

# CORPORATE CRIME

## The Criminal Investigation Branch — Its Role In

- Investigation
- Prosecution

(\*Paper Prepared by: Detective Sergeant 2nd Class D. W. A. Kelly (Dip. Crim.)  
FRAUD SQUAD, CRIMINAL INVESTIGATION BRANCH, N.S.W. POLICE DEPARTMENT)



(\* Detective Sgt 2/C D.W.A. Kelly)

### INVESTIGATION —

The role of the investigation of corporate crime in the State of New South Wales falls to two Government organisations, namely the Fraud Squad of the Criminal Investigation Branch (New South Wales Police Department), and the Investigation and Prosecution Section of the Corporate Affairs Commission.

#### (1) FRAUD SQUAD

The Fraud Squad is a Squad within the umbrella of the Criminal Investigation Branch and is now situated in premises on the 8th Floor, Remington Centre, 168 Liverpool Street, Sydney. The Squad consists of 40 units, it is headed by a Detective Inspector and it contains eight Detective Sergeants and other ranks. Also seconded to the Squad is an Accountant/Inspector from the Corporate Affairs Commission who will assist, advise and give evidence in complex cases where accountancy expertise is required.

The Squad members are all members of the New South Wales Police Force who have entered the Service as Probationary Constables. Squad members must be designated Detectives and have had at least eight years service with five years duty on criminal investigation duties. It has been estimated by senior members of the Squad that it takes about five years service on the Squad to be able to tackle with confidence the complex and voluminous inquiries that are thrust upon it.

I am frequently asked, "What are the qualifications of the Fraud Squad to handle white collar and corporate crime?" Probably the best equipment to answer that would be Magistrates and Judges before whom the matters are finally presented. Detectives, like

everyone else in the community, are individuals and a dedicated and conscientious Officer will do a far better job than one who is disinterested and slovenly. Diplomas and degrees, whilst extremely desirable, do not necessarily make a better Detective who has the responsibility of investigating this type of work.

The numerical strength of the Squad is reviewed regularly by the Commissioner of Police so as to attempt to keep pace with the explosion over the past five years with white collar and corporate crime. The Fraud Squad is now the largest Squad attached to the Criminal Investigation Branch of the New South Wales Police Force.

#### (2) REPORTS TO THE FRAUD SQUAD

Complaints to the Fraud Squad are received from members of the public, government and semi-government departments and corporations. When dealing with such complaints we investigate all aspects so as to establish early whether a criminal offence has in fact been committed or the circumstances are such that the matter should be ventilated in a civil jurisdiction. A large amount of time is wasted by members of our Squad investigating matters which are of a purely civil nature.

When the matter is isolated as a criminal offence it is established just exactly whether the offence contravenes the New South Wales Crimes Act or some other State Act. If the offence discovered is a breach of the Companies Act then the file dealing with such inquiry is forwarded to the Investigation and Prosecution Section of the Corporate Affairs Commission for further attention by that body. Prosecutions under the Companies Act can only be launched by sanction of the Attorney-General or the Commissioner for Corporate Affairs.

#### (3) INTERVIEWS WITH OFFENDERS

If the evidence discloses a criminal offence breaching a State law the evidence of witnesses and any relevant exhibits are prepared and collated. Unless there are good reasons to the contrary, offenders are not interrogated by investigating Detectives until they have a full appreciation of all the facts. In the case of persons wishing to co-operate and answer questions it is the function of the investigator to put these questions in a prepared, chronological and intelligent manner. Some interviews with accused which are of the white collar variety have taken place over days with hundreds of exhibits produced. Generally speaking such interviews are conducted with the senior Detective asking questions and the other Detective recording the conversation on the typewriter. Members of the legal profession have been present at many of these interviews.

#### (4) OFFENCES

When we talk of corporate crime, mention should be made of Section 360A of the Crimes Act — 40 of 1900, which was added to the Act by Act 31 of 1951 and amendments by Act 16 of 1955.

Section 360A removes certain procedural impediments to the indictment of corporations. These were the common law requirements that a trial for an indictable offence must be conducted in the presence of the accused and the common law rule that a corporation could not be committed for trial.

A corporation cannot commit perjury (Wych-v-Meal [1734] 3 Peere Williams 310). It can only be convicted of conspiracy if at least two other individuals are involved in the crime (Glanville Williams, Criminal Law [The General Part] 2nd. ed. [1961] p. 861).

From my experience very few charges are levelled at corporations under the machinery of this Section because where an offence involves mens rea a corporation cannot be convicted of such an offence unless it is proved that its responsible officer (i.e. a director, secretary, manager, etc.) had a guilty mind. A foreign corporation is subject to the New South Wales criminal law in respect of an offence committed by it in New South Wales (McNabb-v-T. Edmondson & Co. Ltd [1941] V.L.R. 193 discussed in 15 Australian Law Journal).

Under the terms of Sub-Section (6) of Section 360A, where an offence in this Act carries a term of imprisonment this is replaced by a pecuniary penalty, i.e. Section 360A —

(6) Where the penalty in respect of any offence is a term of im-

prisonment only, the court before which the offence is tried may, if it thinks fit, in the case of a body corporate, impose a pecuniary penalty not exceeding —

- (a) Where the term of imprisonment does not exceed six months — two hundred dollars.

The most frequent charges preferred by members of the Fraud Squad contravene Section 173 of the Crimes Act, (director fraudulently appropriating property). Recent amendments have now increased the maximum penalty from ten years to fourteen years.

However, recent decisions by higher courts have cast doubts in the minds of law officers as to whether charges under this Section should be laid in certain circumstances.

#### (5) CHARGES FREQUENTLY LAID

Section 174 — Directors, etc., omitting certain entries.

Section 175 — Directors, etc., willfully destroying books of the company.

Section 176 — Directors, etc., publishing fraudulent statements.

Section 178A — Fraudulent misappropriation of monies collected or received.

Section 179 — False pretences or wilful false promise.

Conspiracy to cheat and defraud which is a misdemeanour at Common Law.

#### (6) PROBLEMS ASSOCIATED WITH CHARGES OF CONSPIRACY

Charges of conspiracy are usually marathon matters tying up lower and superior courts for several months. These charges are not lightly laid and because of their volume, create a great drain on the resources of the Police Department, Courts and the Crown Law Department, as well as the defendant.

In a large number of cases the evidence of witnesses, especially in the summary hearing, are purely of a formal nature. I feel that in the interests of all parties something must be done to facilitate and expedite committal proceedings. I see no statements of witnesses and shown exhibits well before the lower court hearing so that if counsel agrees the prosecution could formally tender that statement to the presiding Magistrate and the defence could reserve any cross-examination for trial if that is necessary. At the trial I see no reason where the defence agrees for the statement of witnesses to be read. Section 404 of the Crimes Act makes certain provision for evidence to be admitted in certain circumstances.

**Section 404** — Every accused person on his trial may, if so advised by counsel, make any admissions as to matters of fact, whatever the crime charges, or give any consent which might lawfully be given in a civil case.

#### (7) OFFENCES COMMITTED ON CORPORATIONS

Whilst it is conceded that corporations can be charged with offences. Probably they are more offended that being the offender. Over the last couple of years there has been a dramatic increase in offences whereby directors, managers, secretaries and servants of corporations have embezzled, appropriation and stolen large funds, absconded this country and taken refuge overseas. At the last count the figure exceeded fifty such offenders in the last seven years.

Some have returned to Australia but only after huge expense has been incurred by, in some cases, the complainant corporation, the New South Wales Government, the Australian Government and in the United Kingdom, the British Government. A number of these offenders have appealed against extradition with the aid of British Legal Aid to the House of Lords.

Several years have elapsed from the offender's arrest in an overseas country to the ultimate return to Australia. During the intervening period it has been found that witnesses have died, persons have a loss of memory or cannot be found for one reason or another. Whilst I realise that little can be done, I merely make these points as part of our difficulties.

#### (8) COMPLEXITY OF INVESTIGATION

The methods used by criminals to commit crime are becoming more sophisticated and it is necessary for investigation techniques to improve correspondingly. Criminals are making use of every sort of modern equipment for their unlawful purposes thus the essential need for co-ordination of effort within the Police Service, members of the public and outside experts.

It is important to emphasize that an investigating officer needs to establish a basis of communication with outside experts. A Police Officer is not normally an accountant or lawyer and it should be acceptable, therefore, that an accountant or lawyer is not a Police Officer.

A close liaison must be maintained with experts outside the Service who may be in a position to render real assistance to us. Much is already being done in this field. As indicated earlier in this paper at the present time an Accountant/Inspector from the Corporate Affairs Commission is attached to the Fraud Squad and we greatly appreciate his presence with us. The secondment of experts such as this gentleman is certainly a move in the right direction.

#### (9) INCREASE IN CORPORATE AND WHITE COLLAR CRIME

Contrary to the predictions of sociologists of the 1920's and 1930's, who prophesied that the elimination of poverty would bring a decrease in crime, the lines on crime statistic charts have ascended steadily as wealth has increased.

The reasons for crime are complex. Sociologists of different periods have claimed to have discovered the cause of criminal behavior — in the 1920's it was poverty and in the 1960's criminal sub-cultures — but always it has been only a partial answer.

The solution to the crime problem must lie ultimately in social reform, but the tracing of causes followed by appropriate reforms is a slow process. Meanwhile the activities of criminals are adversely affecting the lives of the remainder of the community.

In the 1960's and 1970's the upsurge in corporate and white collar crime has been staggering. By way of example, for the year ended 1974 the Fraud Squad investigated some 810 offences. For the year ended 1975 that figure increased dramatically to 2,047.

The most obvious way to deter a potential offender is to ensure that he believes that the commission of a crime by him will be followed inevitably by his detection and punishment. Such a deterrent, which requires law enforcement that is efficient to near the point of perfection, is hard to produce in a democracy. It is possible to achieve improvements in a Police efficiency by investing capital in equipment and manpower, and there is room for considerable improvement in this way, but modern democracy provides other obstacles in the way of efficiency.

#### (10) INTERNATIONAL CRIMINALS

Over the past few years banks in Sydney and Melbourne have been the victims of international criminals tendering forged bank cheques and letters of credit. These men have gone to extraordinary lengths to carry out their activities, the modus operandi is to obtain a genuine letter of credit and then have the letterhead of the bank copied expertly by a printer, the bank signatory is then forged on the letter. The gang operates in threes, the person who utters the forged letter, the second person carried other forged letters and passports and the third carried the money obtained. The second and third offenders remain in the background and are never seen. With time changes between Sydney and overseas countries, it is near impossible to receive a ready answer whether by telex or telephone. We have investigated cases where an international criminal has arrived in the morning, uttered letters of credit and left the same day. In one of the most recent cases we were able to have the Singapore Police arrest an individual in transit in Singapore who defrauded banks in this city of \$40,000. It was later established that this gentleman was also wanted for similar offences in the United States of America, France and Hong Kong.

#### (11) CARELESS CONTROL OF COMPANY RECORDS

Frequently we see an appalling lack of control by companies and businesses in records maintained by employees entrusted with banking and preparing cheques. Many times persons who are the approved signatory of a company cheque account sign a blank cheque in good faith on the say so of the other signatory or of some other person without any documentation as to the ultimate destination of that cheque. The only way that wayward employees will get huge amounts from a company will be by way of cheques drawn on the company's account. The advice that we tender to such persons is never to sign anything in blank form especially cheques, bills of exchange, etc. Such illegally drawn cheques are always associated with false entries in company records so as to camouflage the misappropriation.

#### (12) CO-OPERATION WITH PUBLIC

The effectiveness of a Police Force depends primarily on the co-operation and goodwill of the citizens. If a Police Department cannot gain and maintain the confidence of the citizens in the community, its effectiveness will be curtailed and its integrity and ability questioned. Public trust and support can be obtained when the citizens are confident that the Police will not overstep the safeguards to individual liberty, and when the individual members demonstrate they are interested and actively engaged in promoting public peace and welfare.

A Police Officer frequently has a profound effect on the personal lives of citizens. He should appreciate the responsibility placed upon him by society and should always act within the legal limits of his authority. However, he must not forget that it is his duty to be vigilant. It is impossible for a Police Officer to do his duty properly unless he investigates every circumstance in which he suspects that a crime has been committed. Unavoidably, he will sometimes have to investigate an innocent citizen and thereby incur the ill will of certain members of society. An informed public, however, will accept his thoroughness not as an infringement of the rights of an individual, but as a guarantee of the protection of the community.

Public co-operation is one of the greatest assets that the Police Officer can have and for this reason he must continuously cultivate

and maintain it. In generally, this is a departmental effort, although the individual officer plays the most important part, for it is through the citizen's personal experience with a Police Officer that attitudes concerning the whole Department are formed.

Public acceptance of an inferior Police Service cannot be obtained through publicity of promotional efforts. Citizens soon become aware of the deficiencies and recognise them for what they are. The individual officer, who is instrumental in shaping public attitude, must earn a reputation of integrity and fair play. He must dedicate himself to giving high public service, impartial enforcement of the law and fulfilling his responsibilities completely, promptly and resolutely. Every officer must recognise that a Police Department exists for the purpose of serving the public, and that the public is entitled to prompt and courteous service.

### **(13) INDIVIDUAL FREEDOM -V- COMMUNAL NEED FOR ORDER**

In any democratic society the desirability of individual freedom must be weighed against the communal need for order. A correct balance is essential, as too much freedom can lead to anarchy and too little to totalitarianism. Currently, the need for a more orderly society has coincided with a hardening of public resistance to control and the maintenance of a proper balance is made difficult.

A feature of modern democratic society is the vocal strength of groups who seek to defend civil liberties. The desire of these groups to prevent encroachment on liberty may be laudable, but their support of certain aims displays enthusiasm for campaigning more than it does objectivity of judgment. In their efforts to safeguard the rights of individuals they tend to overlook the essentiality of order within society.

The activities of groups of this type reinforce attitudes towards authority — ranging from apathetic to antipathetic — that are held by a fairly large section of the community. Consequently, any apparent encroachment of civil liberty is attacked from all quarters. Frequently reason is submerged in emotion and authority deterred by emotionally charged public opinion.

In the interests of freedom any democratic country must impose restraints on the powers of its law enforcement bodies, even if it is the cost of efficiency. What is debatable is the extent of the reduction in efficiency that can be permitted before social order is endangered.

### **(14) PROSECUTION**

In the fight against corporate and white collar crime after the investigator completes his role the brief of evidence is then handed to

the prosecutor. All investigations, no matter how involved or complex which lead to charges by members of the Criminal Investigation Branch, are handled by the New South Wales Police Prosecuting Branch at the committal proceedings.

Like members of the Fraud Squad, the personnel of the Prosecuting Branch are Police Officers. In many prosecutions for corporate and white collar crime offences, Police Prosecutors find themselves opposed to Queen's Counsel and leading members of the New South Wales Bar; a task which calls for a thorough and up to date knowledge of all aspects of criminal law.

Our Police Prosecutors are readily accessible to all members of the Police Force who require immediate advice on Acts of Parliament, preparation of briefs of evidence, court practice and procedure.

On many occasions when the Fraud Squad receive praise for the preparation of some complex fraud investigation, you can be sure that the Police Prosecuting Branch will have played a major part. Unfortunately Police Prosecutors do not receive the credit to which they are justly entitled.

### **(15) THE RIGHT OF THE POLICE PROSECUTOR TO APPEAR IN COURT**

Although Police Prosecutors are an integral part of the system of Justice in the Courts of Petty Sessions in New South Wales, they are not entitled to appear in Court without the permission of the Magistrate presiding at the Court on the particular date. Members of the legal profession are entitled to appear as of right, but the appearance of the Police Prosecutor depends upon the exercise of discretion of the Magistrate.

It is the practice of the New South Wales Magistracy to grant permission to Police Prosecutors to appear quite freely, "to regulate the Court, to promote convenience, expedition and efficiency in the administration of justice". The Privy Council endorsed this procedure on the grounds quoted in the celebrated case of O'Toole versus Scott when the practice was challenged a few years ago.

From time to time we hear that the Police Prosecutors will be replaced by members of the legal profession. I would like to add that the Police Prosecuting Branch, which came into existence in 1941, has a record of fair play and integrity and has served the Police Force, the Government of the day and the public of New South Wales over the past thirty-five years with great distinction and credit. With no discourtesy meant for the legal profession it will be a sad day for my fellow colleagues and myself to see the Police Prosecuting Branch changed from its present form.