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COMPANY OFFENDERS: CAN WE CONTROL THEM?

A Look at
the Commercial Affairs Division

A Thesis
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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 second 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.

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CHAPTER 1

INTRODUCTION

The phrases "white-collar crime", and "corporate crime" have been heard with increasing frequency in recent years. One American writer,¹ 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"²

"Criminals Gaining Ground".³

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 co-operation 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 white-collar 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.

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