 1/4	1	2
About 1/4	10	16
About 1/2	3	5
About 3/4	42	66
All	8	13
Total	64	102

Note:

1 One Judge did not respond to this question.

2 Percentages add up to 102 due to rounding.

⁸ NVivo is a software package for analysis of qualitative data.

3 Judicial perceptions of fines

This chapter explores Judges' perceptions of fines as a sanction, and in particular the perceived advantages and disadvantages of fines. In addition, Judges were asked about their views of the aims of fines as a sentence.

3.1 Advantages and disadvantages of fines

Fines as a sentence are seen to have a number of advantages. First they are an alternative to imprisonment. They are flexible and adaptable and can be tailored to fit the offence and offender. In addition, fines are economical and cost the state little to administer (Hall's Sentencing).

Cole et al (1987) asked Judges the extent to which they agreed or disagreed with statements representing 11 frequently cited advantages or disadvantages of fines. There was widespread agreement with four statements citing supposed advantages: fines are relatively easy to administer, using fines helps prevent overcrowding in correctional facilities, they can be adjusted to fit the severity of the offence and offender's income, and they help reimburse the cost of maintaining the criminal justice system.

The most frequently voiced criticism of fines concerns the inequitable way they can operate between offenders of the same culpability (Review of Monetary Penalties 2000, Ministry of Justice). Fines will always be easier for more affluent offenders to pay than for offenders with lower means. The majority of Judges in Cole's study agreed that fines have little impact on affluent offenders and that 'there is no effective way to enforce fines against poor people'. Nicholson (1994) cites two other disadvantages of fines. Firstly, the possibility of payment by a third person and secondly, that some offenders may resort to further offending in order to obtain the money to pay the fine.

Judges were asked in the questionnaire what they considered to be the main advantages and disadvantages of fines as a sentence. This was an open-ended question; that is, Judges were not restricted to any pre-coded categories.

3.1.1 Advantages of fines

Table 3.1 lists what Judges considered to be the main advantages of fines. Two-thirds of the Judges listed two or more advantages.

There were a wide range of responses to this question. Over a third of Judges indicated that one of the main advantages of fines were that they are a quick and a simple sanction. Comments referred to the immediacy of punishment and also the ease with which both offenders and victims understand fines. A third of Judges commented that fines were an appropriate and acceptable sanction in many cases, particularly for minor or first time offenders, or traffic offenders. Fines were seen to adequately mark the seriousness of many offences and were also considered to be acceptable to the public.

Around a quarter of Judges stated that one of the main advantages of fines as a sentence was their cost-effectiveness. Fines were seen to have small administration costs particularly compared to other sentencing options. And unlike other sentences they contributed to the costs of the criminal justice system. A similar proportion of Judges considered that the ability to direct part or all of the fine to the victim was an advantage when imposing a sentence of a fine⁹.

Other advantages of fines mentioned by several Judges included that fines can be an effective punishment, that they limit an offender's contact with the criminal justice system, and cause minimal disruption to an offender's life.

Table 3.1 Main advantages of fines as a sentence

	No. ¹	% ²
Quick and simple sanction	23	37
Fines are an acceptable/appropriate sanction	21	33
Cost-effective sanction	18	29
Ability to direct part of fine to victim	16	25
Fines limit an offender's contact with the criminal justice system	12	19
Fines cause minimal disruption to an offender's life.	11	17
Fines are an effective punishment	12	19
Other	6	10

Notes:

- 1 Two Judges did not respond to this question.
- 2 Percentages add up to more than 100 because Judges could list more than one advantage.

3.1.2 Disadvantages of fines

Table 3.2 lists the disadvantages of fines. Nearly two-thirds of the Judges listed two or more disadvantages.

Table 3.2 Main disadvantages of fines as a sentence

	No. ¹	% ²
Many offenders have limited means	21	33
Fines are ineffective when not paid	17	27
Fines penalise the offender's family	15	24
Difficulties with enforcement/collection	15	24
Payment by instalments can weaken fines as a sanction	11	17
Having to impose fines where it is the only penalty/where large outstanding infringement fees	10	16
Fines only appropriate for minor offending/ don't address underlying problems	9	14
Fines seen as a licence fee/weak sentence	9	14
Fines are easier for wealthy offenders	9	14
Other	6	10

Notes:

- 1 All Judges responded to this question.
- 2 Percentages add up to more than 100 because Judges could list more than one advantage.

Again, there was a wide range of responses to the question asking Judges to list the disadvantages of fines. Most commonly Judges mentioned people's inability to pay as

⁹ The ability to direct all or part of the fine to the victim is no longer an option under the Sentencing Act 2002.

the main disadvantage of fines. A third indicated that many offenders simply do not have the means to meet a fine. About a quarter of Judges also expressed concern that where people either can't or won't pay, fines become ineffective as a sentence. Offenders are then brought before court where alternative sentences are imposed. Fines become a meaningless sanction which can ultimately lead to contempt for the law.

A quarter of Judges indicated that one of the main disadvantages of fines as a sentence is their impact on the offender's family. Comments included that fines were seen to penalise families more than the offender. A quarter of Judges also mentioned difficulties with the enforcement and collection of fines. Judges perceived enforcement of fines to be time consuming and not particularly effective.

Several Judges (17%) expressed concern that paying fines by instalments can firstly, diminish the punitive nature of the fine and secondly, result in a too-prolonged response to the original offence. In addition, several Judges (16%) also expressed concern at having to impose fines in cases of non-imprisonable offences (where the only penalty is a fine) or in situations where offenders have accumulated large amounts of infringement fees.

Just over one in ten Judges indicated that fines were only appropriate for minor offending. In particular, they were not seen to address the underlying problems that had caused the offending in the first place. A couple of Judges also expressed a view that fines can aggravate existing problems and lead to further offending. Over one in ten Judges also expressed concern that fines were perceived as a weak sentence with little deterrent effect. A similar proportion mentioned that one of the disadvantages of fines is that they have vastly different impacts depending on the wealth of the person being fined.

3.2 Aims of fines

The imposition of a fine may have a deterrent, retributive and possibly rehabilitative impact (Hall's Sentencing). Shaw however, (1989) suggest that fines have a simple justification: 'their aim is to punish, no more and no less' (p.42). Young (1989) interviewed sheriffs¹⁰ in three cities in central Scotland. There was consensus among the sheriffs that the primary sentencing aim of fines was punishment. Other penalties, for example prison, may also have other aims such as rehabilitation but this was not the case with the fine. By punishment, sheriffs referred to both retribution and deterrence, although their opinion was divided as to whether a fine can be used as a deterrent.

Judges were asked in the interview phase of the research, what they were hoping to achieve when sentencing an offender to a fine. As was the case with the sheriffs in Scotland, most of the Judges indicated that the main aim of the fine was punishment.

Generally speaking when you sentence an offender to a fine the objective is punishment...

¹⁰ The sheriff court is the main criminal court in Scotland.

However, some Judges specifically mentioned deterrence as one of the aims they hoped to achieve when sentencing an offender to a fine. Both individual deterrence and general deterrence were mentioned.

A consequence (this is on conviction) for the offending, a punishment, a signal deterrent to others that if you offend and are caught and come before the Court and are convicted that there will be a marked consequence and the fine hits them in the pocket.

Ensure they won't repeat the offending, will pay the fine and won't come back.

3.3 Summary

- Judges mentioned a number of advantages of fines as a sanction. Over a third indicated that they were a quick and simple sanction. They were both immediate and easily understood. A third said they were an appropriate and acceptable sanction particularly for minor or first time offenders.
- Around a quarter of Judges indicated that one of the main advantages of fines was their cost-effectiveness and a similar proportion mentioned the ability to direct part or all of the fine to the victim.
- The most commonly mentioned disadvantage of fines was that many offenders have limited means to pay. Fines were also considered ineffective where people are unable to pay. Other disadvantages included the impact that fines can have on families, and difficulties with enforcement.
- Most Judges who were interviewed said that the main aim in sentencing an offender to a fine was simply punishment.

4 Factors influencing the imposition of fines

Judges were asked a range of questions designed to explore their decision-making processes when imposing fines. These included questions around what factors were involved in determining the amount of fines imposed for a variety of offences, what factors would influence them to impose an alternative sentence to a fine, and the influence of the means of the offender on the fine imposed.

4.1 Factors involved in determining the amount of fines imposed for a variety of crimes and offences

Judges were presented with four hypothetical scenarios each describing a specific offence. Judges were first asked to consider what amount of fine would be their starting point for the particular offence described in the scenario. Secondly, they were asked to consider what factors they would take into account in increasing or decreasing the amount of the fine.

The specific offences chosen were those where a high proportion are known to result in a fine. In addition, Judges who commented on an early draft of the questionnaire indicated that these offences would be the most useful to examine.

4.1.1 Possession of cannabis

If you were to sentence an adult, first time offender who pleads guilty, to a fine for possessing two cannabis cigarettes (less than 10gms), approximately what amount of fine is your starting point for this offence?

'Possession of cannabis' is an offence under the Misuse of Drugs Act s7(1)(a) & s 7(2)(b). The maximum penalty for this offence is 3 months imprisonment or a \$500 fine. In 2001 nearly half (46%) of convicted charges for possession or use of cannabis resulted in a fine. The median fine for this offence was \$150¹¹.

More than two out of five Judges (43%) said that they would impose a fine of between \$150 and \$199. A quarter indicated an amount between \$200 and \$250 and a third indicated an amount of less than \$150. The mean fine was \$153. It is worth noting that a number of Judges explicitly mentioned that court costs of \$130 would be imposed in addition to the specified fine.

¹¹ The median is the middle value when all the amounts are arranged from smallest to largest.

Figure 4.1 Starting point for fines for hypothetical offence of ‘possession of cannabis’.

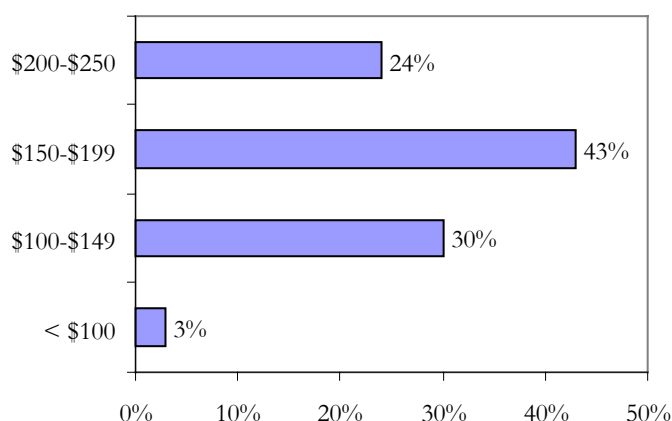


Table 4.1 shows that the vast majority of Judges (89%) would not change the amount of the fine they would impose where the offender had two prior non-drug convictions but over half (58%) would increase the fine where the offender had two prior similar convictions. Most of the Judges also indicated that they would not change the amount of the fine because of the offender’s age. Two-thirds would not change the fine if the offender was on the unemployment benefit and four out of five Judges would not change the fine where the offender had an above average income.

One of the factors that Judges were asked to consider was whether the offender pleaded not guilty and whether this would have an impact on the Judge’s decision to increase or decrease the amount of fine. While two-thirds of Judges indicated that they would increase the fine where the offender pleaded not guilty they made it clear that this would involve a discount from the starting fine for an early guilty plea rather than an increase when the offender pleaded not guilty.

Table 4.1 Factors which Judges would take into account in increasing or decreasing the amount of the fine for ‘possession of cannabis’¹

	Decrease the fine %	Not change the fine %	Increase the fine %	Consider another sentence %
Offender had two prior (non-drug) convictions ²	0	89	8	3
Offender had two prior similar convictions	0	6	58	30
Offender was aged 17-19	8	86	6	2
Offender was aged 40 or over	2	91	6	2
Offender pleaded not guilty	0	27	69	3
Offender was on the unemployment benefit	16	64	0	19
Offender had an above average income	0	84	16	0

Note

1 Up to three Judges did not respond to this question.

2 A small number of Judges ticked more than one option in response to these questions. Their responses have not been included in the Table.

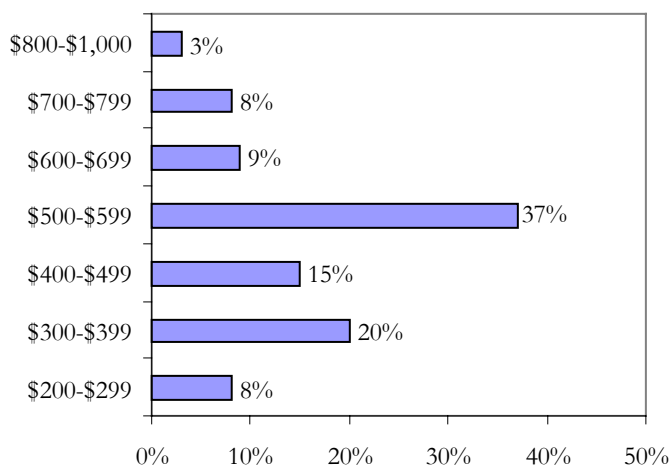
4.1.2 Common assault

If you were to sentence an adult, first time offender who pleads guilty, to a fine for punching someone twice in the face outside a pub, approximately what amount of fine is your starting point for this offence?

The offence of ‘common assault’ under the Summary Offences Act 1981 s9, carries a maximum penalty of 6 months imprisonment or a \$4,000 fine.

Over a third of Judges said that they would impose a fine of between \$500 and \$599 as their starting point in this scenario (in most cases this was a fine of \$500). However, there was also a wide range of responses with one in five Judges indicating sums of between \$600 and \$1,000 and two in five (43%) sums of less than \$500. This is in part likely to reflect some uncertainty regarding the circumstances of the offence described in the scenario. For example, a number of Judges indicated that injuries to the victim and provocation would have a significant impact on the amount of fine imposed.

Figure 4.2 Starting point for fines for hypothetical offence of ‘common assault’



Most Judges said that they would not change the fine where the offender had two unrelated convictions but would consider another sentence where the offender had prior convictions for ‘common assault’.

Nearly all Judges (94%) said they would not change the amount of the fine where the offender was aged 40 or over compared with two-thirds who indicated this for offenders aged 17 to 19. Nearly a third said that they would either reduce the amount of the fine (15%) or consider another sentence (17%) where the offender was aged 17-19.

Half the Judges said that where the offender was the recipient of an unemployment benefit they would consider an alternative sentence. A quarter of the Judges said they would not change the fine and one in five would decrease the fine. Three-quarters of Judges would not change the fine where the offender was on an above average income.

Table 4.2 Factors which Judges would take into account in increasing or decreasing the amount of the fine for ‘common assault’¹

	Decrease the fine %	Not change the fine %	Increase the fine %	Consider another sentence %
Offender had two prior (non-violent) convictions ²	0	92	3	3
Offender had two prior similar convictions	0	0	12	86
Offender was aged 17-19	15	66	2	17
Offender was aged 40 or over	2	94	2	3
Offender pleaded not guilty	0	22	71	6
Offender was on the unemployment benefit	20	25	0	53
Offender had an above average income	2	74	23	2

Note

- 1 Up to four Judges did not respond to this question.
- 2 A small number of Judges ticked more than one option in response to these questions. Their responses have not been included in the Table.

4.1.3 Driver exceeding specified alcohol limits (first or second offence)

If you were to sentence an adult, first time offender who pleads guilty, to a fine for driving with a breath alcohol level of 600 micrograms of alcohol per litre of breath, approximately what amount of fine is your starting point for this offence?

Over half (61%) of convicted charges involving driving with excess alcohol resulted in a fine in 2001. This category includes a number of charges under the Land Transport Act 1998 with varying penalty levels. Over two thirds (70%) of the charges in this category were for ‘Breath alcohol level exceeds 400 mgms of breath’ under section 56(a) of the Act. The maximum penalty for this offence is a fine of \$4,500 or 3 months in prison.

Half of the Judges stated that in the case of an adult, first time offender who is convicted for driving with a breath alcohol level of 600 micrograms they would impose a fine of between \$600 and \$699. A quarter said they would impose fines of between \$500 and \$599 and 17% fines of between \$400 and \$499. Only 5% said they would impose fines of \$700 or more.

Figure 4.3 Starting point for fines for hypothetical offence of ‘driver exceeding specified alcohol limits’ (first or second offence)

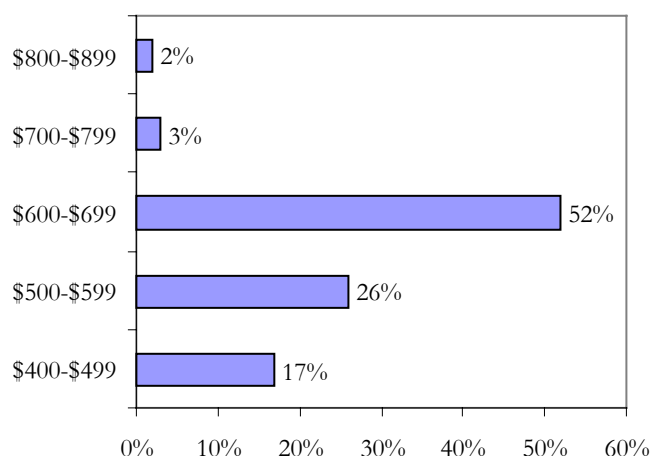


Table 4.3 shows that all Judges reported that they would not change the amount of the fine where the offender had two prior non-traffic convictions. However, the vast majority (89%) said they would consider another sentence where the offender had two prior similar convictions. This is not surprising given that section 56 (3) of the Land Transport Act 1998 provides that anyone convicted of their third or subsequent offence of exceeding specified alcohol limits is subject to a maximum penalty of two years imprisonment or a fine not exceeding \$6,000.

The age of the offender was not considered relevant by any of the Judges in increasing or decreasing the amount of the fine from the starting point. All Judges said they would not change the fine where the offender was aged 21-25 or 40 or over.

Nearly all Judges (92%) would not change the amount of the fine from their starting point if the offender had an above average income. However, over half (55%) would consider another sentence where the offender was unemployed, and one in five would decrease the fine.

Table 4.3 Factors which Judges would take into account in increasing or decreasing the amount of the fine for ‘exceeding specified alcohol limits’¹

	Decrease the fine %	Not change the fine %	Increase the fine %	Consider another sentence %
Offender had two prior (non-traffic) convictions ²	0	100	0	0
Offender had two prior similar convictions	0	0	8	89
Offender was aged 17-19	0	100	0	0
Offender was aged 40 or over	0	100	0	0
Offender pleaded not guilty	2	19	80	0
Offender was on the unemployment benefit	19	23	0	55
Offender had an above average income	0	92	2	0

Note

- 1 One Judge did not respond to this question.
- 2 A small number of Judges ticked more than one option in response to these questions. Their responses have not been included in the Table.

4.1.4 Dangerous driving

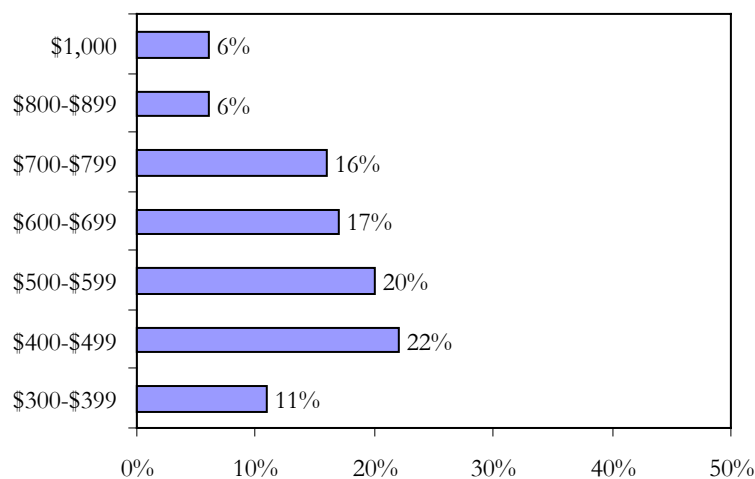
If you were to sentence an adult, first time offender who pleads guilty, to a fine for driving at 120km in a 50km zone, approximately what amount of fine is your starting point for this offence?

Forty-six percent of convicted charges for reckless/dangerous driving resulted in a fine in 2001. The majority of these were for ‘driving in a dangerous manner’ under the Land Transport Act 1998 section 35 1(b). This carries a maximum penalty of a fine of \$4,500 or 3 months in prison. The median fine was \$400.

There were wide ranging responses to this question of the amount of fine that would be the starting point for this offence, again perhaps reflecting the variety of circumstances which may surround this offence. One in five Judges said that they would impose a fine

of between \$400 and \$499 and a similar proportion indicated they would impose a fine between \$500 and \$599. One in ten Judges (12%) said they would impose fines of \$800 or more. The median fine was \$500.

Figure 4.4 Starting point for fines for hypothetical offence of ‘dangerous driving’



Most Judges would not change the amount of the fine where the person had two prior non-traffic convictions, but about three-quarters would consider another sentence where the offender had two prior convictions for ‘dangerous driving’. Again, age made little difference to the amount of fine imposed. Four out of five Judges would increase the fine where the offender pleaded not guilty.

Half of the Judges said that where the offender was on the unemployment benefit they would consider another sentence. Most Judges indicated that they would not change the fine where the offender had an above average income.

Table 4.4 Factors which Judges would take into account in increasing or decreasing the amount of the fine for ‘dangerous driving’¹

	Decrease the fine %	Not change the fine %	Increase the fine %	Consider another sentence %
Offender had two prior (non-traffic) convictions ²	0	98	0	2
Offender had two prior similar convictions	0	0	23	72
Offender was aged 17-19	9	82	0	8
Offender was aged 40 or over	0	97	2	2
Offender pleaded not guilty	0	18	79	3
Offender was on the unemployment benefit	17	27	0	50
Offender had an above average income	2	84	13	2

Note:

- 1 Up to three Judges did not respond to this question.
- 2 A small number of Judges ticked more than one option in response to these questions. Their responses have not been included in the Table.

4.1.5 Overall

Table 4.5 shows the mean and median¹² fines Judges indicated they would impose for each of the four offence types. It also shows the standard deviation¹³. The larger the standard deviation the greater the variation between Judges in the amount of fines imposed. For example, consensus among Judges in the amount of fine imposed was greatest for ‘possession of cannabis’. Variation between Judges in amount of fine imposed was greatest for ‘dangerous driving’.

Table 4.5 Mean, median fines and standard deviation of starting point of fines imposed for hypothetical offences

	Mean	Median	Standard deviation
Possession of cannabis	\$152	\$150	44.50
Common assault	\$477	\$500	153.55
Drink driving	\$563	\$600	82.29
Dangerous driving	\$579	\$500	182.74

There was a high degree of consensus among Judges in the amount of fine imposed for both ‘possession of cannabis’ and ‘driving with excess breath alcohol’. In both of these scenarios the Judges were told the amount of cannabis in possession and the excess breath alcohol level indicating the seriousness of the offence. The variation between Judges in the amount of fine imposed for ‘common assault’ and ‘dangerous driving’ reflects the uncertain circumstances surrounding the offence described in both these scenarios. For example, with respect to ‘common assault’ Judges indicated that injuries to victim and provocation would have a significant impact on the amount of fine imposed.

‘Possession of cannabis’ was the only offence where the majority of Judges did not consider the offender’s lack of employment to be a relevant factor in the amount of the fine imposed. For all other offences, around half of the Judges indicated that they would consider another sentence for an offender who was on the unemployment benefit. No doubt this is due to the very different amounts of fines imposed for ‘possession of cannabis’ (\$150) compared to the other offences where the median fine was \$500 or \$600. Across all scenarios only about one in five Judges said they would decrease the fine where the offender was receiving an unemployment benefit.

A minority of Judges indicated that they would increase the fine where the offender had an above average income. This was consistent across the four offences, although Judges were most likely to increase the fine for an offender with above average income convicted of ‘common assault’ (23%) and least likely in the case of an offender convicted of ‘driving with excess breath alcohol’ (2%).

A prior criminal history, if unrelated to the current offence, made little difference to the amount of the fine the Judge would impose from the starting point. That is, the vast majority of Judges indicated that they would not change the amount of the fine where the offender had two prior dissimilar convictions. However, the situation was very different where the offender had two prior convictions similar to their current offence.

¹² The median is the middle value when all the amounts are arranged from smallest to largest.

¹³ The standard deviation serves as a basic measure of variability.

In this case Judges would either increase the fine or consider another sentence. They were most likely to increase the fine in the case of ‘possession of cannabis’ and consider another sentence where the offender was convicted of ‘common assault’, ‘driver exceeding specified alcohol limits’ and ‘dangerous driving’, again perhaps reflecting the already high starting points for these latter offences.

Age had little impact on the amount of fine the Judge would impose, with most Judges saying that they would not change the amount of fine regardless of whether the offender was younger or older. The exception to this was ‘common assault’, where a third of Judges said that they would either decrease the fine or consider another sentence where the offender was aged 17-19.

The majority of Judges indicated they would increase the fine where the offender pleaded not guilty. However, a plea of guilty is a mitigating factor (rather than a plea of not guilty being an aggravating factor) and Judges pointed out that they would give a discount from the starting point for a plea of guilty rather than increase the fine for a plea of not guilty.

Judges were asked in the interviews why they tended to give an alternative sentence in each of the scenarios rather than decrease the fine where the offender was on the unemployment benefit. While people’s inability to pay a fine was considered to be a factor, Judges also mentioned the need to maintain some level of consistency in sentencing.

Well it comes down to ability to pay at the end of the day. There does come a point where a small fine is simply not going to mark the gravity of the offence.

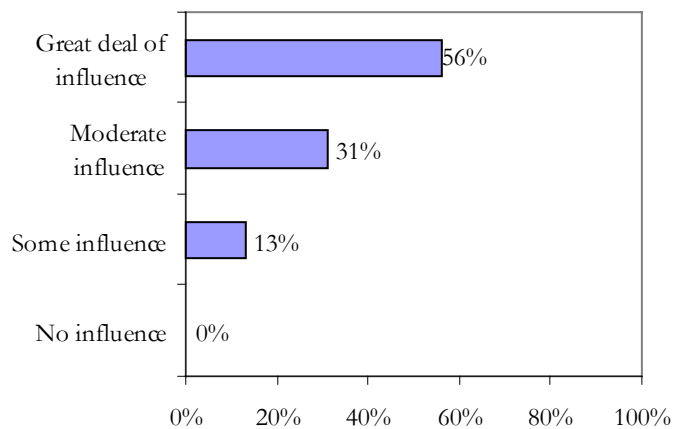
To impose on an unemployed person, a fine of \$150 which might be similar in degree of penalty to that on the business man of \$800 doesn’t give the right message to the public when it is said that people can drink and drive etc etc. The public see that someone only got fined \$150. They don’t know what their circumstances are and therefore the deterrent aspect isn’t met and therefore I think Judges look for alternative sentences.

Especially with EBA’s [Excessive Breath Alcohol] because trying to achieve consistency. We need to try and get consistency across the board...

4.2 Influence of the means of the offender

All Judges were asked to indicate how much influence the means of the offender as opposed to other factors had on the amount of fine they would impose. Figure 4.5 shows the results of this question.

Over half the Judges said that the means of the offender as opposed to other factors would have a great deal of influence on the amount of fine they would impose. No Judge said that the means of the offender would have no influence on the amount of fine imposed.

Figure 4.5 Influence of the means of the offender on amount of fine imposed

4.3 Decision to impose a fine or alternative sentence

Table 4.6 shows that the means of the offender or their ability to pay the fine was considered to be the major factor that would influence a Judge to impose a sentence other than a fine. Two-thirds of Judges listed this as one of the factors other than the serious nature of the offence committed that would influence them to impose a sentence other than a fine.

The offender's previous offending was also considered to be a significant factor in the decision to impose an alternative sentence to a fine, mentioned by a third of the Judges. A couple of Judges indicated that they were particularly concerned where there were convictions for similar offending for which fines had been imposed, but most just indicated previous convictions in general.

Nearly a quarter of Judges stated that unpaid fines (including reparation and infringement fees) would influence them to impose a sentence other than a fine and a quarter indicated that they would consider whether the offender would benefit from a rehabilitative/restorative sentence. Judges would commonly impose a sentence of supervision where they thought an offender needed to address the causes of their offending. Where a 'restorative' sentence was required (giving something back to the community), they would tend to impose community service.

One in five Judges stated they would take into account the views or needs of the victims when deciding whether to impose a fine or an alternative sentence and 17% indicated that they would consider the impact the fine was going to have on others, particularly family members.

About one in ten Judges mentioned that they would take into account the need to impose a sentence which would punish or deter the offender, the offender's circumstances, or the offender's attitude when deciding whether to impose a fine or an alternative sentence.

Table 4.6 Factors influencing the imposition of a sentence other than a fine

	No. ¹	% ²
Ability to pay/means of offender	42	66
Previous offending	20	31
Unpaid/outstanding fines	15	23
Need to impose a rehabilitative/restorative sentence	15	23
Views/needs of victims	12	19
Impact of fines on family/others	11	17
Need to impose a sentence which would punish/deter	7	11
Offenders' circumstances and history	6	9
Offender's attitude	5	8
Other	10	16

Note:

- 1 One Judge did not respond to this question.
- 2 Percentages add up to more than 100 because Judges could list more than one factor.

Judges were also asked more specifically whether there were any particular financial or family circumstances that would lead them to impose a sentence other than a fine. Table 4.7 shows that two out of five Judges said that they would not impose a fine where the offender had dependants. This included children, partners, family members who were sick and other dependant relatives. A similar proportion would tend not to fine where the offender was on a benefit or a low income. A third of Judges simply indicated that inability to pay a fine or lack of income would lead them to impose a sentence other than a fine.

A quarter of Judges would not impose a fine where that fine would deprive the family in some way. Judges made it very clear that fines should not punish the offenders' family. Other circumstances included where the offender had outstanding fines or large debts.

Table 4.7 Family or financial circumstances that would influence the imposition of a sentence other than a fine

	No. ¹	% ²
Where offender has dependants	24	39
Where offender on a benefit/low income	23	37
Inability to pay	22	35
Where fine would deprive family	17	27
Where offender has existing fines	10	16
Where the offender has large debts	7	11
Nature of offence/offending	5	8
Other	6	10

Note:

- 1 Three Judges did not respond to this question.
- 2 Percentages add up to more than 100 because Judges could list more than one circumstance.

4.4 Adjusting fines

Judges were asked in the interviews to indicate how they would adjust a fine to take into account the means and responsibilities of the offender. Most appeared to adjust the fine by a process of guess work taking into account both the seriousness of the offence and the means of the offender, including their family obligations.

There is no set process by which one does that. In many instances I think the Judge has an idea of what the appropriate fine should be for the offence. And if that level of fine can't be met then an alternative sentence would be considered....

Yes well, by guess and by God basically...

One Judge however, stated the following:

There are tariffs within bands for a number of the more regularly recurring type of offences. And you weigh the fine up or down within the band for that offence, according to the seriousness of the offence as well as the means of the offender.

Lack of information appeared to be the main factor limiting Judges' ability to take into account the means and responsibilities of the offender when setting a fine.

Actually knowing what the means and responsibilities of the offender are. And it's not very often that you are told. If they are represented by counsel, counsel will say the defendant can pay a fine albeit by instalments so you impose a fine accordingly.

It's always a rushed matter and no matter how much time they put into budgets, to be quite brutally honest it's a best guide.

One Judge also indicated that another limiting factor is the need to have consistency in sentencing:

.....there comes a point where for certain offences it is not appropriate to bring it down below a certain level, otherwise you wouldn't be being even-handed.

Judges who took part in interviews were asked whether the means of the offender was likely to have a greater impact on the amount of fine imposed for some offences than for others. More than half the Judges responded positively to this question, with four specifically mentioning drink driving offences. The seriousness of the offence was considered of much greater importance than the means of the offender when setting the level of the fine. This was largely because the seriousness of offending can be more precisely measured (through breath and blood alcohol levels) than for example with 'common assault'.

Yes, for example with drink driving offences there is almost a standard range for drink driving and if a person's means are such that they can't afford a fine within that range then an alternative sentence would be looked at....except for the means of the offender, all other factors are often equal in the sense that you know that you are dealing with a breath or blood alcohol level of a certain amount. And I think to some extent its difficult to explain to the public why two people with a breath alcohol level of 700 should be getting a fine on the one hand of around \$700 or \$200.

4.5 Summary

- The median fine for the hypothetical offences of 'possession of cannabis' was \$150, for 'common assault' and 'dangerous driving' was \$500 and for 'driving with excess breath alcohol' it was \$600. Consensus amongst Judges was greatest for the offences of 'possession of cannabis' and 'driving with excess breath alcohol'. There was a large degree of variation between Judges in the amounts of fines imposed for both 'common assault' and 'dangerous driving'.
- A prior criminal history if unrelated to the offence made little difference to the amount of fine or whether an alternative sentence was imposed. However, the situation was very different where the offender had two prior convictions for a similar offence. In the case of 'possession of cannabis' the majority of Judges said they would increase the fine and in the cases of 'common assault', 'driving with excess breath alcohol' and 'dangerous driving' they would consider an alternative sentence.
- Age had little impact on the amount of fine imposed or on Judges' decision to impose an alternative sentence.
- The majority of Judges indicated that they would increase the fine where the offender pleaded not guilty but it was also indicated that this would have been a discount from the starting fine for an early plea of guilty rather than an increase for a not guilty plea.
- Nearly two-thirds of the Judges said that they would not change the amount of fine from their starting point for 'possession of cannabis' where the offender was unemployed. However, in all other scenarios around half of the Judges indicated that they would consider another sentence when faced with an offender receiving an unemployment benefit.
- Only a minority of Judges said they would increase the fine where the offender had above average income.
- Over half of Judges said that the means of the offender would have a great deal of influence on the amount of fine imposed. A further 31% said it would have a moderate influence.
- Two-thirds of the Judges said that the means of the offender or their ability to pay the fine would influence them to impose a sentence other than a fine. A third of Judges mentioned previous offending.
- Two out of five Judges would not impose a fine where the offender had dependants and a similar proportion indicated that they would not impose a fine where the offender was a beneficiary or on a low income.

5 Current practices and policies

This chapter presents the results of Judges' response to a number of questions about current practices and policies at the time of the research. This included questions about Judges' information needs, issues relating to court costs and payment of fines by instalments.

5.1 Information needs

A range of information may be available to Judges when sentencing someone to a fine. This may include the offender's criminal record, income and assets. Judges were first asked how necessary the particular information was when sentencing someone to a fine. Judges were then asked to indicate how adequate this information was in each case. Table 5.1 presents Judges' response to the first question asking how necessary each of the types of information was when they were sentencing someone to a fine.

An offender's criminal record and information on outstanding fines/infringement fees were considered to be 'almost always necessary' when sentencing someone to a fine. Nearly four out of five Judges said that this information was 'almost always necessary' and nearly all said it was necessary in at least most cases.

Also considered necessary was information on the offender's income and employment status. Two-thirds of the Judges indicated that knowing the offender's income was 'almost always necessary' when sentencing someone to a fine and a further 26% thought it was 'necessary in most cases'. Information about the offender's employment status was considered 'almost always necessary' by over half the Judges and 'necessary in most cases' by a third.

Information about the offender's family status/community ties, assets and financial expenditure was considered to be less necessary when sentencing someone to a fine, although about half of the Judges still thought it was necessary almost always or in most cases. About 30% to 40% of Judges considered this information only necessary in a few cases or almost never necessary.

Table 5.1 How necessary are specific types of information when sentencing someone to a fine?

	Almost always necessary % ¹	Necessary in most cases %	Necessary in about half the cases %	Necessary in few cases %	Almost never necessary %
Offender's criminal record	80	18	2	0	0
Offender's family status/community ties	25	28	17	22	9
Offender's income	66	26	6	2	0
Offender's employment status	55	32	9	3	0
Offender's outstanding fines/infringement fees	78	17	5	0	0
Offender's assets	25	22	13	30	11
Offender's financial expenditure	25	30	14	27	5

Note: 1 Due to rounding percentages may not add up to exactly 100.

Table 5.2 presents the results of Judges' response to the second question, asking how adequate each type of information was. Judges were most satisfied with the information on the offender's criminal record, with the vast majority saying that it was 'almost always adequate' and all Judges saying that it was adequate in at least most cases. While only 30% of Judges said that information on the offender's outstanding fines/infringement fees was 'almost always adequate', three-quarters thought it was adequate in at least most cases.

Judges were least satisfied with the information they received on the offender's assets and financial expenditure. About two out of five Judges indicated that this information was 'adequate in only a few cases' or 'almost never adequate'. A significant minority of Judges also indicated that this information was 'not generally provided or available' (30% in the case of the offender's assets and 25% in the case of the offender's financial expenditure).

Table 5.2 How adequate are specific types of information when sentencing someone to a fine?

	Almost always adequate	Adequate in most cases	Adequate in about half the cases	Adequate in few cases	Almost never adequate	Not generally provided/ Available
	% ¹	%	%	%	%	%
Offender's criminal record	89	11	0	0	0	0
Offender's family status/community ties	6	44	22	10	2	16
Offender's income	3	50	27	9	5	6
Offender's employment status	16	44	31	8	2	0
Offender's outstanding fines/infringement fees	30	48	16	5	0	2
Offender's assets	2	11	17	27	14	30
Offender's financial expenditure	0	14	23	25	13	25

Note:

1 Due to rounding percentages may not add up to exactly 100.

Table 5.1 has shown how important a particular type of information is to the sentencing process and table 5.2 how adequate this information is. Figure 5.1 combines both to show the discrepancy between importance and adequacy of information. It shows the proportion of Judges who thought a particular type of information was always or in most cases necessary and those who thought it was always or in most cases adequate. The gap between these two figures (necessity and adequacy) for a specific type of information, reveals the extent of any problems in this area of information needs.

Figure 5.1 Proportion of Judges indicating a particular type of information was necessary and adequate.

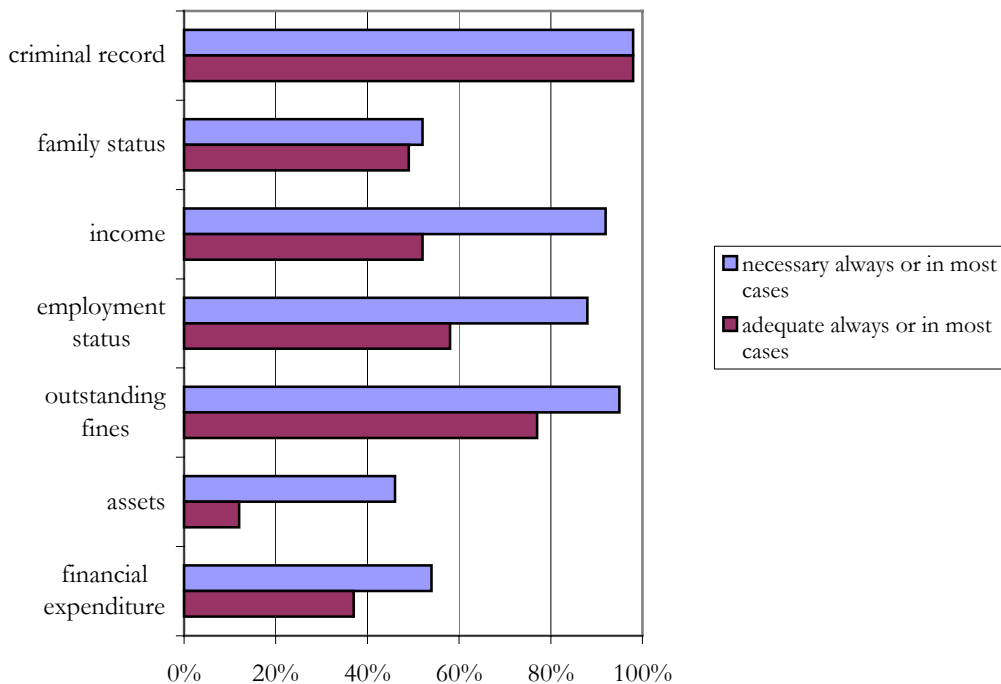


Figure 5.1 clearly shows that information about the offender's income was the area of most concern to Judges. Nearly all Judges (92%) said that this information was always or in most cases necessary when sentencing someone to a fine. Yet, only half of the Judges said that it was always or in most cases adequate. Information on the offender's employment status was also an area of concern with 87% of Judges indicating that this information was always or in most cases necessary, but only 60% saying that it was always or in most cases adequate.

While there was also a big discrepancy between the proportion indicating that information on the offenders' assets was necessary and adequate, fewer than half the Judges thought this information was always or in most cases necessary.

5.1.1 Improving information

Judges were asked how information about the offender and their circumstances could be improved to assist when sentencing someone to a fine. Two out of five Judges mentioned the need for a written statement of means or an assessment of the offender's financial situation. A couple of Judges mentioned that offenders should be required to sign a form relating to their means. In addition, several Judges indicated the need for evidence of income and employment.

Nearly one in five Judges mentioned the need to ensure that information is accurate, up-to-date and has been verified. A few Judges said that information should be independently verified, although one Judge acknowledged that while ideal, this would be impossible to achieve.

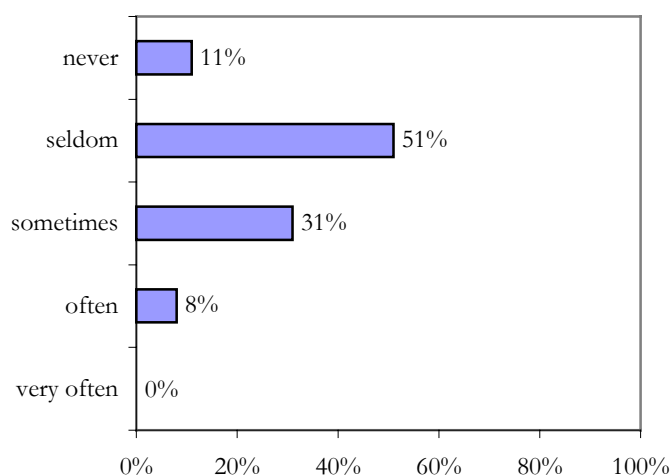
About one in ten Judges thought that better information could be provided on offenders' outstanding fines. This included always having a fines report available detailing outstanding fines and fines history. A few Judges mentioned that counsel in particular should be briefed adequately and be able to provide detailed information.

About one in ten Judges indicated that the information they currently receive is adequate when sentencing someone to a fine.

5.1.2 Written statement of means

Figure 5.2 shows that it was uncommon for Judges to request a written statement of means. While most Judges indicated that they would request a statement of means at some stage, half would only request one on a seldom basis. Under a third (31%) would sometimes request a written statement of means and only 8% would often request one.

Figure 5.2 How often a statement of means is requested



Question: How often is a written statement of means requested?

Judges were asked to indicate from a list provided, what were the main reasons they might not request a written statement of means when considering imposing a fine. Table 5.3 shows that the majority of Judges ticked each of the options provided. The reason supported by the highest number of Judges was that the fine was too small to warrant a written statement of means.

Table 5.3 Reasons for not requesting a written statement of means

	No.	% ¹
Lack of court time	44	69
Fine is too small to warrant a written statement of means	52	81
Sufficient information on offender's means presented orally	47	73
Offender indicates that they can pay a fine	50	78

Note

1 Percentages add up to more than 100 because Judges could list more than one reason.

Judges were also able to indicate other reasons why they might not request a written statement of means. Nineteen Judges took the opportunity to make further comments.

Five of these Judges commented further on time pressures in court with a couple mentioning that obtaining a written statement of means is impractical when there are large numbers of people appearing in court.

Other reasons why Judges may not obtain a written statement of means included that the defendant was illiterate, that the offending was not serious, or that the penalty prescribed by legislation was a fine only.

Judges who were interviewed were asked to expand on the circumstances in which they considered it necessary to obtain a written statement of means and reasons why or why not a written statement could assist them in sentencing.

Several of the Judges indicated that they obtain a written statement of means where there was some doubt as to the person's ability to pay the fine.

Generally speaking where I would have a gut feeling that the person can't afford to pay a fine but I am being urged by the defendant or by counsel that the fine is appropriate. Then I may ask for a written statement of means....I think a written statement of means is going to assist you in those cases that are on the border. It gets back to what I said before that if you are being urged to impose a fine in circumstances where you have a question mark as to whether the person is able to pay then I would request a written statement of means. In other cases, perhaps it's clear-cut.

Only when we have got somebody who is trying to pull the wool over our eyes.

A number of Judges mentioned that obtaining a statement of means is not a realistic option in a busy court:

Well, it's just impossible in a busy court to do that. The numbers that are coming through are anywhere between 70 and 100 people per day. If you are going to stand people down each time you would never get through. So its very much justice on the hoof. I think it comes back to not imposing fines unless you think its realistic that they can pay them and that is sort of a gut feeling or an experience.

We simply do not have the time to do that so the answer is never.

Judges indicated that the disposable income of the offender was the most relevant information in their decision whether to impose a fine or an alternative sentence.

Ideally it would be the net amount of surplus income but it's very seldom that you get that particular information.

The gap between the income and expenditure – the legitimate expenditure.

Also important was the source of the income:

Genuine ability as to income, so its not just rubbish. He's got a letter from his employer that says he's been working there for two years or six months and he gets paid x dollars per week instead of I am working in so and so; I can't tell you what the number is.' What we call hard evidence.

5.2 Court costs

Judges were asked in the questionnaire to indicate how often they would impose court costs in addition to a fine. The vast majority (98%) said that they would impose court costs in almost all cases.

This finding is supported by analysis of data from the Law Enforcement System for all convicted charges in 2000. Table 5.4 shows the number and proportion of charges receiving a particular sentence where court costs were imposed in addition to the sentence. The vast majority of charges where a fine was imposed were also ordered to pay court costs (94%). This contrasts with reparation where only 18% of convicted charges also had court costs imposed in addition to the reparation. Very few convicted charges receiving a community-based sentence also received court costs.

Table 5.4 Number and proportion of charges where court costs were imposed

	N	%	Total
Imprisonment	2	x	31,337
Periodic Detention	96	0.3	36,069
Community Service	59	0.5	12,142
Supervision	230	1.1	20,380
Community Programme	4	0.7	606
Fine	51,835	94.3	54,964
Reparation	2098	17.9	11,692
Driving disqualification	17677	47.7	37,056
Deferment	507	4.2	12,208

x denotes percentage of less than 0.05.

This finding was confirmed in the interviews with most Judges indicating that court costs were routinely imposed where there was a fine:

I generally impose costs as a matter of practice and policy – almost every instance where a fine is imposed after conviction.

About half of the Judges mentioned that court costs were an acknowledgement that the offender had “cost” the system and that it was a form of cost recovery.

Several Judges expressed concern at the additional burden that court costs placed upon offenders and in particular the standard amount of \$130 for court costs was considered excessively high. Comments included:

\$130 is significant and another good reason not to impose a fine. With \$130 court costs you are starting to look at a big fine.....Court costs are a significant extra penalty not provided for in the penalty part of the legislation.

Well again it's a nonsense than they have increased court costs up to \$130 and sometimes I will simply impose a fine of court costs only, so court costs certainly are a factor to take into account and ...I may well reduce fines because of the \$130 which has to be paid.

5.3 Instalments

Fines are payable within 28 days of imposition unless an order is made for payment by instalments. The extended time must not exceed 18 months from the granting of the extension¹⁴.

Judges who were interviewed were asked their views on paying fines by instalments and the length of time over which people are able to pay the fine. Most of the Judges indicated that they were in favour of people paying fines by instalments. Instalments were seen as an appropriate way of making it possible for people on lower incomes to be fined. However, there were a range of views on the length of time over which people should pay the fine. Some thought that anything more than a two-year period was an inappropriate length of time. Other Judges simply mentioned that the time period should not be too lengthy.

I think its unrealistic to have a long term commitment to pay fines. Anything over two years is unrealistic.

Paying fines by instalments is appropriate. Drink driver could expect to pay \$500-\$600. Most people can't pay that in one amount. But where a person had a lot of fines you can't expect them to mortgage their future. Two years is the absolute maximum time over which you can expect people to pay.

I've got no problem with people paying fines by instalments. If the instalment amount is ridiculously low or if the time over which it has to be paid is too lengthy then I will look at an alternative sentence.

A couple of Judges thought there should be some flexibility in the time over which people could pay the instalments, to take account of individual circumstances.

I can see no reasons why they should pay it over a restricted time. If it's a matter that deserves a heavy fine it can be of assistance if that is kept in place for some time...

However, a couple of Judges indicated that while good in theory, instalments do present some practical difficulties:

Fine by instalment is good in one sense that it is a permanent reminder of the reasons as to why the person ended up in court. But it's also I think unfortunately seen as a means of getting rid of a difficult problem. 'Oh I can pay by instalments so therefore it will be OK.' And people again I think enter into, or say they can pay a fine, knowing that they have the opportunity of paying it off without the real intention of actually ever doing so.

¹⁴ Summary Proceedings Act 1957 sections 86, 86A. This has been changed to five years by an amendment to the Summary Proceedings Act in the Sentencing Act 2002.

I agree with the ability to pay fines over a period of time. But once again it's great in theory but in practice it breaks down. Because the time of life of so many of the people that we are dealing with, they are in flux, at a state of change. So many of them are going from address to address, that even for collections to keep up it's a huge task.

5.4 Summary

- Four out of five Judges said that information on the offender's criminal record and outstanding fines/infringement fees was 'almost always necessary' when sentencing someone to a fine and nearly all Judges considered it 'necessary in most cases'.
- Over half of Judges thought that information on the offender's income and on their employment status was 'almost always necessary' and most thought that it was 'necessary in most cases'.
- Judges were most satisfied with information they received on the offender's criminal record – 89% said it was 'almost always adequate' and all Judges said it was 'adequate in most cases'. While only 30% of Judges said that information on the offender's outstanding fines was 'almost always adequate' three-quarters thought it was 'adequate in most cases'.
- Information on the offender's income was of greatest concern to Judges. Nearly all Judges said this information was necessary, but only half thought it was adequate in at least most cases.
- Half of the Judges said they would seldom request a written statement of means, and 31% said they would sometimes request a written statement of means. Several Judges who were interviewed indicated that they would obtain a written statement of means when there was some doubt as to people's ability to pay the fine.
- Nearly all Judges said they would impose court costs in addition to a fine. Several Judges who were interviewed expressed concern at the additional burden that court costs placed upon offenders.
- Most Judges who were interviewed were in favour of people paying fines by instalments. However some Judges expressed concern that the time period to pay should not be too lengthy or the instalments set too low.

6 Judicial perceptions of people's ability to pay fines

The percentage of convictions for imprisonable offences resulting in a fine has decreased from 41% in 1985 to 22% in 2000. Triggs (2000) found that any offender sentenced in the 1980's had a higher probability of receiving a monetary penalty than an offender with the same statistical characteristics in the 1990s. She suggests that this may in part be due to a change in the average circumstances of people coming before the Court (such as the ability to pay the fine).

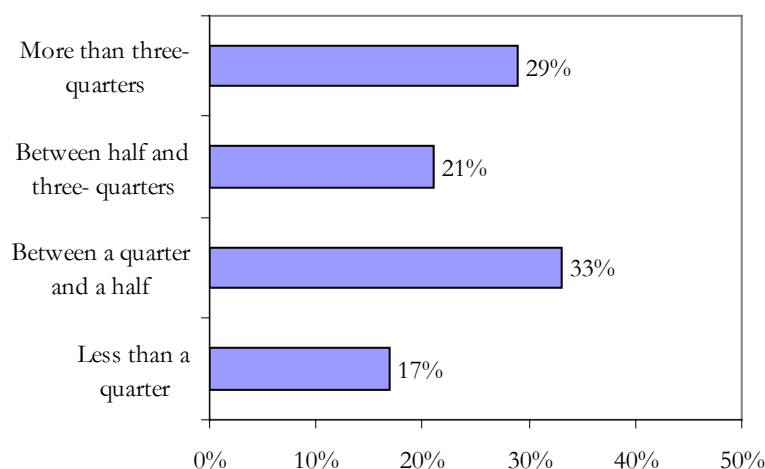
This chapter presents information on questions in the postal questionnaire and interview asking Judges their perceptions of people's ability to pay fines.

6.1 Alternative sentence imposed due to means

Judges were firstly asked to indicate the proportion of cases in which they would impose an alternative sentence to a fine because they thought the offender could not pay the fine they would usually impose.

Figure 6.1 shows that 29% of Judges would impose an alternative sentence in more than three-quarters of cases because the offender cannot afford to pay the fine they would usually impose and a further 21% would impose an alternative sentence in between half and three-quarters of cases. A third of Judges would impose an alternative sentence in between a quarter and a half of the cases and only 17% said they would impose an alternative sentence to a fine in less than a quarter of cases.

Figure 6.1 Proportion of cases where an alternative sentence is imposed because offenders could not pay



6.2 Reasons for decrease in the use of fines

In the interviews Judges were asked for their views on the factors contributing to the decrease in the use of fines. Economic factors were seen to be the biggest contributor to this change in sentencing pattern. Comments included:

People can't pay. In 1985 the economy was buoyant. We had the crash in 87. You can't fine, impose a meaningful fine on an unemployed person, somebody on the benefit.

Social-economic profile. That is what it comes down to. No point in a fine for unemployed. This just affects the children.

Four Judges also mentioned the high level of outstanding fines, as a factor in the decrease in the use of fines.

For me probably the volume of unpaid fines that we constantly see with people who come before the Court and you may want to fine but you find that they've got large numbers of fines outstanding and you wonder about the effectiveness of the fine. I think fines for some people, for a lot of people, is a way of getting rid of the problem on the day and that they will face the difficulty of payment of the fine at some later point and of course that often doesn't happen.

A couple of Judges mentioned more punitive sentencing regimes which reduce sentencing options available to Judges.

The way in which sentencing options are reduced by the need according to the government to impose for quite a number of offences terms of imprisonment. The legislature has given an indication that for example in the third or subsequent drink drive the maximum term of imprisonment is two years. Therefore the indication is that someone on a third or subsequent should be sent to prison. Whether that be suspended or not is another matter entirely.

Statistical analysis shows that women are less likely than men to receive a fine even after taking into account the lower average seriousness of offences committed by women (Triggs, 2000). Judges were asked in the interviews what they thought were some of the reasons for this difference. Most indicated that the primary reasons were both that women were more likely to be in receipt of a benefit and also to have primary responsibility for child-care.

More women who appear before me are in the receipt of benefit assistance as their sole or main income stream. Only in exceptional cases would I impose a meaningful fine on a woman on a domestic purposes or other form of benefit. My own view about that is that I am not punishing her but I am taking food out of the mouth and sandals off the feet of her children.

I think probably my impression would be that they are less able to normally meet a fine and they are more suitable on average to community service than the male offender. A. because it's more serious offending and B. because they have, at least normally have, a larger ability to meet a community-based sentence during the week.

Economic factors were also considered to be the main reason why Māori and Pacific people were less likely to receive a fine.

A little bit the same as for women. Much less chance of long term stable employment which gives rise to their ability to meet a meaningful fine. Government support and dependants again or in the cases of many of the Courts we sit in here...seasonal work....

6.3 Amount of fine

Judges were also asked in the interviews if there was an amount of fine they would not go above in the case of a person who is unemployed. Half of the Judges interviewed indicated that they don't have any particular figure in mind – rather it was dependent on personal circumstances.

No I don't have any set amount. It's about the individual case and circumstances of that person...

Where Judges quoted an amount of fine they would not go above this ranged widely from \$130 through to \$1,000.

...Off the top of my head my guess would be something in that \$250 level that I have referred to you before. Practice here is to ordinarily add costs on to the fine so it would be \$250 plus the \$130.

A couple of Judges indicated that they were unlikely to impose a fine on someone who was unemployed:

A person that is unemployed is very unlikely to get a fine in my view. But they might be willing to pay court costs of \$130 but how will they ever pay it?

I am unlikely to impose a fine upon an unemployed person who is incapable of paying it within an appropriate time. So there is not a level. It's personal circumstances.

6.4 Summary

- Twenty-nine percent of Judges said they would impose an alternative sentence to a fine in more than three-quarters of cases because an offender could not afford to pay the fine they would usually impose.
- Judges who were interviewed indicated that economic factors were the biggest contributor to the decrease in the use of fines in the last two decades. Also mentioned were the high number of outstanding fines and more a punitive sentencing regime.
- A lower use of fines amongst women and Māori was due to childcare commitments and economic factors.
- Half of the Judges who were interviewed indicated that they did not have an amount of fine they would not go above in the case of a person who is unemployed. Rather it was dependent on personal circumstances. A couple of Judges said they would be very unlikely to fine someone who was unemployed.

7 Other issues

7.1 Sentencing and Parole Reform Bill

This research took place in the context of the development of the Sentencing and Parole Reform Bill. The Bill was subsequently passed in May 2002 and came into force on 30 June 2002 as the Sentencing Act and Parole Act. However, Judges were surveyed and interviewed before the Bill was passed into legislation. The Sentencing Act includes a stronger presumption in favour of fines as the first resort than has been the case in the past. It also provides that the Court must take into account the financial circumstances of the offender in setting the level of the fine and this may have the effect of either increasing or decreasing the fine. This provision is set out in Section 40 of the new Sentencing Act 2002¹⁵.

Judges who were interviewed were asked a couple of questions with respect to the Sentencing and Parole Reform Bill. Firstly, whether the presumption in favour of fines would encourage a greater use of fines and secondly, whether the ability to increase or reduce the fine according to means would encourage a greater use of fines across a range of offending.

In response to the first question a couple of Judges were emphatic that the presumption in favour of fines would not encourage a greater use of fines. Other Judges were unsure as to whether this policy would make much difference to what in fact was already current practice. The bottom line was people's inability to pay fines.

Obviously Judges are required to abide by the law. I have misgivings about that policy, particularly in areas such as that where I am involved, because at the end of the day if a person can afford to pay a fine and the seriousness of the offence and their list of previous convictions merits a fine then they will get a fine. The reasons they are not getting a fine is because of other factors. So in an area like this I don't know it will make a great deal of difference.

The new Bill will encourage people to think about fines more, but in reality things are different. People need jobs.

One Judge however, spoke positively of the presumption in favour of fines and in particular the encouragement to use non-custodial solutions.

¹⁵ Sentencing Act 2002 Section 40:

Determining amount of fine

1. In determining the amount of a fine, the court must take into account, in addition to the provisions of sections 7 to 10, the financial capability of the offender.
2. Subsection (1) applies whether taking into account the financial capacity of the offender has the effect of increasing or reducing the amount of the fine.
3. If under an enactment an offender is liable to a fine of a specified amount, the offender may be sentenced to pay a fine of any less amount, unless a minimum fine is expressly provided for by that enactment.
4. If a court imposes a fine in addition to a sentence of reparation, it must, in fixing the amount of the fine, take into account the amount payable under the sentence of reparation.

In response to the second question, that is whether the ability to increase or reduce the fine according to means would encourage a greater use of fines across a range of offending, a few of the Judges indicated that they simply did not know the answer to this question.

Don't know. Difficult question to grapple with. Sounds strange to consider increasing a fine because the person has more means. Would have thought the fine should relate to the offence not the means. Would have difficulty conceiving a situation where I would increase the fine.

Again, one Judge brought up the issue of consistency in sentencing:

For me I don't know that it would, that this is going to make a great deal of difference to whether I fine, don't fine or amount of fine. Because it's about gravity of offending, it's about consistency in sentencing. This Bill is saying we should be fining more, but we have to of course enforce the law and that may be the end result. But presently my feelings are no.

A few Judges indicated that this provision in the Act was not different to current practice and would therefore have limited impact.

Well it's exactly the same as the law is now under the Criminal Justice Act so I don't think it changes anything.

I don't think so because again if a fine is appropriate then an appropriate fine is going to be imposed now.

Judges were asked whether they could think of anything that could be done in terms of the new legislation to encourage a greater use of fines. Several of the Judges thought that there was little that could be done to encourage a greater use of fines:

No I have to say that I can't see. The general comment I have and I hear being made is that it's difficult for fines being imposed upon people who cannot meet them and increasing the level of fines and increasing the attempts at payment of those fines by enforcement might have a very serious social impact upon a large percentage of the population we deal with. And Judges see that as a consequence and then I don't think they are going to impose them.

A few of the Judges mentioned that the only factor, which would result in an increase in the use of fines, would be an improvement in the economic situation:

You are asking for a manifest improvement in the economic situation of perhaps two-thirds of our customers. Short of that, no.

A couple of Judges made suggestions for encouraging greater use of fines. One suggested an improvement to the infringement fee system and another to the collection of fines.

There may be instances where you would like to impose a fine but the person might have thousands of dollars of outstanding fines that are imposed without any regard to the persons' means to pay because of the instant fine regime...so then when someone comes before the Court for drink driving and your first reaction there would be to look to a fine it simply may not be possible.

I think some overhaul of the instant fine regime may be appropriate because some of the fines there are really quite high compared with the sort of fines which are being given in court for more serious offending.

Yes, if there was an ability on imposing a fine to indicate that there be an order for immediate execution, in other words the fine had to be paid immediately or the person in default would be held in prison then I am sure that fines could be used much more often than they maybe are at the moment.

7.2 Improvements

Judges were asked in the interviews what improvements could be made to the way fines were both imposed and enforced. These were two separate questions but their responses to these are presented together.

A few Judges suggested changes to the instant fine regime. These are two of their comments:

It would be a vast improvement if there were no instant fines. These are a huge headache and have not reduced offending.

...the disrespect for the system, and for non-payment of fines stems from the ease with which fines can be imposed for infringement fees....it's a huge irony that we are restricted to not imposing fines that can't be collected within a reasonable period of time and are within the means of those before us and yet the infringement fees for speeding as well as for the stationary vehicle offenders are fixed and in no way related to the means of the owner....until that dichotomy is solved I think that the fines system as a first penalty will always lack integrity and fall into disrespect.

A couple of Judges suggested the need to ensure that payment of fines is immediate:

Immediacy. Today, you make the arrangement and you start next week. That's the deal...

Greater monitoring of them and a closer monitoring. So that there isn't suddenly six months whistle by when there has been no payment. In other words where collections are really onto making an arrangement and ensuring that it is kept and having some ability to follow-up and demand that the person come back to court if they miss out. Again that's going to require huge resources and I think impractical.

Other suggestions included:

...remission of fines is something that can only be done by a Judge and I think that there could be appropriate senior staff within the Department who could undertake that sort of work. It seems a bit of a waste of a Judge's time to be honest to be sitting here deciding on whether a person's fines for traffic charges should be remitted or not.

7.3 Other comments

Forty-four Judges (approximately two-thirds of the Judges who responded to the postal questionnaire) had further comments to make about court-imposed fines. They commented on a range of issues.

Several Judges commented positively on fines as a sentence, with one Judge stating that it was important that they be retained as a sentencing option. One Judge indicated that court-imposed fines are realistic with offenders making an effort to pay them. A couple of Judges indicated that the collection and enforcement of fines had improved in recent years. These responses were echoed in the interviews with Judges.

A fine, provided it is going to be paid, is a very good sentence. Its quite amazing the way first defendants may be fined and that then deters them from further offending....

Fines are perfect for minor matters and for first offenders....

However, a couple of Judges, while stating that they would like to use fines more often, indicated that this was limited by people's inability to pay fines.

About a third of Judges who made further comments, questioned the effectiveness or appropriateness of fines as a sentence with several stating that fines do not act as a deterrent. Judges indicated that this was primarily due to an offender's lack of ability to pay a fine, with the sector of the community most likely to be fined being those least able to meet the fine. A few Judges also stated that some offenders 'play' the system and that fines are treated with contempt. Fines were perceived as most effective where the person had the ability to pay the fine off within a short time frame. A few Judges also expressed concern at how often they remit fines.

Nearly one in every four Judges who responded to this question, commented on the presumption in favour of fines as the sentence of first resort. A couple of Judges indicated that fines were already being imposed whenever possible. Others stated that a presumption in favour of fines would be ineffective or that they were reluctant to see fines used more widely. Judges pointed particularly to offenders' lack of ability to pay fines, stating that many offenders were unemployed or struggling financially. Two Judges said that while the presumption in favour of fines was good in theory it was not practical in reality. One of the Judges interviewed made the following comment:

Well I repeat what I said in my questionnaire – that I have a concern that the policy doesn't take into account real life in places like.....and it may be all very well for the well-heeled in places like Wellington but by and large here, if a fine is not imposed it's because a fine can't be imposed.

About one in five Judges commented on the infringement fee system with a few expressing concern that infringement fees are higher than those imposed in the Court where Judges are obliged to consider means. Other Judges indicated that the accumulation of unpaid infringement fees impacts on the credibility of fines as a sentencing option. Again, issues relating to infringement fees were echoed by Judges who were interviewed:

I had one boy yesterday, only about 20 in court for \$18,000 or \$19,000 of unpaid fines...and a lot of them are related to what I call standing offences, parking, no registration or warrant...Now that's when the system is in disrespect if you ask me and how can you compare their position against other people who are fined in court and where we are trying to say this is a meaningful penalty in your case.

A couple of Judges expressed concern where statutes impose fines as the only penalty for an offence (for example, Fisheries legislation). This was seen to result in difficulty in imposing fines commensurate with the gravity of offending where the offender didn't have the means to pay the fine.

A few Judges also mentioned issues of enforcement with three Judges suggesting tougher enforcement procedures. This included seizing of vehicles and other assets (eg boats, stereos) more often and stopping people with outstanding fines from leaving New Zealand.

8 Conclusion

8.1 Introduction

This is one of the first studies in New Zealand to examine judicial attitudes towards fines and judicial practice in the imposition of fines. All District Court Judges were sent a postal questionnaire to which there was a 79% response rate. The questionnaire was followed-up with in-depth interviews with ten District Court Judges.

The research was undertaken in the context of policy work on a sentencing framework and in particular the Sentencing and Parole Reform Bill¹⁶. Judges were aware that the Bill included a stronger presumption in favour of fines as the sentence of first resort. The findings were designed to contribute to the refinement of the Bill and implementation of the new legislation.

The overall aim of the survey was to examine how court-imposed fines were being imposed at the time of the research. More specifically the aims of the research were to identify judicial perceptions of fines as a sanction; identify factors involved in determining the amount of fines imposed for a variety of crimes and offences; identify current practices and policies limiting the imposition of court-imposed fines and limiting the ability to adjust the amounts of fines imposed; and assess judicial perceptions of people's ability to pay fines. Conclusions will be drawn in relation to each of the objectives of the study.

Fines are the most widely imposed penalty in the New Zealand courts. For many minor offences, and in particular traffic offences, a fine is the only available sanction. In 2001, 33% of all charges resulting in a conviction had a fine imposed as one of the sentences. Traffic and miscellaneous offences were the most likely to result in a fine in 2001 (55% and 62% respectively). The median fine in 2001 was \$300.

8.2 Judicial perceptions of fines as a sanction

Results of the survey and interviews showed that Judges consider fines to be a crucial sentencing tool. They are a useful sanction for first time and minor offenders and are considered particularly appropriate for traffic offenders. They are also regarded as relatively easy to administer and cost-effective compared to other sentencing options.

However, while some Judges expressed a desire to impose fines more often, the reality was that many people coming before the courts simply could not afford to pay fines. Judges commonly mentioned this as one of the main disadvantages of fines as a sentence. Judges also expressed concern at the impact that fines have on the offender's family; in some cases this is in fact greater than the impact on the offender. Fines were perceived as most effective when the offender had the ability to pay the fine off in a short period of time.

¹⁶ This Bill came into force on 30 June 2002 as the Sentencing Act and Parole Act.

These attitudes clearly came through in comments on the Sentencing and Parole Reform Bill and particularly the presumption in favour of fines. Some Judges commented that while in theory, imposing fines where appropriate rather than a community-based or custodial sentence was a sound policy, the bottom line was many offenders' inability to pay fines. However, several Judges made it clear that a presumption in favour of fines as set out in the Sentencing Act 2002 was no different to current practice where they already imposed fines whenever possible.

Most Judges who were interviewed agreed that their main aim when imposing fines was simply to punish and several indicated that fines were effective in achieving this purpose. However, some Judges indicated that one of the disadvantages of fines was that they did not address underlying reasons for offending, with a couple of Judges indicating that fines can lead to further offending.

8.3 Factors involved in determining the amount of fines imposed for a variety of crimes and offences

The sentencing principle of 'equality before the law'¹⁷ argues that personal characteristics of the offender (unrelated to the crime) should be considered irrelevant in sentencing decisions. Punishment should reflect the seriousness of the crime. However, the principle of 'equality of impact' argues that punishment should reflect the situation of each offender. People are not equal in terms of social and economic circumstances and sentencing must be adjusted to take this into account.

Fines are perhaps the sentence where these two principles are most obviously in tension. To treat all offenders as alike when imposing monetary penalties ignores the reality that wealth is not distributed evenly across society (Nicholson, 1994). Two main models emerge in fixing the fine. Some countries have developed unit fines in which the size of the fine is systematically adjusted to the means of the offender. Other countries, including New Zealand, employ a system of fining in which the main consideration is the seriousness of the offence and then some regard is given to altering the fine based on the offender's means.

It is a statutory requirement in New Zealand to take the means of the offender into account when setting the level of the fine. The findings from the research certainly show that New Zealand Judges are attempting to reflect the reality of unequal wealth in their sentencing decisions. Over half of the Judges indicated that the means of the offender would have a great deal of influence on the amount of fine they would impose. Also, two-thirds of the Judges stated that the offender's ability to pay the fine would be a crucial factor in their decision whether to impose a fine or an alternative sentence.

However, results from the survey also showed that Judges were more likely to impose alternative sentences to fines in the case of unemployed offenders rather than adjust the fine downwards. Judges were presented with four scenarios and were asked to indicate

¹⁷ Ministry of Justice. 1997. *Sentencing Policy and Guidance: A discussion paper*. Ministry of Justice, Wellington, New Zealand.

the amount of fine that would be their starting point in each case. Each scenario described a specific offence ('possession of cannabis', 'common assault', 'driver exceeding specified alcohol limits', and 'dangerous driving'). Judges were then asked to indicate what factors they would take into account in increasing or decreasing the amount of the fine.

Across all four scenarios only one in five Judges (approximately) said that they would decrease the fine where the offender was the recipient of an unemployment benefit. Judges indicated that they were most likely to consider another sentence to a fine for an unemployed offender where the starting point for the fine was relatively high. This was the case in three out of the four scenarios, 'common assault', 'driver exceeding specified alcohol limits' and 'dangerous driving', where the average starting point for the fine was either \$500 or \$600. In the case of 'possession of cannabis' where the average fine was \$150, two-thirds of the Judges said that they would not change the amount of the fine from their starting point when faced with an offender who was the recipient of an unemployment benefit.

Judges were asked if there were specific financial or family circumstances that would lead them to impose a sentence other than a fine. Two out of five Judges said they would not impose a fine where the offender had dependants, and a similar proportion said they would not impose a fine where the offender was the recipient of a benefit or on a low income.

Previous convictions for a similar offence were also a key factor in determining the amount of fine or type of sentence imposed for a particular offence. Judges were most likely to increase the fine where the starting point was relatively low ('possession of cannabis') and were most likely to consider an alternative sentence where the starting point was relatively high, no doubt in part reflecting the seriousness of the respective offences.

Only a minority of Judges said they would increase the fine where the offender had an above average income. This was consistent across the four offences, although Judges were most likely to increase the fine for an offender with an above average income convicted of 'common assault' and least likely for an offender convicted of 'driving with excess alcohol'.

The need to ensure consistency in sentencing was one of the main reasons given by Judges who were interviewed as to why alternative sentences tend to be imposed on people who cannot afford to pay the fine that would usually be imposed. Judges felt constrained by how the public perceive vastly differing levels of fines for the same offence. Young (1989) also found that Judges did adjust the amount of fine to reflect the circumstances of the offender but only within narrow bands. Any movement was limited by the stress on formal equality.

8.4 Current practices and policies which are limiting the imposition of court-imposed fines and limiting the ability to adjust the amounts of fines imposed

8.4.1 Provision of information

In order to take into account the means of the offender in determining the amount of the fine the Judge needs adequate information concerning the offender's financial circumstances. New Zealand Judges are obliged to obtain a statement of the offender's means before imposing a fine, unless they are satisfied that the offender has sufficient means to pay a fine. Such a statement may be oral or in writing.

Overseas research has shown that use of a means form is relatively low (Nicholson, 1994). The results from this survey also showed a low use of written statement of means. About two-thirds said that they would seldom or never ask for a written statement of means and about a third said they would sometimes request a written statement. Time pressures were clearly one of the main reasons why Judges did not request a written statement of means, but other reasons included that the fine was too small to warrant a written statement of means, or that the offender indicated that they had the ability to pay a fine. Judges who were interviewed indicated that written statements of means were only considered necessary when there was some doubt as to the person's ability to pay a fine.

However, when asked how information could be improved to assist them when sentencing an offender to a fine, two out of five Judges mentioned the need for a written statement of means including evidence of income and employment. Judges who were interviewed indicated that lack of information was one of the main factors limiting their ability to adjust fines according to the means of the offender.

Judges considered the offender's criminal record and information on their outstanding fines to be the most critical information when sentencing someone to a fine. Also considered necessary was information on the offender's income and employment status. However, while Judges were satisfied with the information they received on the offender's criminal history, they were less satisfied with information they received on the offender's income. Only half the Judges said that this was adequate always or in most cases.

8.4.2 Court costs

Court costs are imposed in nearly all cases where there is a sentence of a fine. These are currently set at \$130 and are considered standard practice when sentencing someone to a fine. Court costs are an unrecognised penalty imposed upon offenders; while the median fine in 2001 was reported to be \$300, the monetary penalty imposed upon offenders is in fact \$430 once court costs have been factored in.

Several Judges who were interviewed considered court costs to be excessively high and expressed concern at the additional burden they place upon offenders. A couple of Judges indicated that this is a factor which may either cause them to think of an alternative sentence or to reduce the fine they would ordinarily impose.

8.4.3 Infringement fees

While the research did not set out to specifically canvass opinions on issues relating to the infringement fee system, Judges frequently raised concerns in this area. One of the main concerns was the fact that infringement fees are imposed without any regard to the means of the offender. This, along with the accumulation of unpaid infringement fees, had an impact on the credibility of fines as a sentencing option in the Court.

In his paper on instant fines, Wilson (2001) states that 'Perhaps one of the major difficulties of the present infringement regime is that it imposes penalties with no regard to a person's ability to pay' (p. 76). He goes on to say that infringement fees also do not recognise previous offending and a repeat offender receives the same fine as a first time offender. Wilson concludes that while fines are a useful administrative tool, the current infringement system would benefit from a review and legislative uniformity.

8.5 Judicial perceptions of people's ability to pay fines

It was clear that Judges thought that one of the main reasons why fines are not used more often was people's inability to pay fines. This issue was raised frequently in response to the questionnaire and in the interviews with Judges. Twenty-nine percent of the Judges said that they would impose an alternative sentence to a fine in more than three-quarters of cases because they thought the offender could not pay the fine they would usually impose. Judges who were interviewed also perceived that there had been an increase in the proportion of people appearing before them who could not afford to pay a fine.

Payment by instalments was seen as one of the ways in which it was possible for people on lower incomes to be fined. However, many of the Judges who were interviewed indicated that it was important that the period over which people should pay a fine should not be too lengthy, with some saying it should not be more than a two year period.

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Appendix 1 Scoping Exercise

Imposition of court-imposed fines

Researchers undertook a scoping exercise in the Wellington region as part of the project development on a study on court-imposed fines. The purpose of the scoping exercise was to identify questions and issues to be addressed in the main study and the best methods of collecting this information. As part of the exercise, researchers undertook a search of court files and held discussions with a Judge, probation officers, collections and court staff, and duty solicitors. This paper presents the main findings of those discussions.

Determine what factors Judges are taking into account when they are deciding whether or not to impose a fine

Judges are basically taking three main factors into account when imposing fines:

- Nature of offence – and in particular, minor offences (shoplifting, drug, traffic) and first time offenders. Some offences are non-imprisonable, and therefore the Judge can only impose a fine.
- Ability of a person to pay the fine.
- Current outstanding fines and compliance with fines in the past.

Issues

- Court costs of \$130 are imposed in addition to the majority of fines. This means that a person receiving a \$100 fine will effectively be paying \$230.
- The ability of a person to pay a fine was considered a significant constraint in Judges' ability to impose fines and in whether fines could be imposed more frequently. Collections staff indicated that improvement in enforcement methods meant that fines were a more viable sentence.
- There was the consensus that Judges perceive a \$150 fine or less to be payable by all offenders, but disagreement whether in fact it was reasonable to assume everyone could pay this amount. Concerns were expressed over the hardships to families and communities that fines were causing.
- In some cases Judges are imposing fines for non-imprisonable offences knowing the person cannot pay them.

Determine what factors Judges take into consideration when fixing the amount of the fine

It was unclear from the scoping exercise whether Judges were taking into account the means of the offender when fixing the amount of the fine. A couple of participants indicated that Judges tend to have unwritten practices regarding the amount of fine to impose for certain offences (particularly traffic offences) and if the person can't pay that amount they would impose an alternative sentence. A search of court files certainly seemed to indicate that it was the offence, rather than the persons' employment status, that was linked to the amount of the fine.

Issues

- How much discretion do Judges currently have when deciding on the amount to fine an offender?

Identify the information that is currently available to Judges when deciding to impose a fine and fixing the amount of the fine

Means of the offender – this information is in the main presented orally, often by the duty solicitor or the offender themselves. Written statement of means are only prepared on an occasional basis and when there is some uncertainty as to whether the person can pay the fine or where the Judge is considering a substantial fine.

Pre-sentence reports – these reports, prepared by probation officers, tend to be done in more serious cases or where there are specific issues which need to be addressed. Sometimes a person will be stood down to enable a ‘same day’ report to be prepared. The reports contain information about a person’s means and are prepared in consultation with collections staff. They will recommend a particular sentence.

Outstanding fines – there were a number of ways Judges could be informed of outstanding fines – the offender themselves, probation officer, collections staff or duty solicitor. Collections readily have this information available but it doesn’t appear that it is routinely given to Judges.

Issues

- Judges receive a lot of their information about the means of the offender and circumstances orally.
- The quality of information before the Judge relies heavily on the duty solicitor and the offender themselves. Judges rely a lot on what the offender themselves say regarding their ability to pay a fine. This raises the issue that some offenders see fines as an easy way out and say they can pay it when they don’t have the means to do so.

Identify what additional information would assist Judges when they are deciding whether to impose a fine and fixing the amount of the fine

Participants tended to indicate that Judges currently had sufficient information to assist them when making decisions regarding fines. It was seen to be the job of probation officers and duty solicitors to make sure Judges had adequate information. A couple of participants did state that better information, and in particular written information, about the means of the offender would be useful for Judges.

Issues

- The types of information available to Judges appears to be sufficient, but there is some question whether this is routinely available. The quick turn over in the list court is an issue.

Other issues

- What are fines aiming to achieve? It was thought that fines were only effective as a deterrent for a small proportion of offenders, primarily first time offenders. They were not seen to be effective for young offenders (male) and repeat offenders. Fines were seen as a 'convenient' sentence.
- Concern was expressed regarding infringement fees and the need for alternative to fines. Judges appear to be remitting considerable numbers of these.

Appendix 2: Questionnaire



Research on court-imposed fines

Fines are the most commonly imposed sentence in New Zealand courts. For many minor offences, and in particular traffic offences, a fine is often the only available sentence.

The Minister of Justice has recently introduced a Sentencing and Parole Reform Bill. The Bill includes a stronger presumption in favour of fines as the sentence of first resort. The findings of the research will contribute to the refinement of the Bill and implementation of the new legislation.

This questionnaire is designed to obtain the views of all District Court Judges on a range of areas, including perceptions of fines, people's ability to pay fines and factors involved in determining the amount of fines for a variety of offences.

It is very important that we get the views of as many District Court Judges as possible. The questionnaire should take about **20 minutes to complete**.

Each questionnaire has an individual identifier to enable us to follow-up on late returns. This individual identifier will only be known to the researcher and no individual Judge will be able to be identified in the final report.

If you have any enquiries please contact:

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Please answer the following questions by ticking boxes or writing in comments as requested.

1. In general, how much influence does the means of the offender as opposed to other factors have on the amount of the fine you impose? Please tick one box.

no influence-----	<input type="checkbox"/>
some influence-----	<input type="checkbox"/>
a moderate influence-----	<input type="checkbox"/>
a great deal of influence-----	<input type="checkbox"/>

2. In approximately what proportion of cases would you impose an alternative sentence rather than a fine because you think the offender cannot afford to pay the amount of fine you would usually impose? Please tick one box.

less than a quarter-----	<input type="checkbox"/>
between a quarter and a half-----	<input type="checkbox"/>
between half and three-quarters-----	<input type="checkbox"/>
more than three-quarters-----	<input type="checkbox"/>

The next series of questions ask about amounts of fines that you consider appropriate for a range of offences. You are then asked to consider what factors you would take into account in increasing or decreasing the amount of the fine.

3. Possession of cannabis— Misuse of Drugs Act s 7(1)(a) & s 7(2)(b). Maximum penalty 3 months imprisonment or a \$500 fine.

- a. If you were to sentence an adult, first time offender who pleads guilty, to a fine for possessing two cannabis cigarettes (less than 10gms), approximately what amount of fine is your starting point for this offence?

- b. To what extent would the following changes in the offender’s circumstances decrease or increase the amount of fine you would impose? Would you decrease the fine, not change the amount of the fine, increase the fine or would you consider another sentence? Please tick one box next to each statement.

	decrease the fine	not change the fine	increase the fine	consider another sentence
offender had two prior(non-drug) convictions-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had two prior similar convictions-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 17-19-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 40 or over-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender pleaded not guilty -----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was on the unemployment benefit-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had an above average income-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
additional sentences being considered-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
other factors (please specify)_____				

4. 'Common assault' – Summary Offences Act 1981 s 9. Maximum penalty 6 months imprisonment or \$4,000 fine.

a. If you were to sentence an adult, first time offender who pleads guilty, to a fine for punching someone twice in the face outside a pub, approximately what amount of fine is your starting point for this offence?

b. To what extent would the following changes in the offender's circumstances decrease or increase the amount of fine you would impose? Would you decrease the fine, not change the amount of the fine, increase the fine or would you consider another sentence? Please tick one box next to each statement.

	decrease the fine	not change the fine	increase the fine	Consider another sentence
offender had two prior (non-violent) convictions-	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had two prior similar convictions-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 17-19-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 40 or over-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender pleaded not guilty -----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was on the unemployment benefit-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had an above average income-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
additional sentences being considered-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
other factors (please specify)_____				

5. 'Driver exceeding specified alcohol limits (first or second offence)'- Land Transport Act 1998 s 11 & 56(3)(a). Maximum penalty 3 months imprisonment or \$4,500 fine

a. If you were to sentence an adult, first time offender who pleads guilty, to a fine for driving with a breath alcohol level of 600 micrograms of alcohol per litre of breath, approximately what amount of fine is your starting point for this offence?

b. To what extent would the following changes in the offender's circumstances decrease or increase the amount of fine you would impose? Would you decrease the fine, not change the amount of the fine, increase the fine or would you consider another sentence? Please tick one box next to each statement.

	decrease the fine	not change the fine	increase the fine	consider another sentence
Offender had two prior (non-traffic) convictions--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had two prior similar convictions-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 21-25-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 40 or over-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender pleaded not guilty -----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was on the unemployment benefit-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had an above average income-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
additional sentences being considered-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
other factors (please specify)_____				

6. ***'Dangerous driving' – Land Transport Act 1998 s 7 & 35. Maximum penalty 3 months imprisonment or \$4,500 fine. This offence carries a minimum mandatory disqualification period of 6 months.***

a. If you were to sentence an adult, first time offender who pleads guilty, to a fine for driving at 120km in a 50km zone, approximately what amount of fine is your starting point for this offence?

b. To what extent would the following changes in the offender's circumstances decrease or increase the amount of fine you would impose? Would you decrease the fine, not change the amount of the fine, increase the fine or would you consider another sentence? Please tick one box next to each statement.

	decrease the fine	not change the fine	increase the fine	consider another sentence
offender had two prior (non-traffic) convictions--	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had two prior similar convictions-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 17-19-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was aged 40 or over-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender pleaded not guilty -----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender was on the unemployment benefit-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offender had an above average income-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
additional sentences being considered-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
other factors (please specify)_____				

7. How often do you impose court costs in addition to a fine? Please tick one box.

in almost all cases-----	<input type="checkbox"/>
in three-quarters of cases-----	<input type="checkbox"/>
in about half of cases-----	<input type="checkbox"/>
in about quarter of cases-----	<input type="checkbox"/>
in very few cases-----	<input type="checkbox"/>

8. What do you consider to be the main advantages of fines as a sentence?

9. What do you consider to be the main disadvantages of fines as a sentence?

10. Other than the serious nature of the offence committed, what are the other factors that may influence you to impose a sentence other than a fine?

11. In general, how necessary is the following information when you are sentencing someone to a fine? *Please tick one box next to each statement.*

	almost always necessary	necessary in most cases	necessary in about half the cases	necessary in few cases	almost never necessary
offenders' criminal record-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' family status/community ties-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' income-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' employment status-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' outstanding fines/infringement fees-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' assets-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' financial expenditure-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

12. How adequate is this information? *Please tick one box next to each statement.*

	almost always adequate	adequate in most cases	adequate in about half the cases	adequate in few cases	almost never adequate	not generally provided /available
offenders' criminal record-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' family status/community ties-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' income-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' employment status-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' outstanding fines/infringement fees---	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' assets-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
offenders' financial expenditure-----	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

13. How could information about the offender and their circumstances be improved to assist you when sentencing someone to a fine?

14. How often would you request a written statement of means?

never-----	<input type="checkbox"/>
seldom-----	<input type="checkbox"/>
sometimes-----	<input type="checkbox"/>
often-----	<input type="checkbox"/>
very often-----	<input type="checkbox"/>

15. Please indicate from the following list what are the main reasons why you might not request a written statement of means when considering imposing a fine? Please tick as many boxes as are needed.

lack of court time-----	<input type="checkbox"/>
fine is too small to warrant a written statement of means-----	<input type="checkbox"/>
sufficient information on offender's means presented orally-----	<input type="checkbox"/>
offender indicates that they can pay a fine-----	<input type="checkbox"/>
other-----	<input type="checkbox"/>

-----Please specify____

16. In most cases where you would typically impose a fine, are there particular financial or family circumstances that would lead you to impose a sentence other than a fine? Please specify.

17. Do you have any further comments about court-imposed fines?

Your Details

We need the following information to help us work out response rates and to analyse the differences between groups who respond. All identifying information that you provide will be kept confidential to the project team and will not be used in any reports about this research.

18. At which court are you based? _____

19. How long have you worked as a Judge?

Less than 1 year
 1 year to less than 2 years
 2 years to less than 5 years
 5 years or more

20. Approximately what proportion of your work is in the criminal jurisdiction?

Less than ¼
 About ¼
 About ½
 About ¾
 All

21. Please tick as many of the following boxes as you need to show which ethnic group(s) you belong to

New Zealand European -----		please specify: _____
Māori-----		
Samoan-----		
Cook Island Māori-----		
Tongan-----		
Niuean-----		
Chinese-----		
Indian-----		
Other-----		

22 Please indicate whether you would like to receive a summary of the findings of this survey:

Yes No

Thank you for participating in this research

Please send your completed survey to us using the enclosed FREEPOST envelope

Appendix 3: Informed consent sheet



Research on Court-Imposed Fines Informed Consent Sheet

The Minister of Justice has recently introduced a Sentencing and Parole Reform Bill. This Bill includes a stronger presumption in favour of fines as the sentence of first resort. This research will contribute to the refinement of the Sentencing and Parole Reform Bill and the implementation of the legislation.

The first phase of this research consisted of the postal questionnaire you completed a few weeks ago. As part of this same project, I am now conducting face to face interviews with Judges in five regions. These interviews will allow us to explore in greater depth some of the issues that were raised in the questionnaire.

There are some consent issues you need to be aware of before you agree to be interviewed.

- The research is voluntary – you don't have to take part if you don't want to.
- You don't have to answer any question you don't want to, and you can stop the interview at any time.
- All the information you provide is confidential and will be stored in a secure environment.
- We'll be publishing a report about this research next year. Your information will be combined with those of other Judges and no individual Judge will be able to be identified in the final report.
- It's helpful when we write up a research report if we can include some quotes from the interviews. If we do this we will make sure that there is no way you can be identified.
- To avoid taking lots of notes during the interview, I'd like to tape it. If you don't want me to tape the interview, that's fine.

I agree for the interview to be taped.

YES NO

I agree to being quoted anonymously in the final report.

YES NO

I agree to be interviewed for the court-imposed research project.

Signed _____

Appendix 4: Court-imposed fines - Interview schedule for Judges

Thank you very much for giving up some of your time and agreeing to take part in this interview. I appreciate that you are very busy. Thank you also for completing the earlier questionnaire I sent to you.

Before we get into the interview I have to ask you to read this informed consent sheet. This gives you some background to the research and asks for your signed agreement to take part in the research.

1. What are you hoping to achieve when you sentence an offender to a fine?
2. The percentage of convictions for imprisonable offences resulting in a fine has decreased from 41% in 1985 to 22% in 2000. What in your view are some of the factors contributing to this decrease in the use of fines?
3. Women are less likely than men to receive a fine, even after taking into account the lower average seriousness of offences committed by women? What do you think are some of the reasons for this difference?
4. So too Māori and Pacific Peoples are less likely to receive a fine. What do you think are some of the reasons for this?
5. How do you adjust a fine to take into account the means & responsibilities of the offender?
6. What factors limit your ability to take into account the means & responsibilities [financial outgoings] of the offender in setting the level of the fine?
7. Are the means of the offender likely to have a greater impact on the amount of fine you impose for some offences than for others? [prompt 'please specify which offences and why'. 'Are there certain offences where the amount of the fine is determined principally by the seriousness of the offence and the means of the offender will not change this much?']
8. Do you consider that the emphasis in the Sentencing and Parole Reform Bill on the use of fines as the sentence of first consideration, after reparation, taking into account principles of sentencing such as the need to have regard to the gravity of offending will encourage a greater use of fines?
9. The new Sentencing and Parole Reform Bill provides that the Court must take into account the financial circumstances of the offender whether that will have the effect of increasing or reducing the amount of the fine. Do you think this provision, allowing both for an increase or decrease in the fine, will encourage a greater use of fines across a range of offending?

10. Results from the questionnaire indicate that Judges tend to give an alternative sentence or not change the amount of the fine rather than decrease the fine when the offender is on the unemployment benefit. Can you suggest why this might be the case?
11. What are the specific personal and financial circumstances of an offender that prompt you to impose an alternative sentence rather than a fine? [prompt for example, solo parent]
12. Is there an amount of fine that you will not go above in the case of a person who is unemployed? In the case of an unemployed person with children? In the case of a solo parent?
13. To what extent do you take into account the means of the offender when imposing court costs? [prompt Why do you impose court costs in addition to fines?]
14. What is your view on paying fines by instalments and the length of time over which someone can pay their fine? [Prompt if necessary – should there be a minimum weekly amount, or a maximum time period over which people can pay off a fine? Who sets the level of instalments – the Judge or Collections staff?]
15. In what circumstances do you consider it necessary to obtain a written statement of means? [Who should be primarily responsible for providing information about the means of the offender?]
16. What specific information, in terms of the financial circumstances of the offender, is most relevant to your decision to impose a fine or an alternative sentence?
17. About a quarter of Judges indicated in the questionnaire, that information could be improved by providing a written statement or form about the financial circumstances of the offender. Yet nearly two-thirds of Judges said they would never or only seldom request a written statement of means. In your opinion, why or why not could a written statement of means assist you in your sentencing?
18. Can you think of anything that could be done in terms of the new legislation to encourage a greater use of fines?
19. Do you have a view on the collection rate of fines and if so does this encourage, discourage or have no effect on the extent to which you impose fines?
20. What improvements could be made to the way fines are imposed?
21. What improvements could be made to the way fines are enforced?
22. Do you have any other comments about the use of fines?

Appendix 5: Use of fines in New Zealand Courts

Fines can be imposed for nearly every offence for an amount up to a maximum specified in legislation. For imprisonable offences for which no fine is prescribed, the Court may impose a fine of any amount, except where this is expressly disallowed. Where no fine is prescribed, the fine imposed must not exceed \$4,000 if imposed by a District Court Judge¹⁸ and \$400 if imposed by a justice of the peace or a community magistrate.¹⁹ There is no limit in the High Court. For many offences a fine is the only available sanction to the Court.

This paper presents detailed information on the use of court-imposed fines for all convicted charges in 2001²⁰. In particular, it provides information on the types of offences resulting in fines and the amounts of fines imposed.

In 2001, 33% of all charges resulting in a conviction had a fine imposed as one of the sentences. In most of these charges (95%), a fine was the primary or most serious sentence. It is rare for a custodial sentence or a community-based sentence to be imposed in combination with a fine.

Given that every fine that is imposed for each offence they are convicted of is payable by the offender (ie the amounts are cumulative) the information presented in this paper is charge-based rather than case-based.

Proportion of convicted charges resulting in a fine

Table A5.1 shows the number and percentage of all convicted charges resulting in a fine for specific offence types.

Traffic and miscellaneous offences were most likely to result in a fine in 2001.

Seventy-one percent of convictions involving careless driving, 61% of convictions involving driving with excess alcohol, 47% of convictions involving driving causing death or injury and 46% of convictions involving reckless/dangerous driving resulted in a fine in 2001. Over half of the 'other traffic' offences also resulted in a fine.

Eighty-two percent of convictions involving offences under the Dog Control Act, and 70% of tax-related and 85% of liquor-related offences resulted in a fine. Seventy-six percent of convictions involving fisheries-related offences resulted in a fine.

Over half of the convictions for offensive language (52%) and disorderly behaviour (61%) resulted in a fine. Drug offences also commonly resulted in a fine, particularly possession/use of cannabis where 46% of convicted charges resulted in a fine in 2001.

¹⁸ This has been increased to \$10,000 under the Sentencing Act 2002.

¹⁹ However, where a person pleads guilty after committal to a District Court for trial a Judge may fine up to a maximum of \$10,000 where no maximum amount is prescribed by statute (section 28F(1)(b)(ii) District Courts Act 1947).

²⁰ Fines resulting from unpaid infringement notices (for speeding or parking offences etc) are not included in the data.

Around a third of convictions for ‘other cannabis’ offences and possession/use of non-cannabis drugs resulted in a fine in 2001.

A third of convictions for minor assault resulted in a fine in 2001.

Table A5.1 Number and percentage of all convicted charges resulting in a fine, by type of offence, 2001

Offence type	Total convictions	Number fined	%
Violent offences			
Murder	21	0	0.0
Manslaughter	34	0	0.0
Attempt murder	12	0	0.0
Kidnapping/abduction	119	1	0.8
Rape	181	0	0.0
Unlawful sexual connection	421	0	0.0
Attempted sexual violation	63	0	0.0
Indecent assault	833	41	4.9
Aggravated burglary	83	1	1.2
Aggravated robbery	372	2	0.5
Robbery	155	4	2.6
Grievous assault	1,318	83	6.3
Serious assault	3,370	821	24.4
Male assault female	2,921	319	10.9
Assault on a child	296	29	9.8
Minor assault	3,854	1,285	33.3
Threaten to kill/do GBH	629	43	6.8
Cruelty to a child	23	0	0.0
Other violence	119	4	3.4
Subtotal	14,824	2,633	17.8
Other offences against the person			
Incest	2	0	0.0
Other sexual	230	9	3.9
Resist/obstruct	2,298	652	28.4
Threats/intimidation	619	136	22.0
Other against person	382	76	19.9
Subtotal	3,531	873	24.7
Property offences			
Burglary	5,532	142	2.6
Theft	14,195	2,451	17.3
Receiving stolen goods	2,837	348	12.3
Motor vehicle conversion	2,058	97	4.7
Fraud	14,227	414	2.9
Arson	198	11	5.6
Wilful damage	5,070	871	17.2
Other property	4,710	493	10.5
Subtotal	48,827	4,827	9.9
Drug offences			
Use cannabis	5,543	2,542	45.9
Deal in cannabis	3,595	817	22.7
Other cannabis	2,185	836	38.3
Use other drug	546	196	35.9
Deal in other drug	433	24	5.5
Other drug	296	50	16.9
Subtotal	12,598	4,465	35.4

Offences against justice			
Breach periodic detention	6,261	403	6.4
Breach supervision	579	86	14.9
Breach parole	267	14	5.2
Breach community service	220	83	37.7
Failure to answer bail	4,311	199	4.6
Breach protection order	2,366	242	10.2
Escape custody	292	19	6.5
Obstruct/pervert course of justice	116	9	7.8
Other against justice	624	147	23.6
Subtotal	15,036	1,202	8.0
Offences against good order			
Riot	15	8	53.3
Unlawful assembly	17	3	17.7
Possess offensive weapon	1,444	238	16.5
Offensive language	645	335	51.9
Disorderly behaviour	6,942	4,251	61.2
Trespassing	3,102	670	21.6
Other against good order	255	101	39.6
Subtotal	12,420	5,606	45.1
Traffic offences			
Drive causing death or injury	1,431	675	47.2
Drive with excess alcohol	22,396	13,539	60.5
Driving while disqualified	7,415	1,940	26.2
Reckless/dangerous driving	2,777	1,269	45.7
Careless driving	7,977	5,685	71.3
Other traffic	14,689	8,137	55.4
Subtotal	56,685	31,245	55.1
Miscellaneous offences			
Arms Act	711	145	20.4
Dog Control Act	491	404	82.3
Tax-related	3,823	2,689	70.3
Liquor-related	191	163	85.3
Fisheries-related	763	580	76.0
Other miscellaneous	3,585	1,954	54.5
Subtotal	9,564	5,935	62.1
Total	173,485	56,786	32.7

Amount of fines

Table A5.2 presents information on the mean and median fine for each specific offence category. It also shows the minimum and maximum amount of fine in each case. The median fine imposed in 2001 was \$300. Table A5.3 further breaks down this information by presenting ranges of fines and shows that 11% of fines imposed in 2001 were for amounts of \$100 or less and 19% were for amounts between \$501 and \$1,000.

Table A5.2 shows that the lowest median fine in 2001 was \$150 imposed for possession or use of cannabis and failure to answer bail. About a third of fines imposed for theft, 41% of the fines imposed for failure to answer bail and 30% of fines imposed for offensive language were for sums of \$100 or less (see Table A5.3).

Traffic offences account for the greatest proportion of fines. The median fine for driving with excess alcohol was \$600. Table A5.3 further shows that 51% of fines for

driving with excess alcohol were for sums of between \$501 and \$1,000 and 6% were for sums of between \$1,001 and \$5,000.

The median fine for driving causing death or injury was \$500, 33% received a fine between \$501 and \$1,000, and 15% sums of between \$1,001 and \$5,000. The median fine for careless driving was \$300, and 21% of charges received a fine of \$301 to \$400, and 15% a fine of \$401 to \$500.

Table A5.2 Mean, median, minimum and maximum fines imposed (in dollars), by type of offence, 2001

Offence type	Number	Mean	Median ¹	Minimum	Maximum
Violent offences					
Indecent assault	41	1,276	900	250	5,000
Grievous assault	83	728	750	100	2,000
Serious assault	821	504	400	50	3,500
Male assaults female	319	505	400	100	7,500
Assault on a child	29	463	500	100	850
Minor assault	1,285	314	300	50	1,500
Threaten kill/do GBH	43	415	350	100	1,000
Other violence ²	12	1,021	500	100	3,500
Subtotal	2,633	431	350	50	7,500
Other offences against the person					
Resist/obstruct	652	216	200	25	750
Threats/intimidation	136	273	250	80	800
Other against person ³	85	1,772	500	100	30,000
Subtotal	873	376	200	25	30,000
Property offences					
Burglary	142	486	400	100	3,000
Theft	2,451	227	180	20	10,000
Receiving	348	428	300	50	5,000
Conversion	97	369	300	100	1,500
Fraud	414	540	300	50	15,000
Arson	11	623	500	100	2,500
Wilful damage	871	219	200	50	1,500
Other property	493	413	350	60	1,750
Subtotal	4827	297	200	20	15,000
Drug offences					
Use cannabis	2,542	189	150	50	1,000
Deal in cannabis	817	487	400	70	7,500
Other cannabis	836	204	200	50	5,000
Use other drug	196	255	200	100	800
Deal in other drug	24	983	500	150	5,000
Other drug	50	277	225	70	1,000
Total	4,465	255	200	50	7,500
Offences against justice					
Breach periodic detention	403	295	250	50	1,200
Breach supervision	86	217	200	70	500
Breach parole	14	245	225	100	400
Breach community service	83	291	300	70	800
Failure to answer bail	199	180	150	50	800
Breach protection order	242	362	300	40	1,500
Escape custody	19	225	200	100	500
Other against justice ⁴	156	328	300	40	1,250
Subtotal	1,202	286	250	40	1,500
Offences against good order					
Possess offensive weapon	238	304	250	50	1,000
Offensive language	335	197	200	50	750
Disorderly behaviour	4251	207	200	50	2501

Offence type	Number	Mean	Median ¹	Minimum	Maximum
Trespassing	670	21	200	40	750
Other good order ⁵	112	261	200	20	800
Subtotal	5,606	212	200	20	2,501
Traffic offences					
Drive causing death or injury	675	765	500	100	15,000
Drive with excess alcohol	13,539	630	600	50	4,500
Drive while disqualified	1,940	405	400	40	4,500
Reckless/dangerous driving	1269	493	450	40	2,000
Careless driving	5,685	339	300	30	2,000
Other traffic	8,137	347	250	25	6,000
Subtotal	31,245	487	400	25	15,000
Miscellaneous offences					
Arms Act	145	358	300	60	2,500
Dog Control Act	404	214	200	50	2,600
Tax-related	2689	324	200	14	12,000
Liquor-related	163	270	200	25	3,000
Fisheries-related	580	1220	400	70	13,000
Other miscellaneous	1,954	1233	250	20	40,000
Subtotal	5,935	703	250	14	40,000
Total	56,786	439	300	14	40,000

Notes:

1. The median is the middle value when numbers are arranged from smallest to largest. This statistical representation of the 'average' value is not affected to the same degree as the mean by a small number of very small or very large values.
2. Due to small numbers kidnapping/abduction, aggravated burglary, aggravated robbery, and robbery have been included in this category.
3. Due to small numbers 'other sexual' offences have been included in this category.
4. Due to small numbers obstruct/pervert course of justice has been included in this category.
5. Due to small numbers riot and unlawful assembly have been included in this category.

Table A5.3 Ranges of fines imposed, by type of offence, 2001

	<=\$100	>\$100	>\$150-	>\$200-	>\$250	>\$300	>\$400-	>\$500	>\$1000-	>\$5000	No.
	%	-\$150	\$200	\$250	-\$300	-\$400	\$500	-\$1000	\$5000	%	
		%	%	%	%	%	%	%	%	%	
Violent offences											
Indecent assault	0.0	0.0	7.4	4.9	9.8	4.9	12.2	39.0	29.3	0.0	41
Grievous assault	1.2	1.2	2.4	4.8	4.8	12.1	15.7	44.6	13.3	0.0	83
Serious assault	2.0	2.3	7.4	9.4	11.5	17.9	21.6	22.9	5.1	0.0	821
Male assaults	1.3										
female		2.2	7.2	9.1	11.9	18.8	23.5	23.5	2.2	0.3	319
Assault on a child	6.9	0.0	3.5	6.9	13.8	10.3	34.5	24.1	0.0	0.0	29
Minor assault	6.7	7.6	17.7	16.0	17.0	17.5	11.5	5.8	0.2	0.0	1,285
Threaten kill/do											
GBH	4.7	0.0	9.3	9.3	20.9	25.6	14.0	16.3	0.0	0.0	43
Other violence	16.7	0.0	0.0	8.3	8.3	0.0	25.0	0.0	41.7	0.0	12
Subtotal	4.3	4.7	12.1	12.3	14.1	17.4	16.6	15.4	3.0	0.0	2,633
Other offences against the person											
Resist/obstruct	18.3	18.4	25.3	16.6	12.0	5.2	3.1	1.2	0.0	0.0	652
Threats/intimidati	5.9	11.0	23.5	23.5	14.0	14.7	2.2	5.2	0.0	0.0	136
on											
Other against	11.8	1.2	4.7	9.4	7.1	7.1	20.0	16.5	12.9	9.4	85
person											
Subtotal	15.7	15.6	23.0	17.0	11.8	6.9	4.6	3.3	1.3	0.9	873
Property offences											
Burglary	2.8	2.1	8.5	9.2	12.0	16.2	26.8	19.7	2.8	0.0	142
Theft	30.7	17.6	19.8	9.8	8.7	5.9	4.5	2.5	0.6	0.1	2,451
Receiving	4.3	7.5	13.5	9.8	16.1	17.2	13.8	15.2	2.6	0.0	348
Conversion	3.1	3.1	11.3	16.5	21.7	19.6	16.5	7.2	1.0	0.0	97
Fraud	16.7	6.5	11.8	14.5	8.7	11.6	15.2	10.6	2.4	1.9	414
Arson	27.3	9.1	0.0	0.0	0.0	9.1	27.3	18.2	9.1	0.0	11

Court-imposed fines: A survey of Judges

	<=\$100 %	>\$100 -\$150 %	>\$150- \$200 %	>\$200- \$250 %	>\$250 -\$300 %	>\$300 -\$400 %	>\$400- \$500 %	>\$500 -\$1000 %	>\$1000- \$5000 %	>\$5000 %	No.
Wilful damage	22.3	15.6	23.9	15.3	10.5	6.8	4.6	0.9	0.2	0.0	871
Other property	3.9	9.5	11.6	13.6	9.7	13.4	18.9	17.4	2.0	0.0	493
Subtotal	22.0	14.0	18.0	11.6	10.0	8.7	8.5	6.0	1.1	0.2	4,827
Drug offences											
Use cannabis	25.7	26.9	22.3	9.9	7.6	5.2	1.9	0.7	0.0	0.0	2,542
Deal in cannabis	4.8	3.1	10.0	10.5	13.6	17.8	15.7	20.3	4.0	0.2	817
Other cannabis	21.8	22.5	26.4	14.1	8.6	4.3	1.6	0.5	0.2	0.0	836
Use other drug	12.2	15.8	23.5	16.3	10.7	10.2	9.2	2.0	0.0	0.0	196
Deal in other drug	0.0	8.3	4.2	4.2	0.0	20.8	25.0	4.2	33.3	0.0	24
Other drug	20.0	8.0	22.0	14.0	8.0	12.0	10.0	6.0	0.0	0.0	50
Subtotal	20.3	20.9	20.8	11.1	9.0	7.7	4.9	4.4	1.0	0.0	4,465
Offences against justice											
Breach periodic detention	21.8	10.9	15.4	11.2	7.9	13.9	8.9	9.7	0.3	0.0	403
Breach supervision	16.3	12.8	32.6	17.4	14.0	3.5	3.5	0.0	0.0	0.0	86
Breach parole	7.1	14.3	28.6	14.3	14.3	21.4	0.0	0.0	0.0	0.0	14
Breach community service	10.8	10.8	16.9	10.8	12.1	22.9	13.3	2.4	0.0	0.0	83
Breach bail	41.2	16.1	21.1	11.6	2.0	4.5	1.5	2.0	0.0	0.0	199
Breach protection order	3.3	7.0	13.6	12.0	18.2	15.7	21.1	8.3	0.8	0.0	242
Escape custody	15.8	10.5	31.6	21.1	10.5	5.3	5.3	0.0	0.0	0.0	19
Other against justice	10.3	7.7	9.6	9.6	35.3	8.3	9.6	8.3	1.3	0.0	156
Subtotal	18.4	10.7	17.0	11.8	13.4	11.8	10.0	6.5	0.4	0.0	1,202
Offences against good order											
Possess offensive weapon	13.5	11.8	16.8	14.7	9.7	11.3	13.9	8.4	0.0	0.0	238
Offensive language	29.6	17.9	19.7	14.3	8.1	7.2	2.7	0.6	0.0	0.0	335
Disorderly behaviour	25.2	17.0	21.8	17.2	8.1	6.8	3.0	1.0	0.0	0.0	4,251
Trespassing	23.7	16.9	25.5	13.1	7.9	7.6	4.0	1.2	0.0	0.0	670
Other good order	25.9	13.4	17.0	10.7	11.6	4.5	6.3	10.7	0.0	0.0	112
Subtotal	24.8	16.7	21.8	16.3	8.2	7.0	3.7	1.5	0.0	0.0	5,606
Traffic offences											
Drive causing death or injury	0.2	1.6	4.2	4.2	9.6	10.4	22.1	33.0	14.7	0.2	675
Drive with excess alcohol	0.4	0.8	2.6	2.4	4.3	12.7	19.7	51.2	6.0	0.0	13,539
Drive while disqualified	1.0	2.4	8.9	10.3	16.4	24.9	24.4	10.8	0.9	0.0	1,940
Reckless/dangerous driving	0.6	0.6	6.4	5.6	10.8	22.5	23.3	28.6	1.6	0.0	1,269
Careless driving	5.3	5.1	13.4	12.7	17.8	21.3	15.3	9.0	0.1	0.0	5,685
Other traffic	10.3	7.6	19.8	14.7	10.3	13.1	12.9	10.4	0.9	0.0	8,137
Subtotal	3.9	3.5	9.6	8.1	9.4	15.5	17.6	29.1	3.3	0.0	31,245
Miscellaneous offences											
Arms Act	5.5	4.8	15.9	19.3	10.3	20.7	17.2	5.5	0.7	0.0	145
Dog Control Act	28.5	11.6	37.4	5.2	6.9	3.7	3.2	3.0	0.5	0.0	404
Tax-related	27.2	9.6	17.0	12.9	7.6	6.1	5.9	9.6	4.1	0.0	2,689
Liquor-related	4.3	14.7	52.2	10.4	4.9	5.5	2.5	3.7	1.8	0.0	163
Fisheries Act	11.2	9.0	9.7	10.0	6.9	6.0	12.8	12.4	19.0	3.1	580
Other miscellaneous	20.3	6.9	11.7	11.5	8.3	5.2	6.0	9.1	15.9	5.2	1,954
Subtotal	22.3	8.8	16.9	11.7	7.7	6.0	6.6	9.0	9.0	2.0	5,935
Total	11.2	8.0	13.6	10.2	9.5	12.3	12.9	18.8	3.1	0.3	56,786

Gender, age and ethnicity of offenders receiving fines

Tables A5.4 and A5.5 present information on the use of fines for all major offence categories by gender, age and ethnicity of the offender. Differences in the use of fines between groups of offenders may be due to a number of factors including differences in the exact nature of the offences resulting in conviction, and differences in people's ability to pay a fine.

Men were slightly more likely than women to receive a fine (33% compared to 29%), and in particular were considerably more likely to receive a fine for an offence against good order (46% compared to 35%).

The percentage of convicted charges involving NZ European that resulted in a fine (34%) was considerably higher than the percentage for Māori (22%).

Table A5.4 Proportion of charges resulting in a fine as the primary sentence, by offence type and gender and ethnicity, 2001

Offence type	Gender		Ethnicity			
	Male	Female	NZ European	Māori	Pacific Peoples	Other
Violent	17.9	16.6	23.4	13.7	14.1	23.9
Other against persons	25.1	20.1	25.6	22.9	23.9	22.5
Property	10.4	8.4	11.3	8.4	8.9	12.0
Drug	36.0	32.1	40.2	29.0	36.8	47.6
Against justice	8.3	6.0	10.2	6.3	6.9	10.1
Good order	46.2	35.2	50.1	40.4	42.3	44.5
Traffic	54.3	55.8	56.0	39.5	47.2	64.3
Miscellaneous	59.7	61.2	49.7	45.9	52.6	73.4
Total	32.7	28.9	33.5	22.2	26.6	39.1

Note: Figure excludes corporations charged with an offence – 79% of which resulted in a fine.

Table A5.5 shows that offenders aged 40 years or more were more likely to receive a fine than offenders of other ages. They were more likely to receive a fine for an offence against justice or for a traffic offence. Offenders aged under 30 were more likely to receive fines for offences against good order.

Table A5.5 Proportion of charges resulting in a fine as the primary sentence, by offence type and age group, 2001

Offence type	15-19	20-24	25-29	30-34	35-39	40+
Violent	18.1	19.6	16.7	17.3	17.6	17.2
Other against persons	20.4	29.8	29.3	23.9	23.0	17.6
Property	9.7	9.5	9.3	10.0	10.8	10.8
Drug	37.9	38.5	35.2	33.7	31.9	34.3
Against justice	6.5	8.1	7.3	8.2	8.8	10.3
Good order	47.1	53.8	46.2	38.6	36.8	33.4
Traffic	57.0	56.3	51.1	48.8	50.3	59.3
Miscellaneous	62.6	45.3	55.0	58.2	57.9	62.0
Total	31.2	31.0	29.2	29.6	31.1	38.6

Proportion and amounts of fines by court

Table A5.6 shows that half or more of convicted charges in Alexandra, Balclutha, Kaikoura, Morrinsville, Queenstown, Rangiora, Waihi, Warkworth and Whataroa District Courts resulted in a fine in 2001. A quarter or less of convicted charges resulted in a fine in Ruatoria, Taumaranui, Wanganui, Wairoa, Otahuhu, Gisborne and Papakura District Courts.

Kaikoura District Court imposed the highest median fine (\$500) and Ruatoria and Gisborne District Courts the lowest (\$200).

Table A5.36 also includes a measure of deprivation. The NZDep96 index of deprivation, constructed from 1996 Census data, provides a deprivation score from 1 to 10 for small areas, where 1 represents the least deprived ten percent of areas, and 10 represents the most deprived ten percent of areas. The NZDep96 describes general socio-economic deprivation in an area²¹. The measure of deprivation included in Table A5.36 relates to Local Government Areas and therefore must only be considered a general indication of deprivation with respect to a particular district court area.

Table A5.6 Proportion and amounts of fines, where a fine was the primary sentence, by court, 2001

Court	N	%	Mean \$	Median \$	NZDep96*
Wellington DC	2194	30.2	535	250	3-4
North Shore DC	2843	40.3	431	350	3-4
Queenstown DC	305	65.5	497	400	3-4
Blenheim DC	716	36.8	394	250	4-5
Upper Hutt DC	458	28.2	373	300	4-5
Pukekohe DC	605	36.5	384	300	4-5
Te Awamutu DC	263	40.4	431	350	4-5
Alexandra DC	323	69.3	441	350	4-5
Ashburton DC	285	44.3	520	400	4-5
Rangiora DC	361	49.4	438	400	4-5
Warkworth DC	265	57.5	417	400	4-5
New Plymouth DC	1145	30.0	353	250	5-6
Hamilton DC	2736	30.3	362	250	5-6
Feilding DC	245	46.1	424	250	5-6
Masterton DC	634	37.9	378	275	5-6
Dunedin DC	1285	27.7	420	300	5-6
Palmerston Nth DC	1211	29.0	387	300	5-6
Henderson DC	2192	30.2	457	300	5-6

²¹ Crampton, P., Salmond, C., Kirkpatrick, R. 2000. Degrees of deprivation in New Zealand. An atlas of socio-economic difference. David Bateman, Auckland, New Zealand.

Court	N	%	Mean	Median	NZDep96*
			\$	\$	
Auckland DC	6151	31.3	454	300	5-6
Lower Hutt DC	1232	31.8	396	300	5-6
Nelson DC	1274	33.5	484	300	5-6
Huntly DC	290	41.9	344	300	5-6
Timaru DC	825	44.8	441	300	5-6
Morrinsville DC	387	49.8	429	300	5-6
Papakura DC	709	25.6	450	350	5-6
Invercargill DC	1396	35.6	480	350	5-6
Oamaru DC	237	36.0	424	350	5-6
Dannevirke DC	179	38.7	446	380	5-6
Tauranga DC	2059	33.3	478	400	5-6
Christchurch DC	5004	35.6	535	400	5-6
Westport DC	109	39.6	457	400	5-6
Gore DC	368	41.3	485	400	5-6
Balclutha DC	249	61.3	507	400	5-6
Waipukurau DC	130	38.4	459	413	5-6
Hastings DC	1146	26.9	373	250	6-7
Rotorua DC	1348	27.9	382	250	6-7
Hawera DC	390	32.2	366	250	6-7
Waihi DC	469	49.9	343	250	6-7
Napier DC	1128	30.5	387	260	6-7
Wanganui DC	564	23.8	367	300	6-7
Whakatane DC	619	29.1	440	300	6-7
Porirua DC	1159	30.9	409	300	6-7
Taupo DC	560	39.2	419	300	6-7
Greymouth DC	292	41.5	450	300	6-7
Marton DC	168	45.0	513	300	6-7
Taihape DC	157	47.4	329	300	6-7
Manukau DC	4298	32.7	457	350	6-7
Whangarei DC	1723	35.9	448	350	6-7
Dargaville DC	205	36.4	400	350	6-7
Thames DC	391	46.6	430	350	6-7
Te Kuiti DC	208	29.6	434	400	6-7
Kaikoura DC	44	58.7	497	500	6-7
Ruatoria DC	32	21.5	275	200	7-8
Gisborne DC	765	25.6	325	200	7-8
Levin DC	439	31.7	380	250	7-8

Court	N	%	Mean	Median	NZDep96*
			\$	\$	
Tokoroa DC	642	40.2	374	250	7-8
Taumaranui DC	121	22.9	358	300	7-8
Wairoa DC	117	24.2	395	300	8-9
Opotiki DC	166	29.9	387	300	8-9
Kaitaia DC	323	31.1	412	350	8-9
Kaikohe DC	596	28.3	435	400	8-9
Total	56,786				

* 1=least deprived, 10=most deprived

Note: High Courts are excluded from the table as they rarely impose fines.
 Because of small numbers, convictions in Lumsden were included in the Invercargill figures, convictions in Whataroa were included in the Greymouth figures, and convictions in the Chatham Islands were included in the Wellington figures.