2003/04 Financial review of the Serious Fraud Office

Report of the Law and Order Committee

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Serious Fraud Office

Recommendation

The Law and Order Committee has conducted the financial review of the 2003/04 performance and current operations of the Serious Fraud Office and recommends that the House take note of its report.

Excellent financial and service performance

The Office of the Auditor-General has assessed all five areas of the Serious Fraud Office’s financial and service performance management to be excellent.\(^1\) Public sector organisations rarely achieve the highest ratings consistently in consecutive years. The majority of us congratulate the office for continuing to maintain this high standard, as it achieved the same ratings the previous year.

Investigation into Waipareira Trust

On 2 November 2004 the office issued a press release confirming it had initiated an investigation into the Te Whanau o Waipareira Trust in response to allegations contained in a report (the Paragon report) commissioned by the trust, but prepared by a private investigation company, that false invoices totalling $100,000 were constructed during 1998/99.\(^2\) The director also verbally confirmed that the report containing the allegations was forwarded to the office by MP Hon John Tamihere, who was the Chairman of the trust during the period under investigation.

The office took the rare step of issuing the press release because of the nature of the allegations, and also because there was already significant public interest in the matter. The director made it clear that the office will usually (in 90 percent of cases) neither confirm nor deny that an investigation has begun, as to do so could cause unfair prejudice against the parties being investigated. For the same reason the director would not disclose any further information relating to the office’s investigation of the trust, but assured us that the office would fully investigate all the allegations put before it. The office confirmed that it is aware that people under investigation might try to remove evidence, and has the powers to address this issue if it needs to. It also assured us that it was a routine part of their investigations to follow money trails, and that if an investigation uncovered any criminal offending that would not warrant the office’s involvement it would be referred to the police.

On 18 October 2004, before the office’s announcement, the Government announced that it had initiated an inquiry into matters relating to the trust and Mr Tamihere. The inquiry

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\(^1\) The five areas are: financial control systems, financial management information systems, financial management control environment, service performance information and information systems, and service performance management control environment.

was headed by Douglas White QC. It investigated a number of allegations made with respect to Mr Tamihere, including matters relating to payments made by the trust to Mr Tamihere and the tax status of these payments, remuneration from Westland, a trust subsidiary; the return of election expenses with respect to a campaign donation made by the trust; and related matters. At the time of the hearing the director planned to talk to Mr White to ensure that their respective tasks did not in any way prejudice their roles. The director was unable to say whether any aspects of the office’s investigation would delay Mr White’s inquiry report to the Prime Minister as he had not yet spoken with Mr White. Considering that the inquiry and the investigation are being conducted at the same time, the director said he would expect that Mr White would be careful not to prejudice any criminal actions that might result from the office’s investigation.

**Duration of the investigation**

The office could not indicate how long its investigation into the trust was likely to take. The course of the investigation will depend on the information that comes to light. The investigation team will report to the director on what they have found. In accordance with normal practice the director will assess the material and determine whether further work needs to be done, or whether he is in a position to make a judgement on the matter.

**Previous assessment of Waipareira Trust**

We are aware that the trust was scrutinised by the office 3 or 4 years ago. The office confirmed that it assessed, but did not fully investigate, “certain allegations relating to forgeries and Aotearoa Rugby League”. After a thorough assessment the office decided that there was not a sufficient case to open an investigation. The director did not rule out the possibility of any case being reopened if new and relevant information became available.

**Electronic presentation of evidence**

During the 2003/04 financial year the office completed work on the “electronic courtroom” project, which will allow the office to present evidence electronically in court. As the office’s work is largely electronically-based, the new system (which is compatible with the office’s database software) means it can seamlessly transfer the documents that form the basis of its case to the courtroom in electronic form, rather than in hard copy, which is currently the practice in most courtrooms.

The system enables court participants, including the jury, to view all exhibits electronically on flat screens positioned around the court, instead of having to handle large amounts of paper. The whole court, including defence counsel, can now, at the push of a button, have immediate access to the prosecution’s exhibits. Exhibits can be shown with subtitles, and new evidence produced by the defence counsel can be scanned on the spot.

The system has been successfully used in two trials in Auckland (one involving four defendants and over 10,000 documents), and will be used in several forthcoming trials. During the current year the office has given priority to implementing the system in the Wellington and Christchurch District Courts so that it can be used in jury trials.

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**Expected benefits of the system**

While the long-term benefits of the system cannot be assessed yet, the office appeared confident that it was a vast improvement on the previous paper-based system. The office’s assistant director of investigations said that it offered “huge” advantages in time, convenience, and participants’ understanding of the case. The office expects the new system to significantly reduce the duration of trials, particularly complex fraud trials that can be very demanding of valuable court time. The office also expects that the system will save considerably on paper and photocopying costs. We were reassured to learn that presenting electronic evidence in this way has not, as yet, given rise to any legal issues.

For the year under review the cost of the system, against an allocation of $100,000 for capital works including computer equipment, totalled approximately $50,000. The software cost only $1,047, and costs mostly relate to computer equipment, in particular monitors, and courtroom modifications to accommodate them.

We intend to monitor expenditure on the system, and its impact on proceedings brought by the office before the courts. In particular, we will be looking at whether the expected long-term benefits, such as shorter trials and more effective presentation of documentary information, are borne out without adverse consequences. We have asked the office to provide statistics on the savings brought about by the new system in a year’s time.

**“Going behind” legal professional privilege to investigate white-collar crime**

Information covered by legal professional privilege is the only exception to the director’s powers of access to confidential information in investigating and prosecuting cases of serious or complex fraud.

The office addressed this issue several years ago, to see whether the Act’s provisions could be applied more effectively. This was not successful, largely because of the nature of court proceedings, and the complexities of searching for information held on computer systems.

The office remains of the view that it is highly likely that information for which legal professional privilege is being claimed will be held on the computer system of the legal firm acting for the party being investigated by the office. At present, the office does not necessarily get to examine such information to determine whether it might be relevant to the criminal investigation and outside the ambit of legal professional privilege.

The director states in the annual report:4

> The sophisticated criminal knows that legal professional privilege will provide a measure of protection to his or her activities. The criminal also knows that their lawyer and the Courts will not lightly set aside any claim of legal professional privilege. The net effect is that legal professional privilege serves well the interests of the sophisticated white collar criminal.

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4 Serious Fraud Office, Annual report for the year ended 30 June 2004, p. 15.
Section 24 of the Act provides that in the case of a dispute over the application of legal professional privilege the matter is to be referred to a District Court Judge for a decision. The director told us that litigation under this provision has impeded the progress of investigations. He asserts that the intent of the Act, that legal challenges to investigations should not impede an investigation, was beginning to be undermined by the increasingly numerous claims of legal professional privilege. In many cases the office has had to put an investigation on hold pending the outcome of the legal privilege argument.

Although the office does not keep records of every occasion when legal professional privilege has been raised, it reported that there had been at least 6 section 24 applications in recent years, and that investigations have been delayed by periods ranging from several months to well over a year. In one case it took 12 months to get the matter to court and to secure a resolution, and another case currently before the office is expected to take even longer. The office confirms that in other cases where legal professional privilege has been raised it has, albeit after consequent delays, been able to reach a satisfactory accommodation with the parties making the claim.

**Office’s preliminary views on a model allowing it to “go behind” legal professional privilege**

The office’s preliminary views on a suggested model that would allow it to “go behind” legal professional privilege are that it would essentially remove legal professional privilege as a barrier to access all the information that it requires to investigate a matter of serious or complex fraud. The office states that its intent is not to displace legal professional privilege entirely, but to modify it to ensure that the office can obtain full information on matters that are properly subject to investigation.

The model would enable the office to make the initial decision on the question of the relevance of the information to its investigation, in the same way that it now evaluates non-legal information. The office pointed out that the information it acquires is already subject to strict secrecy provisions. If necessary, it suggested, an additional safeguard could limit the use (other than directly by the office in relation to its investigation) of any material subsequently held by a court to fall within the area of legal professional privilege. The office expects that any proposed model will be considered by a body such as the Law Commission, before any changes were recommended. The director informs us that he is currently discussing with the Law Commission the prospect of the commission undertaking a review of legal professional privilege as it relates to serious fraud investigations.

**Expected impact of “going behind” legal professional privilege**

The office envisages that going behind legal professional privilege would give it, rather than the courts, responsibility for investigating and assessing the relevance of the material. The court will not be required to do time-consuming investigation work, for which it is neither trained nor resourced, on matters that are more usually the domain of experienced Serious Fraud Office investigators and forensic accountants. Other benefits will include speedier resolution of matters under investigation, greater certainty that the office is getting to the
truth of the matter, and a signal to the public that New Zealand is serious about prosecuting cases of serious or complex fraud.

The office can cite only six cases where disagreement over the application of legal professional privilege has resulted in court proceedings, although we note it has been a factor in delaying some investigations that did not reach the courts. While these six cases may have been substantial, we remain unsure whether this is an impediment to the office’s ability to investigate. As acknowledged by the director, extending the office’s powers to “go behind” legal professional privilege represents a radical departure from the current law. While giving the office this power might improve its ability to investigate and prosecute fraud, it must be balanced against other fundamental considerations. Further thought on how such an approach would work in practice, including consultation with the legal profession and other affected groups, is required. The majority of us are pleased the office is discussing the issue with the Law Commission. We wish to be informed whether a review will be initiated.

**Impact of the office on serious fraud**

We were interested in how the work of the office has impacted on the nature and extent of serious or complex fraud offending in New Zealand, especially as, over the 14 years that the office has been in existence, there appears to have been no appreciable reduction in the number of cases investigated. Because of the nature of serious or complex fraud the office says it is difficult to assess the extent to which the number of complaints reflect the incidence of serious or complex fraud, because, unlike most other crimes, fraud may happen without any “victim” being aware of it. We heard that the large majority of complaints and referrals of cases to the office come from external sources, including Government departments, liquidators, receivers, statutory managers, professional associations and the general public. However, on occasion the office is proactive in initiating its own enquiries.

**Timeliness of investigations and prosecutions**

We were pleased to hear that the office considers itself to be well resourced to carry out its work. We had some questions about the length of time taken to resolve some cases.

The office emphasised that investigating serious and complex fraud is by its very nature time-consuming. Each year the office resolves about 20 full cases and assesses at least 60 possible cases. At any one time the office will be dealing with approximately 12 preliminary investigations, 25 full investigations, and 30 prosecutions. While the office says it is very conscious of the need to expedite cases, reviewing each case monthly, it stressed that as it relies on information from various people to progress each investigation, cases may take longer to conclude than is desirable. Also, while the office has good relationships with banks, who provide information readily, it takes some time to trace transactions that are many years old.

It also takes time to understand the information provided. The director cited the office’s successful prosecution of two people for a complex fraud involving government superannuation bonds. This case took many months to investigate because it required an understanding and unwrapping of the markets to show fraud, and then translation of this complex information into a form understandable by a lay person. But the director pointed
out the biggest factor affecting timeliness was not the time taken in deciding whether to prosecute, but the time taken from the laying of charges to the completion of the hearing. It may take up to a year to reach the preliminary hearing date, and then another 6 to 8 months to get to the trial date. It is also difficult to find time in the court’s programme for a big case, which may take up to 6 weeks. These difficulties are evidenced by the fact that the office has already scheduled cases for trial and depositions into mid-2005.

We appreciate that investigating serious or complex fraud is a complex matter that requires expert analysis by forensic accountants and specialist investigators. Securing court time is outside the office’s control. But we nevertheless remain concerned at the perception that the office is too slow in moving to prosecute alleged offenders.

**Changes in performance measures**

Two changes have been made to the office’s performance measures for quality and timeliness, as detailed below.

**Table 1: Changes in performance measures**

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<thead>
<tr>
<th>2003/04 Performance measure</th>
<th>2004/05 New performance measure</th>
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<tr>
<td>That a minimum of 85 percent of prosecutions are successful.</td>
<td>Measure discontinued.</td>
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<tr>
<td>That the standards set by the director and senior counsel are met and that at least 80 percent of the cases achieve a satisfactory quality rating for the case investigation and preparation from senior counsel, and less than 5 percent incur adverse judicial comments.</td>
<td>That the standards set by the director for case investigation, case preparation and the presentation of cases in court are maintained.</td>
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We raised concerns regarding the desirability of these changes, particularly the discontinuation of the target for successful prosecutions, and asked how the changes will help the office present a more relevant, complete and transparent picture of its performance.

The office says the changes remove measures that were considered inappropriate for a prosecuting agency. With respect to the discontinuation of the target for a minimum of 85 percent successful prosecutions, the director told us he had a problem with this measure, as it was contrary to the general understanding that performance measures should be matters within one’s control. He considers this performance measure to be inappropriate because the decision on whether or not any case is found to be proved is subject to a number of factors beyond his (the office’s) control. He noted that he was looking for an alternative performance measure, to avoid comment to the effect that the office was not performing and was removing the measure to hide the fact. To dispute possible assertions of non-performance, the director referred to the office’s track record of a very high success rate in prosecutions – 100 percent for the last 2 or 3 years. He also pointed out that the office would be concerned if it received adverse comment from counsel or the court, but informs us that the few comments that it has received have been constructive and carefully considered.
The office reaffirmed its commitment to prosecuting criminal offending in accordance with the Solicitor-General’s guidelines, by investigating every case thoroughly and ensuring each case is presented in the best way possible to the court. Ultimately, however, the way the case is presented to the court rests with the senior prosecutor, who is independent of the office.

We were reassured to learn that both performance measure changes were made only after discussions with the Attorney-General, the Treasury, State Services Commission and the Office of the Auditor-General. We intend to monitor the outcomes of the new performance measures and raise them with the office at the next review.
Appendix A

Approach to this financial review
We met on 03 November and 01 December 2004, and 02 February 2005, to consider the financial review of the Serious Fraud Office. Our review took 1 hour and 56 minutes. We heard evidence from the Serious Fraud Office and received advice from the Office of the Auditor-General.

Committee members
Martin Gallagher, Chairperson (Labour Party)
Marc Alexander, Deputy Chairperson (United Future)
Georgina Beyer (Labour Party)
Brian Connell (National Party)
Ann Hartley (Labour Party)
Ron Mark (New Zealand First Party)
Mahara Okeroa (Labour Party)
Hon Tony Ryall (National Party)

Evidence and advice received
In addition to the 2003/04 annual report and statement of intent, we considered the following evidence and advice during this financial review:

- Response to supplementary questions, 1 October 2004.
- Response to additional supplementary questions, 1 November 2004.
Appendix B

Final transcript

Financial Review: Serious Fraud Office
Law and Order Committee

03 November 2004

Members
Martin Gallagher (Chairperson)
Marc Alexander (Deputy Chairperson)
Gerry Brownlee
Hon David Cunliffe
Hon Taito Phillips Field
Ann Hartley
Rodney Hide
Ron Mark
Hon Damien O'Connor
Hon Judith Tizard

Staff
Tracey Rayner, Clerk of Committee
Toakase Tonga, Parliamentary Officer (Report Writer)
John Thomson, Parliamentary Officer (Committee Support)

Witnesses
David Bradshaw, Director, Serious Fraud Office
Gib Beattie, Assistant Director Investigations

Gallagher Welcome to Mr David Bradshaw from the Serious Fraud Office. Basically what I perhaps invite you to do is, in terms of the process, to perhaps give us a fairly concise, reasonable sort of overview of the activities in terms of the report the Serious Fraud Office has tabled. Then at that point I will get an indication of which members want to ask questions, and we will move through those questions, governed as we all are by relevant Standing Orders. We are in your hands, sir.

Bradshaw Thank you. First of all, may I introduce the two people who are with me from the office. Gib Beattie is my Assistant Director Investigations. Absent today is my Assistant Director Prosecutions, who unfortunately has a court fixture and could not make it down here. And I have Jan Coppins, who is
in charge of the administration area in our office and is responsible for putting together the various questions that this committee asks, to make sure you get them on time, and the like. She is here today to see the other end of the process of what she puts in at the office.

I believe we have had a good year at the office. I think the office is in good heart in terms of its staffing, its facilities, and its ability to do its job. The report details the prosecutions we’ve taken, the investigations we’ve undertaken during the year. There is a consistent number of investigations being done by the office each year. There has been a slight decrease in the number of complaints coming to the office, but not a decrease in the number of actual investigations being undertaken. The number of prosecutions we are taking continues to be at quite a steady level now. We generally have somewhere between 25 and 30 live prosecutions on our books at any one stage. So we have a reasonably consistent workload going through. The cases we are dealing with come from a range of people—from the general public, from lawyers and accountants and liquidators. We get complaints from everywhere, and we do look at some matters of our own volition.

I think the strength of our office is the ability that we have to actually spend time to actually get inside and consider complaints, to make sure that we do a thorough job in our investigations, and present the best case we can to the court when we decide to take a prosecution.

This year we’ve been working with the Securities Commission on a public education campaign, which has kicked off just in the last month down in the Bay of Plenty area, where we have been trying to draw attention in various community groups to some of the scams that are happening—the housing frauds, and the like. We’ve been working with the Securities Commission on that. We sent some pamphlets to the committee earlier about that, which highlights an attempt that we’re making to not only be at the bottom of the cliff taking prosecutions but hopefully to be the fence at the top, saving people from getting caught up in some of the scams that are happening.

I’d be happy to take any questions.

Gallagher That is the end of your overview presentation? What I now need to do is to get an indication of members of the committee who wish to ask questions. As is the tradition I go the senior Opposition person on the committee.

Brownlee Firstly, congratulations to the Serious Fraud Office for getting five excellents in their audit. That’s good. You’ve been given the Paragon report by the Waipareira Trust and asked to investigate matters that relate to that document. Does that stop you looking at other aspects that may need to be considered as that case unfolds?
Bradshaw: Can I just make one correction to that. The report was actually forwarded to us by Mr Tamihere, not the Waipareira Trust—just to put that on the record. In terms of our investigation, we will go as wide as we need to, if we think there is any offending.

Brownlee: How do you rate your former colleagues who put that report together?

Bradshaw: I’ve got no comment on those people. I don’t know who actually did it, so I really couldn’t comment.

Brownlee: If I were to ask you whether or not you would give a reference to the person who signed that report off as the senior investigator—a person who once worked in your office—would you not give it?

Bradshaw: I would give a reference in terms of the work that they undertook for me in the office that I knew about. But I can’t comment on a report that I don’t know anything about how it was prepared, or any of the circumstances.

Brownlee: I didn’t ask you to do that. I asked you how you would rate those people or that person.

Bradshaw: When Mr Roigard worked for us he was a good investigator.

Brownlee: So what will your process now be, and how long can we expect it to take?

Bradshaw: My process will be basically bringing together the investigation plan, then working through that and, depending on what comes out from the various things we find, we may have to amend our plan as we go through. Ultimately, the investigation team will do a report to me, and I will then assess that material and determine whether any further work needs to be done, or whether I’m in a position I feel to make a judgment on the matter.

I will never say how long a case will take, because that’s like asking how long a piece of string is. I don’t know what I’m going to find when I start an investigation, so I never like to give people the view that it’s going to be done in 1 week or 2 weeks or 3 weeks, because I just don’t know.

Brownlee: What sort of interaction do you expect to have with Douglas White QC?

Bradshaw: I will be talking to Mr White to ensure that our two tasks don’t in any way prejudice our roles.

Brownlee: Do you think any aspects of your investigation would hold Mr White up in making his report to the Prime Minister?

Bradshaw: I haven’t spoken to Mr White yet, so until I have that discussion with him, I don’t know what he’s planning and he doesn’t know how I will be approaching it. So until we’ve had that discussion, I don’t know.
Brownlee  Considering there are two investigations going on, are there some aspects or areas that need to be looked at, given the very broad brief that Douglas White has been given, and that you will be indicating to him that he should defer to you on?

Bradshaw  I would think— given my statutory responsibilities, I would expect that Mr White would, if I am looking at a matter, be careful not to prejudice any criminal actions that I might want to take.

Brownlee  Subsequent to the public understanding that the Serious Fraud Office were going to be involved, has the Serious Fraud Office received other information from other parties that might relate to the allegations surrounding Mr Tamihere?

Bradshaw  I don’t think it’s appropriate at the moment, given that I have a live investigation to undertake and I must act independently, that I discuss the details of any information or anything. I am happy to talk about the process, but I think beyond that, it runs the risk of prejudicing any later action I take.

Gallagher  In summary, you’re here to talk about process. Natural justice would preclude a specific discussion of a specific case.

Brownlee  With all due respect, I haven’t asked you about any details, and I haven’t asked you for any details. I have simply asked you, since it became publicly known that the Serious Fraud Office were investigating matters related to John Tamihere, has the office received any other information that might lead to investigations?

Cunliffe  Point of order, Mr Chairman. We are either ruling in or out matters pertaining to specific cases, as within the scope. This is a financial review of the office, and if Standing Orders natural justice procedures apply, then I submit to you, Mr Chairman, that that is out of order.

Brownlee  Mr fellow over here needs to read the Standing Orders.

Hartley  Point of order. You address members correctly.

Gallagher  You address members correctly, Mr Brownlee, please.

Mark  Point of order, Mr Chairman. Can you tell me his name so we can do so?

Gallagher  I am happy to clear the room and call the Clerk of the House if need be to rule, but just help me please.

Brownlee  Mr Cunliffe needs to take a little bit of stock of what the Standing Orders are about. Natural justice in the Standing Orders provisions comes into play where there is an allegation made against a person, and they are given an opportunity to come and defend themselves. I’m not laying any allegations against anybody. I’m asking the Serious Fraud Office director if, subsequent
to the public announcement that there was going to be a Serious Fraud Office investigation into matters relating to false invoices—or alleged false invoices—coming from the Waipareira Trust at a time that John Tamihere was the chief executive officer, has there been any further information come to the Serious Fraud Office that relates to John Tamihere’s activities.

Gallagher: I will rule, obviously, that we can talk about a process of investigation, but I think, Mr Bradshaw, you have absolute discretion and right, within the terms of your office, to answer questions as you see fit, in such a way that does not compromise the integrity and the objectivity and the impartiality of any investigations you may or not be currently involved with.

Mark: Point of order, Mr Chairman. Before we progress, I would just like one thing sorted right now. We have a number of people who have come on to the committee who are not normally members here. Within seconds, we’ve had a spurious interjection, and that has taken up quite some considerable time. Whenever we lose time in such sessions, the parties that generally tend to lose out are the minor parties, particularly the United Future party. Could I ask you, where a spurious interjection result in the loss of time, that that comes off the time of the party that brings it.

Gallagher: I think with good will, Mr Mark, I’m going to do my very best as chair to ensure that within reason, obviously, all members of this committee—all parties represented at this committee—have adequate time to pursue their questions within the Standing Orders.

Bradshaw: As the director, I go to great lengths to ensure that whenever I’m investigating a matter, at that stage there can be no unfairness or prejudice to any of the persons concerned. The media—and many of them are here—will know that when they ring my office, even to ask me am I investigating a matter, 90 percent of the time they will be told that I will neither confirm nor deny, because to either confirm or deny is to be unfair to a party simply because I am investigating them.

It’s not a reluctance to share any information with the committee, but it is a matter of fairness in terms of how this office investigates people. I have to draw a line and I have to say, to get into any discussion on what information I have or don’t have on any matter—not just this but on any matter—I don’t think that is proper for me to be divulging, until such time as I decide to prosecute a case. If I prosecute a case, then the matter goes into court, it’s public record; people have to stand up and give evidence about what they’ve told me in my investigation.

Brownlee: So you would be unable to confirm, or you can’t confirm, that the Serious Fraud Office has received a complaint about various activities involving the persons related to this case, and directly concerned with this case, while they were involved with New Zealand rugby league?
Bradshaw I put out a press release, and I wouldn't go any further than what is in my press release.

Hartley I was interested in the change in the performance measures this year, and that you've dropped the minimum of 85 percent of prosecutions successful. I just wondered if you would like to comment on that.

Bradshaw Yes, it always seemed to me from the moment I took up the job that having a performance measure that was driven by successful prosecutions was contrary to the general understanding about performance measures—that they had to be matters that were within your control. In terms of a prosecution, the decision on whether or not any case is found to be proved is subject to a number of variations beyond my control.

Having said that, I was looking to discuss with the Treasury a change to that performance measure at a time that wouldn't bring about some adverse comment that we were not performing and wanted to remove it. I think if you look at our track record, our success rate is actually very high—it's above 85 percent, and for the last 2 or 3 years it's actually been 100 percent, which has caused criticism, again, of whether we're taking the right cases. Sooner or later I needed to make that change. We made it this year.

Hartley So the evaluation of whether you are taking the right cases or not, or only the ones that you can succeed with, is that something that somebody independent has looked at?

Bradshaw In terms of my prosecutions, we have a panel of outside prosecutors who look at our cases—who actually take the prosecutions. So they would see our files, and if they felt we weren't prosecuting correctly, I'm sure they would discuss it with me. We haven't had any criticisms of that nature.

Mark Picking up from where Mr Brownlee started, the Waipareira Trust—as I'm reading in the paper this morning—you have launched an investigation.

Bradshaw We've opened an investigation, yes.

Mark As of when?

Bradshaw The investigation was opened on Monday.

Mark But you've already investigated the Waipareira Trust.

Bradshaw The allegations that I am looking at, as set out in my press release, relate to a number of allegedly false invoices in 1998 and 1999.

Mark But when was the last investigation you conducted on the Waipareira Trust?

Bradshaw I conducted an investigation—I can't give you an exact date, but it would have been probably 3 or 4 years ago, at least.
Beattie  I don't think that was a full investigation. We were assessing certain allegations relating to forgeries and Aotearoa Rugby League.

Bradshaw  That is an important point that Mr Beattie makes, that previously there were allegations made against the Waipareira Trust. When an allegation is made I assess it to see whether I need to look any further and exercise any of my powers to get any papers, to see whether it has got any validity or not. In the previous case, when we looked at it, I did not believe there was a sufficient case to open an investigation. So we made an assessment of it, and we looked at it and decided it was not a matter that we could usefully take any further.

Mark  That was in spite of the fact that there's been revelations that some 30 bogus cheques had been written out to companies that didn't exist?

Bradshaw  I made my decision after we had done a thorough assessment of the material.

Mark  How do you assess that decision now, given that you are back, again, looking into the Waipareira Trust? Some might, in part uncharitably, suggest that your assessment was flawed right from the outset, and had you pursued many of the issues in the public dominion at the time, we would not now be engaged in another round of investigation. Your investigations yourself would have covered this ground and brought to light the issues that are currently under examination. Some might suggest you failed in the job at the first assessment. How do you respond to that?

Bradshaw  I would say that the assessment we made was thorough. When I have to look at a matter, I am looking at it from the question of criminal proceedings. So what I have to assess is what evidence will I be able to establish to bring a charge, a prosecution, which I need to establish beyond reasonable doubt. I am not just looking to do a report on a matter; I'm looking to see whether there is any criminal activity. I need to make an assessment of the material that is available, the likelihood that that shows that there has been criminal offending, and the likelihood that I will be able to establish that that criminal offending can be prosecuted.

Mark  So do you ever review your decisions? I mean, do you have a performance review of yourself? When further information comes to light in the public arena— like there was a select committee inquiry that went on beyond that. There are continuing allegations around the Waipareira Trust. Do you ever give yourself time to go back and reflect on issues, and consider maybe, just maybe, there are issues that you hadn't investigated close enough? Do you ever do that? You simply issue a clean bill of health to the Prime Minister and dust it off and walk away.

Bradshaw  No, we don’t do that. If there is further information that came to hand on a matter, then we would certainly go back and look at a case. I think if you look in our annual report, in just about every year you will find a number of
cases that are reopened. We will do that where further information comes to hand. There is a case at the moment where we closed it and referred the material to Australia, because we felt the offending was over there. The Australians have run with it. They have come back with information to us, and we are now working together on that case. So we do reopen, but there has to be a reason for it.

Mark But in this case you didn’t, and now we’re back to it again. Can I just move on. Threshold—what’s the threshold that exists for whether or not a serious fraud investigation should go ahead?

Bradshaw I’ve got two thresholds in my legislation.

Mark What’s the financial threshold?

Bradshaw The law doesn’t place a financial threshold. The financial threshold that is referred to often is the half a million dollars, which is basically a figure that is used between the police and myself as to whether a matter should come to the Serious Fraud Office or be dealt with by the police. If you look in my legislation, you will find that I am not limited to any financial limit. Other factors can come into it, which are the complexity of a matter, or the public interest.

Mark So I assume your decision to investigate the Huata case was based on— it certainly didn’t meet the half million dollar threshold, did it? That decision was based on what, then?

Bradshaw That was based on two factors. One was the complexity surrounding the different financial structures within the foundation, and secondly, there was a public interest factor.

Mark O.K. Tell me, the current insider trading allegations, the charges that are currently before the court, the SFO broke that, cracked it open?

Bradshaw Insider trading, that’s not a criminal matter.

Mark It’s not? Some might suggest that it’s definitely a public interest, and definitely a very serious need, given history. Once again, it seems that the SFO didn’t seem to have a great interest in this. What can you tell me, then, has been the gap in the current legislation that prevents the SFO from attacking such a case, from investigating such a case out of public good and out of public interest?

Bradshaw Because my role is to investigate matters of a criminal nature. We work very closely with the Securities Commission, and the Securities Commission is concerned with the securities law and with the insider trading matters. If the Securities Commission felt that a matter they were looking at had come close to or crossed the boundary between their activity and criminal activity, they would refer it to us.
There are a number of cases where the Securities Commission could have taken lesser securities-type actions against some people, but have preferred instead to see whether there was anything criminal, because they are concerned, and we have taken over a matter from them. One of those was, for example, IMI Pacific, which was a big investment scam where there could have been some simple charges for failure to have prospectuses for different investments, which would have had a very minor penalty, but the whole scam itself was regarded as criminal, and when the Securities Commission handed it to the Serious Fraud Office, we investigated it and brought prosecutions. So it’s the criminal side that we deal with. The Securities Commission deals with the securities civil action side.

Mark: Do you think that that creates a perception problem out there in the eye of the public? The average Joe Blow in the street perceives that the Serious Fraud Office is there to protect the public interest against white collar crime, against fraudulent crime—

Member: It’s not crime.

Mark: I’m talking perceptions. I mean, you make recommendations in the report here about failings in the Act. Do you think that this isn’t an issue the increasing of auditors’ extended powers?

Bradshaw: I don’t think it would be appropriate to combine the activities of the Securities Commission work criminal investigator. I think that would muddy the waters.

Mark: That’s fine. So, that probably leads to the next question. Why do we need the SFO? I mean, who you work for— we get a bit confused where I sit, because it seems that the big boys get away with ripping the country off hundreds of millions, but we’re straight into minor cases. We have the Waipareira Trust in the public eye for allegations of fraud. They get a clean bill of health, and then a couple of years later they’re back in the gun again, and, once again, the SFO is launching an inquiry, which some of us might believe should have been done right at the outset. Tell us why the SFO should exist and why we shouldn’t wrap you up and give the responsibility back to the police?

Bradshaw: Because we don’t do the same sort of work as the police do. The approach that we take to criminal matters is to apply very much a forensic accounting focus approach to serious offending. We are able to apply a multi-disciplined task to those activities in a way that it has been found in the past that the police were not able to do. We combine not only the law enforcement side of it, but we do have an understanding and deal with the markets and different matters of that nature.

You may mention one or two cases. I would equally mention—if you look at my annual report—a prosecution we brought against two people who had got into a very complex attempt to defraud the Government super
fund on trading in Government bonds, which is a very complex matter, which required an understanding of Government bonds and how they were traded, and what these two people were doing. It took a lot of unwrapping and understanding of the markets. I would refer you to the prosecution of Mr Allan and a number of others on a financial scam, where we had to use incredible accounting abilities to show that the investments simply could not work.

So we are not just doing small matters that are inconsequential. Our investigations take many, many months, and often longer, because they are very complex and they require a very full understanding of more than just a simple crime. But beyond that, they also require the ability to then translate that complexity into a form that can be understood by a lay jury, in terms of a prosecution. So the type of forensic accounting people that I have in my office have a skill to understand the most complex matters, but they also have the ability to present it in a simple form to a judge and jury. That is a skill that I think this country is really well served by having.

Mark They couldn’t work for the police?

Gallagher Mr Mark, we have other questions. Do you want one more question?

Mark I’ll come back in that case.

Alexander How many cases do you have on at any one time? I think you mentioned that earlier.

Bradshaw We generally have between 20 and 25 full investigations at any one time. Underneath that we might have half a dozen or so cases that we are looking at, where we haven’t quite got to a full investigation, but we are assessing whether we need to take it further or not.

Alexander So how many conclusions or resolutions would you have in a year, roughly?

Bradshaw In terms of looking at full cases, probably about 20. Then we have a number of lower level cases—probably about half a dozen of those. Then we are also making assessments on whether or not to take cases on, and we would probably do 50 or 60, at least, of those, or more, per year.

Alexander Would I be right in thinking that that would be just the tip of the iceberg? I mean, if you were fully resourced, or if your resourcing was more greatly enhanced, there would be a lot more that you could be doing—a lot that simply escapes the radar.

Bradshaw There are no cases that I have declined because of a lack of resources.

Alexander So you’re comfortable with the level of resourcing at the moment?

Bradshaw For where the cases are at the moment, yes.
Beattie  Those figures also don’t include 25 to 30 prosecutions that are live at any one time, so all up, there’s probably about 50 or 55 matters on our books at any one time.

Alexander  But there’s a sense that, sometimes, timeliness is important. Take the Huata case, for example. With the length of time that it’s taken for that case to drag on and drag on, even if she loses, she ends up winning.

Gallagher  I just want to— I’m not being obstructive, I just want to caution that anything that is sub judice, any committee of the Parliament must—

Alexander  I’m not talking about the qualitative—

Gallagher  In terms of the process.

Alexander  The process is simply this. Win or lose, at the end of the day, she’s still going to win in terms of keeping her perks, keeping her privileges, and all the rest of it, despite the fact that she may well and truly be found guilty.

Gallagher  I think we’re really moving into an area that may be—

Bradshaw  I can talk in generalities. Timeliness: I review every case at least once a month to see where it is going and why there are any delays; are there any blockages in what we’re doing. We are very conscious of the need to expedite cases. The delays don’t generally come because of a lack of resources. The delays come from a number of other areas. Firstly, I need to get a lot of information; I need to ask a lot of people for information. So I need to get that information in, and sometimes that may take a little bit longer than I would desire. But I’m reliant on people assisting me. I have very good relationships with the sorts of places that I need— banks, in particular, I would give a big vote of thanks to, because they are really good in providing us with a lot of information that we need. But it takes time, often, to find cheques and deposit slips, etc, that are many years old.

Many of my investigations now will involve an overseas component. So to get information from overseas takes time. Often witnesses may be travelling, so I need to find witnesses to interview them. In terms of investigations, it’s not actually resources that take my time, it’s a lot of other factors.

The biggest time factor in most of my cases that go to a prosecution is not in the time taken between taking the case on and deciding to prosecute, but in the process of getting it from the laying of charges to the actual completion of the hearing. That is where the time is taken, because it may take up to a year just to get to the preliminary hearing, and then maybe even another 6 to 8 months to get a trial date. Particularly if you’re looking at big cases of 4 to 6 weeks or so, to find that sort of time in the district court programme can be quite difficult. I already have cases now that are programmed for trial and depositions into the middle of next year.
Alexander: I understand, but from a public perception point of view, it sometimes seems to be that the bad guys win, even when they lose.

Bradshaw: I don’t have any ability to change—

Alexander: No, point well taken. Professional legal privilege: that’s been cited as something that actually stymies a lot of accessibility of information and inhibits progress, and so on. To what extent do you think that does actually impede things? Give us a ballpark sort of context.

Bradshaw: There was one case where it took 12 months to get the matter to court and to get a resolution. I’ve got another case that’s probably going to take even longer than that. I think what I’ve suggested is that it’s perhaps timely to review whether there should be some change in terms of how this office is able to receive information, in terms of investigations, to expedite those investigations.

Alexander: What specific things would you be looking at?

Bradshaw: With white collar crime, with a lot of it being document based, we are finding that a lot of those documents will be in lawyers’ offices. A lot of that material is quite straightforward, and we don’t have problems with a number of lawyers. But even asking, sometimes, for transactions on land purchases, we will find lawyers saying that it is legally privileged. We then have to have the argument with them about, well, no it’s not. That just takes time. I think it’s just an opportunity to review whether, for the Serious Fraud Office—and I’m not suggesting anything wider—there is a situation where we recognise white collar crime as a serious matter, and we need to facilitate how we investigate it.

Alexander: Name suppression for even those who are found guilty: is that based in any way on a recommendation from the Serious Fraud Office? Is there a possibility of there being a trade-off, for example—you cop to these things, and we’ll push for name suppression?

Bradshaw: No. The policy of my office is to oppose name suppression. Having said that, there are the exceptional circumstances where we might consent to it for 1 or 2 days to allow family, or the like, to be made aware of what’s happening. But the general policy of the office is to oppose name suppression.

Hide: Just to observe your chief executive’s overview, it’s a very powerful plea to New Zealand, and I commend you for it. You quote George Orwell saying: “All animals are equal, but some animals are more equal than others.”, and then proceed to explain what must be tremendous frustration for you and your staff, when you put years and years into a case involving $1.9 million, where the defendant pleads not guilty all the way through and at the last minute pleads guilty, and then the judge—I think I’m not putting a false gloss on it—goes very, very soft, because this person is a successful businessman. And then you find yourself prosecuting this man again in the
same routine. I think your overview is a must-read for all parliamentarians, and indeed, for the media. So thank you for that.

Have you ever investigated John Tamihere before?

Bradshaw I think, as I answered previously, I made an assessment of some material involving the Waipareira Trust and decided that a full investigation was not necessary. I did actually put out a press release on that matter, so that is available, I'm sure, for anybody who wants to search it.

Hide I remember it very well. It concerned $200,000-odd of cheques that had been forged with Hyrum Parata's signature. He laid the complaint with you. But would it be correct for John Tamihere then to say that he had been investigated and cleared?

Bradshaw You would have to go back to what I said. In my lingo, the way I look at matters, an investigation to the Serious Fraud Office has a particular meaning in our office. In the same way, we talk about a Part 1 investigation, a Part 2 investigation, and the like. We have our own language within the Serious Fraud Office, and sometimes people might say that I have investigated a matter, when, in my terms, I've made an assessment of it and decided, for whatever reason, not to proceed to look at it. So it depends on whether you're talking about common language or particular language.

Hide In my language it goes like this: an allegation and complaints are made to you. You consider that, and decide whether to investigate or not. In considering it, you sort of assess it, investigate it, but then you decide—many times, going by your report— not to proceed further. That hardly clears someone, does it?

Bradshaw I can't comment on how somebody else feels about it. I can only say what I do.

Hide So in the John Tamihere case, originally you chose not to investigate it. In choosing not to investigate it, of course, you did somewhat of an assessment or investigation, and then you made the decision that the Serious Fraud Office wouldn't investigate it.

Gallagher I take it, again—and obviously Mr Bradshaw is well equipped to answer questions in such a way that does not in any way prejudice any possible activities—in terms of process—

Bradshaw I made a public comment on that several years ago.

Hide It just annoys me, because Mr Tamihere's going around saying that you investigated and found nothing wrong, which wasn't the case. You investigated and decided not to proceed.

Bradshaw I think it's fair to say that sometimes I will investigate a matter and decide not to prosecute it. Now, the individuals who were investigated may well
take the view that they have been, in their terms, cleared. I will never issue a
statement that says I have cleared anybody, because I don’t see that as my
role. My role is to look at matters and determine whether or not I should
prosecute them, which is a different approach. How people want to
interpret that is not for me.

Hide Do you work with the police closely on a case?

Bradshaw We work closely with the police, the Securities Commission, customs— any
number of groups.

Hide And in terms of making a decision to investigate John Tamihere, are you
aware, through the police, that he’s already plead guilty to two counts of
forgery and two counts of uttering involving $160,000 of public money?

Gallagher Again, I think Mr Bradshaw is well capable of answering questions
appropriately, but I think, without wanting to—

Bradshaw It's irrelevant to my investigation.

Hide So why would the fact that when you get a complaint of forgery, why will it
be irrelevant that a person had already bet everything in another instance?

Bradshaw Because I look at the facts of the matter before me. That is how I make my
assessment.

Hide But isn’t that a fact?

Bradshaw I look at the facts of the matter that I have been asked to investigate.

Hide Well, answer my question. Were you aware that John Tamihere had pleaded
guilty in the district court to two counts of forgery and two counts of
uttering, involving $160,000?

Bradshaw In terms of any of my investigations, that information— and it would be
irrelevant to give—

Hide Did you know, or didn’t you know?

Cunliffe Mr Chairman, we previously, I think, established that the purpose of today’s
hearing is to do a financial review of the Serious Fraud Office. By my
understanding that is that we are looking at current activities. What I am
hearing are a load of questions focused on one individual, dredging up
matters that are a) long past and b) not the matters before the Serious
Fraud office in any case— previous court matters, and the like. I would just
ask the Chair please to contain the discussion to the matters before it on
the agenda.
Brownlee
With all due respect to Mr Cunliffe, the line of questions that has been run by Mr Hide is quite within Standing Orders. There has been no breach of Standing Orders, no allegations made—simply questions that the Serious Fraud Office director, Mr Bradshaw, is answering, I think, most appropriately. Certainly, he doesn’t need the protection of the cavalry in the form of David Cunliffe. Supplementary question to Mr Hide’s question.

Gallagher
No, I’m happy to go back, but I’m not going to take supplementaries. You will be on the list. Can I just rule, I just want to rule within the pretty obvious natural justice due process of a select committee, and would request that questions bear that in mind. Obviously, I think Mr Bradshaw is well capable of answering any question in an appropriate fashion.

Hide
In respect of process, have you received the report on Monday—have you read the Paragon report yourself?

Bradshaw
I’ve read what I believe to be the Paragon report and the various attachments.

Hide
And do you believe that you have got all the attachments?

Bradshaw
I’ve received material that has led me to decide that I will open an investigation. That investigation will now ensure that the office gets all the relevant material that it feels is necessary for it to make its own decisions. So what I haven’t had at the moment really becomes irrelevant now, because I have decided to make sure that I do get all the relevant information about possible criminal offending to be able to make a decision on that matter.

Hide
Have you spoken to the principals of Paragon Risk about their report yet?

Bradshaw
I don’t want to get into what we have or haven’t done or will or won’t be doing in our investigation.

Hide
So in an ordinary case like this, wouldn’t you speak to the authors of the report, particularly given they are former Serious Fraud Office officers?

Bradshaw
There is no ordinary way of doing it. Each case is assessed on its merits to make sure that, at the end of the day, I get put before me all the relevant material that I need to see to make a judgment on the facts of the matter as to whether or not there is a case to bring a criminal prosecution. If I am not happy with what gets put before me, then it goes back for further investigation. I really can’t get into here what we do in any particular case, because it will vary from case to case, but the emphasis is on making sure that we have all the material to make a proper case.

Hide
In that respect, have you moved to seize computers and all documents?

Bradshaw
I’m not prepared to talk about what we may or may not be doing in the investigation.
Hide  Why not?
O'Connor  He explained that before.
Hide  I'll tell you why it is important. There are questions about your abilities to investigate. There are questions about your ability to obtain documentation. We do know that the shredders have been working overtime at the Waipareira Trust.
Hartley  Point of order. That is an allegation that is— Interruption
Gallagher  Can we just finish? I just urge members of the committee, as I understand it clearly, that we can talk about process in terms of the role of the SFO. We cannot bring into this particular line of questioning, serious matters that may be under current investigation.
Brownlee  Point of order. Are you seriously ruling, Mr Chair, that it was inappropriate for Mr Hide to suggest that he had heard that the shredders are working overtime at the Waipareira Trust? That would be patently ridiculous if you were going to rule that out.
Gallagher  No, I'm just wanting to actually ensure that there is no issue—
Brownlee  There is no issue of natural justice here. If you are going to rule that way I ask you to—
Gallagher  I'll give Mr Bradshaw the right of reply on that.
Mark  Mr Chairman, just to help you, when I made the very same claim about Maurice Dodson in the army, the Speaker didn't overrule it— nor did anybody. In fact, the statement was made in the public arena.
Cunliffe  Point of order. Following on from the member's point of order, I make two comments for your consideration. The first is that I took the ambit of that question to call into question the integrity of the witness, the head of the Serious Fraud Office, in the sense of: are you doing your job properly? And secondly, there is the matter of a specific case which is currently under investigation and subject to __________ around natural justice.
Gallagher  That is not particularly helpful. If we are going to go down this track then I will clear the room and we will seek advice. I don't think we need to do that. I would actually like to go back in terms of the right of reply of the SFO. Obviously you will continue to answer questions appropriately in terms of the integrity of your office.
Brownlee  I just want to clarify that the term “the shredders are working overtime” is not considered unparliamentary language.
Gallagher  No.
Hide Let me put my question. Why wouldn’t you, in a case like this when you decide to investigate, immediately seize all documents and all computers?

Bradshaw What I said is that I’m not prepared to discuss what we may or may not be doing, in any particular case, including this case, so that I really can neither confirm nor deny what we are doing in any particular case. What I can say generally is that the office is well aware of the potential for people occasionally to try to remove evidence, and we have the powers to act if we need to, to address that.

Hide In a case like this do you have the powers to find out what happened to the money—like, for example, if it got spent on election expenses, or something like that?

Bradshaw In any investigation, one of the tasks that my accounting team will do will be to follow the money trails. That is done routinely in just about every investigation that we undertake, because that will often help us understand whether there was any criminality involved in the offending. So as an ordinary part of a Serious Fraud Office investigation, we will be looking to see what happened to various bits of money.

Hide Once you’ve launched an investigation like this into these fake invoices—and you mentioned Mr Tamihere’s name in your press release—can they widen to further complaints of a criminal nature?

Bradshaw The investigation is into _________ of the Waipareira Trust. Once I begin that investigation, if I find any other criminal offending, then yes, I can look at that myself, or I may decide it is of a nature that perhaps does not warrant my involvement but should be referred to the police. So if I see any criminal offending, that is what I would do. At the moment I have a general allegation, and I am having a look at it to see what it is about. Until I have investigated that further, I can’t make any further comments.

Hide Could it be possible also that you could commit a fraud when, like, an MP fills out an electoral return?

Bradshaw Technically, yes.

O’Connor I just want to work out what sort of proactive work you do. You say that you investigate matters of a criminal nature, and that scams that are happening are part of your responsibility, I guess. How do you monitor potential scams that might be occurring _________?

Bradshaw We have a close association with the banks, and we will often get information from banks if they suspect that in the housing area there are technical triggers coming through that it’s not correct. We are talking with other agencies. If there are concerns that we see about documentation coming through—for example, immigration, there are occasionally false employment letters, so we would be watching that. If we had a complaint, we would probably refer a simple false employment letter to the
Immigration department to deal with, but if in discussion we felt it was a wider concern, then we might suspend any further work. It is generally just keeping your eyes and ears open—

Gallagher Just a point of procedure, I just need to interrupt the committee, because this item of business was actually due to go until approximately 10 minutes past 10. I am going to propose that we now finish this item by 11 o’clock at the very, very latest. Can I just so move?

Members No, no.

Gallagher Well, I’m just going to put that. That’s a point of procedural motion. I’m going to put that we conclude this business by 11 o’clock.

Brownlee Point of order. You don’t have to put a procedural motion. You’re the chairman. You make this determination yourself,. I suppose if you need to get sign-off from the Minister, then that is O.K.

Gallagher Order, Mr Brownlee. We run this in a very consensual style. I am aware you are going to do a further question. So 11 o’clock is the close off.

O’Connor Does your jurisdiction run outside New Zealand in scams that might potentially affect people in this country?

Bradshaw The New Zealand criminal law applies only within New Zealand, so I can only prosecute for offending that has happened within New Zealand. It only needs to be a part of that offending for me to be able to bring a prosecution.

What we have found with a number of the scams is that there is a New Zealand component and an overseas component. A good example of that was the prosecution of Mr Allen and others in Auckland recently, where the two main promoters of the scheme were Mr Palmer and Mr Allen. Mr Palmer was actually prosecuted by the American authorities and was found guilty over there, but a large part of their case was provided by the New Zealand Serious Fraud Office in terms of the accounting work analysis we had done on how that scam had affected New Zealand. Mr Allen was in New Zealand and was prosecuted in New Zealand. That is a situation where we had basically the same scam—we had one person locked up in America and one person locked up in New Zealand. We provided information to the American authorities. The Americans—we actually had an FBI agent come out for our prosecution of Mr Allen in New Zealand, and provided an American component of our prosecution.

O’Connor So what would trigger your assessment—not necessarily an investigation, but if you were aware of a tax scam, say, being promoted in Fiji, and promoted by individuals who were set on this, would you then undertake an assessment of whether that was likely to lead to any criminal activity?
Bradshaw What I would do in that situation would be to get in touch with the authorities in the overseas jurisdiction to tell them of the information that I was aware of, and liaise with them as to whether they were interested in doing anything about it, and develop it from there. That is not uncommon. In many instances we find that the overseas jurisdiction is interested in pursuing it in their jurisdiction, and then we will assist them in interviewing New Zealand witnesses for their prosecution in their country. But if the offending has happened in New Zealand, and we want to do a prosecution in New Zealand, then we get the assistance of the overseas agency to help us.

O'Connor Is it difficult to get the overseas jurisdiction to initiate that, given, say, the capability of places like the Cook Islands, for example, or Fiji; and does that mean that people who are setting up scams are likely to target Pacific nations to promote their schemes?

Bradshaw We are working with the law enforcement agencies in the Pacific Islands to assist them and to give them support where necessary to deal with serious offending that might be happening in those countries. I think if you look back you will see that we assisted in Vanuatu in the investigation and prosecution of the Leader of the Opposition for corruption. We have been involved in the investigation and prosecution of people in the Cook Islands for corruption. In both cases the skills that we were able to bring to bear—in one case they were accountants' skills, in another case the computer analysis skills—were critical in bringing to a successful conclusion that investigation. So we take a proactive way, being in touch with those organisations at all times and providing whatever assistance is appropriate if it is a Serious Fraud Office - type matter.

Cunliffe I'm interested to discuss with you the electronic presentation of reports, and, in particular, your development and use of a new programme called that asks you to present documents . Can you give us a bit of an overview about how they work?

Beattie What it enables us to do is to put a TV screen in front of every juror, judge, the witness, defence counsel, and prosecution counsel, so that when someone wants to see a document— they've all been previously scanned—that document can just be called immediately on the computer screen. It just means that everybody is looking at the same document. A witness in the witness box who's an expert on financial structure, for example, can drive what's on the screen, with charts in front of people. It can be used with subtitles underneath it, that subscript underneath. So it really just is a way of making sure that the entire courtroom comes along with the entire case. If the defence come up with the document that they don't want us to see prior to the prosecution, we can scan that on the spot as well, and as soon as they need that document it can just be called up on the screen. The software we located was compatible with our existing database software, so it means that of the 20,000 documents on a case, there are many that are available to the courtroom, whether we want to use them as exhibits or not.
So the defence counsel can have access to an entire SFO case at the push of a button.

Cunliffe So in terms of how that compares to the previous status quo, would you say that that’s better or worse access for the—

Beattie It’s hugely better in terms of saving time, convenience, understanding the case. There’s just no comparison.

Cunliffe How much did it cost?

Beattie Very cheap. We managed to locate the software for NZ$1,047.

Cunliffe You’ve got to be joking.

Beattie No, very cheap, much cheaper than other options we looked at around the world, including New Zealand.

Cunliffe Where was this software developed?

Beattie In the States.

Cunliffe For a thousand dollars?

Beattie Yes, but overall the project would have cost us in the order of $50,000, because we bought computer screens and computer terminals, and the like, so it can be used in court.

Cunliffe I imagine that might save a bit of court time. Have you run any kinds of scenarios on what the cost saving in the court process and your own process might be over time?

Beattie It would be difficult to measure, but it would be huge. If you think of a case with 10,000 documents, where you may be looking at 5,000, and every time someone wants to go to a document there are 20 people in the court who have to find it and look it up, whereas now it’s instantly in front of them on the screen. And we can split the screen so we that can compare documents, as well.

Brownlee Just to clarify that, you’re effectively saying that you could have got the wine-box on a CD.

Beattie Two CD’s.

Cunliffe Are there any legal issues that arise for the office in implementing the electronic presentation of evidence? Have you run into any hitches in terms of the ability of the court to accept ________ you made?

Beattie No, not really. We made some modifications in the Auckland courtroom just to take care of things such as line of sight. The judges were very keen. We talked to a lot of judges and a lot of lawyers about how it would work,
and the judges were very keen to ensure that all members of the jury could see all parts of the courtroom. So we had to modify the courtroom. But there hasn’t been any serious challenges from the defence bar. It makes the case easier to present, which may cause some of them difficulties.

Cunliffe Do you think that this new way of doing business will change the way your office and your people work in terms of preparation?

Beattie We’re very electronic in the office, anyway. When we receive documents, we scan them through particular systems that we operate. We’ve found that everything was being done electronically within the office, but when we came to court we’d revert back to paper. So that’s why we looked for a solution that would take it all the way through. When we discover a case to defence counsel now, we provide that on DVD or CD to them, as well.

Cunliffe Sounds like a cost saving. It would be interesting to run some numbers up in a year or so. You might want to come back to us next year with some.

Beattie Just a couple of points on due process, when you open an investigation, can you tell us about principles that you use in terms of coverage. Presumably you investigate what you consider to be all the relevant facts in a case?

Beattie We may get a complaint relating to a specific matter within an organisation. A company may have thousands of transactions; we may be asked to look at three or four of them. In the course of investigating those matters with the financial expertise that we have within the office, we will look at the thing in the round as well, to make sure that if there is wider offending, our processes and procedures will capture that. So we don’t just focus on a specific matter, if the evidence and the approach is done in such a way that makes sure that you find the other offending.

Cunliffe And while an investigation is on or under way, you don’t tend to comment about the matter that is under investigation. Why is that?

Bradshaw It’s basically a natural justice issue. If I’ve got a company where there’s been an allegation of fraud— say, a travel agency— and I was to go out and say that such-and-such a travel agency is under investigation, nobody would use that travel agency. Then, if I decided that basically there wasn’t a problem there, basically a business has gone out of business, simply because I was doing an investigation to make sure that things were correct. So I have to find a balance between ensuring that I can do investigations in a way that are absolutely fair to people. But there are a few cases— not many, but a few cases— where, in the public interest, I feel I need to comment that the office is involved.

The other issue that I’m confronted with occasionally— but not so much now, because, I think, of our approach— is there are people who will want to refer a matter to the Serious Fraud Office and say that the matter is with the Serious Fraud Office, simply to score points in terms of some _______
company or local authority, or the like. I need to be very careful to make sure that my office is absolutely clear that at the end of the day, I have the possibility that I will be prosecuting somebody for very serious criminal offending, so I need to be absolutely sure that anything that I do is absolutely fair to those people.

Cunliffe So you have had examples, say, in commercial ________, where one party will draw attention to the fact that an investigation is under way on another party to score points or confer commercial advantage from one to the other?

Bradshaw Yes, there are cases where I’ve felt that was what was happening.

Brownlee I was a bit confused by one of your answers before, so I would ask you, would the knowledge that someone had been convicted of fraud—

Bradshaw Not convicted, plead guilty.

Brownlee — sorry, plead guilty to a fraud, and then was the subject of repeated allegations of fraud, tweak your interest just a little bit, when a further allegation was put in front of you?

Bradshaw If an allegation is put in front of me, I will look at the facts of that allegation. That is what is relevant for me to decide whether or not to open an investigation.

Brownlee So you don’t have any sort of list of recidivist fraudsters in the SFO office, and a person’s past involvement and activities make no difference to you at all, when you look at the allegations, and particularly the material that’s in front of you?

Beattie We have databases within the SFO about various fraudsters, and we have access to the Wanganui computer, and the like, so we’re aware, when it’s relevant, of people’s backgrounds. But our prime focus is on the facts of the matter that are before us. Of course, we are aware of things that have happened in the past, but that doesn’t necessarily influence what’s happened in the present.

Brownlee Recognising your role as a public watchdog, can you tell us if the gravity of a fraud is enhanced— or an allegation of fraud is enhanced— by the public standing of the individual alleged to have committed the fraud?

Bradshaw You’ve already mentioned one case earlier that’s currently being prosecuted, and the current Waipareira Trust issue, where, if I feel there are matters of public interest, then I will look to see whether the office should be involved. There are any number of cases, going back over time, where the office has done that, where the amounts involved would not be significant. We trialled an Auditor-General a while back, a judge. There are a number of instances where the amount is not large but, in the public interest, the office will investigate.
You’re asking this committee to accept, going right back to your initial answers to Mr Hide and Mr Brownlee, that in making that assessment of the report that was presented to you and determining whether or not a full investigation is required, you pay no attention whatsoever to the criminal history of the alleged perpetrator. The fact that the person has got convictions in the same sort of area, for the same sort of crime— I put it to you: police investigate a man for rape. They allege rape, drug rape. They look at his history, and they find he has a string of sex-related crimes, and, indeed, he actually has a conviction of drug rape. But in your department, that bears no evidence whatsoever and does not, in fact, signal to you a need to launch a thorough, in-depth investigation.

Bradshaw

Let me answer that. In terms of the Waipareira Trust, we have launched an investigation that will be thorough and in-depth. But let me also make it clear that I have no person who is a suspect. So in terms of if I was to follow the question of looking at individuals, I imagine I would have to do a search of the Wanganui computer centre for every individual at the Waipareira Trust to see if anybody had a criminal background. Would that then make me any more the wiser as to whether an offence had happened? It wouldn’t. I am launching a thorough investigation of the Waipareira Trust— not of any individual, but into the Waipareira Trust—

Brownlee

So the names in the Paragon report don’t matter to you?

Bradshaw

— and the accounting at the Waipareira Trust. I think it would be a very dangerous situation if I was to move away from looking at the facts of a matter before me and to assess whether or not I took on a case and to be prejudiced by somebody’s prior criminal record. Because that is not relevant to whether or not there is an offence in terms of what I am looking at.

Hide

If Mr Hyrum Parata was to resubmit his complaint of cheques being forged to the tune of over $200,000 at the Aotearoa Maori rugby league, would you, as part of this investigation, cast your eye over them again?

Bradshaw

If any person wants to put a matter before my office, it will receive a full and thorough assessment as to whether it warrants an investigation.

Alexander

Just very quickly, I find it absurd that a person’s past doesn’t come into play. In every other facet of criminal investigation in this country, we know that 86 percent of people that walk out of prison go back to prison within 5 years. We know that 70 percent of people in prison have been there for 10 or more convictions. In every single facet of an investigation up and down this country, we know that a person’s past affects their future, and are you telling me that in this particular instance you put your blinkers on, you stick your head in the sand, and you say that the past doesn’t matter?

Beattie

Using Mr Mark’s example, certainly the police would be aware of the previous rape convictions, but they would investigate the current matter. All we are trying to say is we must investigate the facts relating to the
current matter, and that has to be our primary focus. Obviously you don’t exclude what may have happened before, but you have to prove each case on its merits. You don’t get convicted of a subsequent event because you’ve committed something in the past.

Gallagher Thank you very much for your appearance and attendance.

**conclusion of evidence**