Copyright is owned by the Author of the thesis. Permission is given for a copy to be downloaded by an individual for the purpose of research and private study only. The thesis may not be reproduced elsewhere without the permission of the Author.

### COMPANY OFFENDERS: CAN WE CONTROL THEM?

A Look at the Commercial Affairs Division

A Thesis
presented in partial fulfilment of the
requirements for the degree of
Master of Business Studies
in
Accounting and Finance
at Massey University

Jacqueline Christina Hall

1987

#### ABSTRACT

In July 1984, the Securities Commission published their Report which reviewed the effectiveness of the resources that were available for corporate fraud investigations.

The Government's response to the public's concern regarding corporate crime was to allocate additional resources to the Commercial Affairs Division of the Department of Justice, and confirm that the investigation, detection and prosecution of criminal offences by companies should continue to be "the shared responsibility" of the Police, and the Commercial Affairs Division.

The injection of the additional resources to combat corporate crime is in danger of being viewed as a "political sop" by the public, if these resources are not effectively deployed. This study attempts to address this question by reviewing the structure and operational capability of the Commercial Affairs Division, with particular regard to its effectiveness to provide measures to monitor and regulate company offenders. A secondary aim was to ascertain what the concept of shared responsibility means to the investigative officers, and how it operates in practice. It was also envisaged that the study could establish a base for further research by providing the mechanism for a "before" and "after" comparison.

A detailed descriptive analysis of the role, function, structure and legal authority of the Commercial Affairs

Division was undertaken. Two questionnaires were developed. The first was directed at the investigative officers to provide information on the operational capability of the Division to combat corporate crime. The questionnaire was directed at the controlling officer of each of the district offices to ascertain the effectiveness of the Division in terms of the number of complaints, follow-up investigations, and prosecutions. The concept of shared responsibility was dealt with by a three-pronged approach. The originators of the term were interviewed to establish what they meant by this concept and how it "should" operate. The official head of the Commercial Affairs Division was then interviewed in respect of how the concept was "thought" to operate, and finally the investigative officers themselves were surveyed as part of the questionnaire, to find out how it "did" operate.

The results of the questionnaire survey revealed that the operating capability of the investigative officers was seriously inhibited by internal problems such as lack of staff, lack of training, and a lack of resources generally. As a result of the magnitude of these inhibiting factors it was difficult to establish a clear cut finding beyond this. As you would expect, the above problems also seriously undermined the effectiveness of the Division in terms of completed investigations and prosecutions.

The study found that the perceptions held by the originator's and the official head, on how the concept

of shared responsibility should operate bears very little resemblance to reality.

It was concluded that at the present time the Commercial Affairs Division has serious internal problems that were hindering the effective monitoring and regulating of company offenders.

### ACKNOWLEDGEMENTS

First and foremost I would like to thank my family for their encouragement, patience and forbearance over the duration of this study. To my husband, James, and children Jared, Megan and Sharon — a special thank you. Also, a special thank you to Lesley Burton who burnt the midnight oil with me, and was responsible for much of the proofreading and organisation.

I would also like to express my thanks to the following persons who freely provided help and support through many crucial stages of this study. Gordon Fraser, for his knowledge and valued assistance; Phil Gendall for his expertise; and the many officers within the Commercial Affairs Division who gave much appreciated assistance and encouragement.

To the respondents who participated in this study - I give special thanks for your time, interest and willing co-operation.

## CONTENTS

Abstract .....

List of Appendices ..... xiii

ii

xi

	×	
Chapter	*	page
1	INTRODUCTION	1
	8	
2	THE PHENOMENON OF WHITE-COLLAR CRIME	4
	DEFINITIONAL CONSIDERATIONS OF WHITE-COLLAR CRIME	4
*		
	THE IMPACT OF WHITE-COLLAR CRIME	7
	LIMITATIONS ON FULL ENFORCEMENT	9
	(a) Procedural Restrictions	9
	(b) Discretionary Interpretation of	
	Statutes	9
	(c) Technical Difficulties	9
	(d) Organisational Constraints	10
	(e) Idealogical Values	10
	(f) Societal Pressures	10
	PRIORITIES OF THE INVESTIGATION AND	
	PROSECUTION OF WHITE-COLLAR CRIME	11
	PROSECUTION OF WHITE-COLLAR CRIME	11
	The Company as a Vehicle for White-Collar Crime	13
3	A BACKGROUND HISTORY OF THE CURRENT MALAISE	17
	A HISTORICAL PERSPECTIVE	17
	A SHARED RESPONSIBILITY?	25

4	THE	INVESTIGATION OF COMPANIES	32
	CLAS	SIFICATION OF THE LAW	32
	Civi	1	32
	Crim	inal Proceedings	32
	Burd	en of Proof	33
	THE	COMPANY OFFENDER	34
	The	Investigation of Company Malpractice	36
		The Police	36
	2.	The Commercial Affairs Division	39
		The Securities Commission	39
	4.	The Inland Revenue Department	40
	DEFI	NING THE PARAMETERS	40
	1.	Machinery	41
		Criminal	42
	3.	Civil	42
	THE	CRIMINAL PROCESS	43
	1.	The Investigative Agency and the	
		Prosecutorial Function	43
	2.	The Investigative Agency and the	
		Judicial Process	44
	DELI	MITATIONS AND ASSUMPTIONS	46
5	LITE	RATURE REVIEW	50
	REVI	EW - DEPARTMENT OF JUSTICE	50
		Role and Objectives	50
		Effectiveness Measures	51
		Revenue v Services Rendered	54
		Management	55
		General	55
	THE	ROLE OF THE COMMERCIAL AFFAIRS DIVISION	
	OF T	THE DEPARTMENT OF JUSTICE IN THE NEW	
	ZEAL	AND BUSINESS COMMUNITY	55
	Role	and Objectives of Commercial Affairs	
	Di	vision	56
	Corp	orate Affairs Commission (Australia)	57
		stigation of Company Liquidations	57
		laints from Public	58
		oany Inspections	59
		ce Liaison	60
		fing	61
	Effe	ectiveness of Commercial Affairs	
		7151011	62
	Conc	lusions	64

	THE RELATIONSHIP OF THE LITERATURE TO THE PRESENT STUDY  1. Review Report, Department of Justice 2. The Role of the Commercial Affairs Division of the Department of Justice in the New Zealand Business Community	65 65
6	METHODOLOGY	68
	RESEARCH METHODS Role and Objectives of Commercial Affairs	68
	Division Data Source	68 68
	Operational Capability of Commercial Affairs Division Data Sources	69 70
	Effectiveness of Commercial Affairs Division to Monitor and Combat Company Offenders Data Source	70 71
	The Concept of Shared Responsibility Data Source	71 72
	POPULATION	72
	SURVEY METHODS	73
	Methods Chosen	73
	1. Survey of Investigative Officers	73
	2. Survey of Controlling Officers 3. Interview with Assistant Secretary	74
	(Commercial Affairs) 4. Interview with the Securities Commission	74 74
	QUESTIONNAIRES A. DESIGN	75
	Possible Problems	75
	1. Length	75
	<ol><li>Confidentiality</li></ol>	76
	3. Time Commitment	77
	Selection of Respondents	78
	Content 1. Survey on Operational Procedures of Investigative Officers of Commercial	79
	Affairs Division 2. Survey on Investigative Activities	79
	. F . L . C	00

	B. PROCEDURES 1. Pretest	80 81
	2. Letter of Authorisation	82
	3. Introductory Letter	82
	4. Follow-up Letters and Telephone (	
	5. Follow-up Interviews	83
	J. Follow-up Interviews	63
	C. RESPONSE RATE	83
	Non Responses	85
	Quality of Responses	86
	Quality of Responses	00
	*	
7.	COMMERCIAL AFFAIRS DIVISION OF THE	
	DEPARTMENT OF JUSTICE	89
	PART A: DISCRETIONARY AND STATUTORY POW	IERS
	Discretionary Powers	89
	Discretionary Criteria	90
	Statutory Authority	91
	A. Enactments Constituting Crimes and	
	Offences	92
	B. Enactments Making Provision for	
	Inspections and Enquiries	96
	Preliminary Inspections	97
	Limitations of Section 9A	98
	Full Inspection Powers	99
	Limitations of Sections 168-173	101
	PART B: THE STRUCTURE AND FUNCTION OF	CHE
	COMMERCIAL AFFAIRS DIVISION	103
	The Department of Justice	103
	Origin and Structure of the Commercial	103
	Affairs Division	104
	1. Head Office	106
	2. District Offices	107
	3. Corporate Fraud Unit	107
	Role and Objectives of the Commercial	
	Affairs Division	108
	1. Registration	109
	<ol><li>Insolvency</li></ol>	109
	Staffing	110
	Activities	112
	1. Registration and Documents	112
	2. Insolvencies	114
	(1) Bankruptcies	115
	(2) Liquidations	115
	3. Investigations	116
	(1) Company Inspections	116
	(2) C	116

			14.	
	80	Procedures	117	
		<ol> <li>Machinery/Criminal Prosecution</li> </ol>	117	
10		2. Civil Proceedings	119	
		FUNDING	120	
		FUNDING	120	
30				
		9 9		
	8	OPERATIONAL CAPABILITY OF THE COMMERCIAL		
	0	AFFAIRS DIVISION	127	
		AFFAIRS DIVISION	127	
		Staff Recruitment and Retention	127	
		Qualifications and Experience	129	
		Training	132	
		Management	135	
38 =				
		Investigative Activity	137	
		Investigative Process	142	
		The Decision Process	149	(8)
		The Corporate Fraud Unit	154	
		Funding	155	
		Legislative Authority	156	
		General Comments	157	
		General Gomments	131	
			+	
	9	EFFECTIVENESS OF THE COMMERCIAL AFFAIRS		
		DIVISION TO MONITOR AND COMBAT COMPANY		
		OFFENDERS	161	
		OFFENDERS	101	
		Staffing	161	
		Qualifications and Experience	161	
		Investigative Activity	162	
		The Prosecution Process	173	
		General Comments	177	
4				
	10	THE CONCEPT OF SHARED RESPONSIBILITY	180	
		1. The Originator's View	180	
		2. The Official View	181	
		3. The Local View	183	
		Investigative Officers	183	
		Controlling Officers	188	
		10 W W		
· · · · · · · · · · · · · · · · · · ·				
	11	CONCLUSIONS AND RECOMMENDATIONS	10%	
	11	CONCLUSIONS AND RECOMMENDATIONS	194	
		APPENDICES	200	
		APPENDICES	208	
		BIBLIOGRAPHY	255	
		DIDLIUGRAPHI	233	
		1.0		
	100			
	5.			

## LIST OF TABLES

Tabl	e	Page
1.	Police Fraud Squad Personnel	36
2.	Measures of Effectiveness of Commercial Crime Control	53
3.	Prosecutions 1.1.1980 - 31.12.1980	63
4.	Potential Respondents	79
5.	Response Rate	84
6.	Investigating Staff Positions as at 31.3.86	111
7.	Corporate Entities Registered at District Offices	113
8.	Total Expenditure and Receipts of Justice Vote	121
9.	$\ensuremath{\text{\%}}$ Total Justice Vote Spent Compared with $\ensuremath{\text{\%}}$ of Earnings	122
10.	Investigative Officers	127
11.	Familiarity with the Law	130
12.	Working Knowledge	132
13.	Activity Time	138
14.	Follow-Up Investigations	141
15.	Current Workload	143
16.	Criteria re Ordering of Cases	144
17.	Constraints on Satisfactory Investigations	144
18.	Enlisting Assistance	148
19.	Agency Preferred for Bringing Action	153
2.0	Factors Necessary to Effective Investigation and Prosecution	157
21	Source of Complaints	165

22.	Result of Complaints	166
23.	Insolvencies	168
24.	Follow-Up Investigations	169
25.	Prosecutions	170
26.	Prosecutions Pending	171
27.	Cases Still Under Investigation	172
28.	Final Results of Investigations	172
29.	Choice of Prosecutor	176
30.	Contact with Police	183
31.	Nature of Contact with Police	184
32.	Description of Contact with Police (I.O.)	185
33.	Possible Change in Contact with Police (I.O.)	186
34.	Description of Contact with Police (C.O.)	189
35.	Possible Change in Contact with Police (C.O.)	189

# LIST OF APPENDICES

Number		page
1.	Investigating Officers' Questionnaire	209
2.	Controlling Officers' Questionnaire	229
3.	Letter of Authorisation	241
4.	Letter of Introduction	242
5.	Investigating Officers' Follow-up Letter	244
6.	Controlling Officers' Follow-up Letter	245
7.	Statutory Authorities	247
8.	Head Office Organisational Structure	250
9.	Typical Structure of a District Office	251
10.	Job Descriptions of Investigative Officers	252

### CHAPTER 1

### INTRODUCTION

The phrases "white-collar crime", and "corporate crime" have been heard with increasing frequency in recent years. One lamerican writer, describes "white-collar crime" as a "growth industry". The phenomenon is timeless and universal.

The way in which these offences are treated arouses strong emotions. There are allegations of bias which favours the company offender, and other economic offenders. Both in researching the subject, and in talking to those concerned with corporate crime, there is disquiet, even disillusionment about our present system for controlling corporate behaviour.

Two of the law enforcement agencies in New Zealand equipped to control corporate crime are the Police Department, and the Department of Justice. That the Police are finding it increasingly difficult to cope with "violent" crimes, let alone the "non-violent" corporate crimes, is evidenced by the following newspaper headlines:

"Short-staffed Police Forced to Drop Cases"
3
"Criminals Gaining Ground".

Effective control of corporate offenders could be seen therefore, to turn upon the operating capability of the second law enforcement agency, the Department of Justice,

through its corporate monitoring arm, the Commercial Affairs Division. The fact that a regulatory agency is created and theoretically given authority to act does not mean that the instruments will actually be used effectively. Limited budget and manpower considerations, legal and economic corporate records, the relative lack of agency co-ordination and the consequences of too drastic action on the economy, and the public, set limitations on what an agency can do in enforcement.

This study is not an attempt to argue the relationship of corporate crime to society, or the causes of this type of crime. It is an attempt to describe, analyse and evaluate the system of control within the Department of Justice to cope with corporate offenders, and to suggest reforms to it. It is written from the perspective of a reformer, not a revolutionary.

The traditional view of a shared responsibility and cooperation by the Department of Justice and the Police is tested on a practical level.

The first part of the study looks at the phenomenon of whitecollar crime and the priorities for investigation and
prosecution generally. Then more specifically, at the
patterns that have emerged in New Zealand to grapple with the
problem of enforcement of the law relating to companies.
The remainder of the study deals with the operational

capability and effectiveness of the Commercial Affairs

Division of the Department of Justice to monitor and combat

company offenders.

### REFERENCES

- BEQUAI,A. White-Collar Crime: A Twentieth Century Crisis, Mass. Lexington Books, D.C. Heath & Co., 1978.
- "The New Zealand Herald", Auckland (N.Z.)
   November, 1984
- 3. "The Dominion", Wellington (N.Z.) 9 February, 1987.