THE NEW ZEALAND SECURITIES COMMISSION: THE RISE AND FALL OF A LAW REFORM BODY

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I. INTRODUCTION

> it is easy to foresee the Commission ... holding a central position in shaping the future of all corporate and securities law and practice and moulding it to meet the ongoing needs of the commercial community and the investing public.[1]
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> The new Commission has been given a wide range of tasks for a part-time Commission and much will depend on the energy and dedication of its members. It seems rather unrealistic to expect it to act as an effective law reform committee as well.[2]

I. INTRODUCTION

The New Zealand Securities Commission (NZSC) was established in 1979, after the enactment of the Securities Act in 1978.[3] As the above quotes by Darvell and Farrar indicate, commentators at the time held differing views about the NZSC's potential as a law reform body. This article will show that both Darvell and Farrar were wrong in their predictions. Darvell was incorrect because the NZSC would not eventually hold the central position he foresaw, while Farrar was wrong because the NZSC did attempt to operate as a wide-ranging securities law reform body. This attempt failed, not because of a lack of energy, but because of New Zealand's economic and political climate during the 1980s and 1990s and the structure created by the Securities Act 1978, within which the NZSC was forced to operate.

This article examines the law reform activities of the NZSC from 1979 to 1993. Little has been written about the NZSC's law reform role. Studies dealing with the NZSC have tended to concentrate on describing or analysing specific proposals put forward by the NZSC,[4] and they have not attempted to analyse the overall law reform efforts of the NZSC or the overall success of the NZSC as a law reform body. Part I of this article will briefly consider the establishment of the NZSC. Part II will consider two of the most important factors which impacted on the NZSC's overall law reform programme. In Part III I will discuss the NZSC's specific law reform efforts, particularly those related to nominee shareholding and takeovers. In Part IV I will discuss the reasons for the failure of the NZSC's law reform efforts, and in Part V I will briefly discuss possible reforms that should be made to the process of securities law reform in New Zealand.

II. THE ESTABLISHMENT OF THE SECURITIES COMMISSION

New Zealand's securities laws were relatively unsophisticated prior to the passing of the Securities Act 1978. A number of pieces of legislation dealt with some areas of securities law, but in general they did not have a significant impact on securities regulation in New Zealand.

Thus, for example, prospectuses issued by public companies were governed by provisions in the Companies Act 1955 which had been put in place when the Act was passed. The Companies Amendment Act 1963 introduced limited controls for written takeover offers. This Act required fourteen to twenty-eight days notice prior to the written offer being made, and the provision of information by the bidder,[5] but (unlike overseas jurisdictions) did not require a mandatory bid for all shares nor for the payment of the same price for the same class of shares.[6] In addition, New Zealand's securities laws lacked specific provisions relating to insider trading, the disclosure of substantial security holders, and financial reporting.

The lack of substantive securities laws was combined with the absence of a state regulatory agency in the securities field.[7] The MacArthur Committee had recommended the establishment of a "companies commission" in the early 1970s, but the government did not act upon this recommendation.[8]