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**CONSISTENCY OF SENTENCING
BETWEEN WELFARE FRAUD AND TAX
EVASION: A LONGITUDINAL
COMPARATIVE STUDY**

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Abstract:

This essay compares welfare fraud and tax evasion sentencing outcomes over the period 1989-2016. Previous research suggested there was a significant discrepancy in treatment by the New Zealand courts. This research analysed data from 83 welfare fraud offenders and 53 tax evasion offenders. On the basis of the data in this study, the overall sentencing discrepancy was not as severe as the prior research suggested. However, the data did confirm that welfare offending was, on average, punished more harshly dollar-for-dollar than tax offending. Analysis of several other variables was used to attempt to quantify and explain the identified discrepancy. The study found key differences in sentencing outcomes according to welfare and tax offending of a comparable monetary value, with welfare offending generally receiving harsher punishment. However, tax offenders convicted under the Crimes Act were sentenced to imprisonment at a higher rate than welfare offenders convicted under the same section of the Crimes Act. Further research is needed using prosecution case files as well as more non-appealed cases in order to evaluate the discrepancy using the data not included in this study.

Key words:

Welfare fraud

Tax evasion

Social Security Act 1964

Tax Administration Act 1994

Crimes Act 1961

Sentencing consistency

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I Introduction

Consistency of sentencing between similar criminal offending is both desirable and a sentencing principle that New Zealand courts must take into consideration when sentencing offenders.¹ Social welfare fraud ('welfare fraud') and tax evasion are similar offences, yet previous research has shown that tax evasion has been treated more leniently by the courts than welfare fraud.² This study examines a sample of cases of tax and welfare offending between 1989 and 2016 to assess the sentencing discrepancy between welfare and tax offending. While the data available has limitations, this study found that the sentencing discrepancy is not as severe as reported in other research. Nonetheless, the data shows that welfare fraud is punished more harshly than tax evasion, relative to the monetary value of the offending. Furthermore, there is a significant difference in outcomes for cases where charges were laid under the Crimes Act 1961 ('the Crimes Act') versus the Social Security Act 1964 ('the SSA'). This difference is larger than the difference observed between cases prosecuted under the Crimes Act versus the Tax Administration Act 1994 ('the TAA') for tax offending. The cases included in the study show a nuanced approach to sentencing that is not tariff-based for either welfare and tax offending, despite some judicial comments about a welfare "custody threshold". Finally, the data shows a noticeable change in sentencing outcomes after the repeal of the Criminal Justice Act 1985 ('the CJA') and the passing of the Sentencing Act 2002 and the subsequent Sentencing Amendment Act 2007. Although it is not possible to definitively establish a *causal* relationship between the legislative changes and the sentencing outcomes, since the Sentencing Amendment Act the rate of imprisonment for welfare offending has significantly decreased. Overall, the data collected in this study shows a complicated picture of welfare and tax fraud sentencing consistency that, while better than previously reported, certainly has room for improvement.

II Why Compare Welfare Fraud and Tax Evasion?

Welfare fraud is conceptually similar to tax evasion. Both are non-violent financial offences with the State as the 'victim' of the crime. Both can constitute offences under

¹ Sentencing Act 2002, s 8(e).

² Lisa Marriott "Justice and the Justice System: A Comparison of Tax Evasion and Welfare Fraud in Australasia" (2013) 22 Griffith Law Review 403.

either the Crimes Act, or under the SSA or the TAA, respectively. Importantly, both offences include omissions-based liability, and offending is based on a breach of a duty.

Yet, despite the parallels between the offences, a study of New Zealand welfare and tax offending found that between 2008 and 2010, 60% of the welfare fraud offenders studied were imprisoned, compared with 22% of the tax offenders.³ The small sample size of only 20 welfare cases limits the conclusions of this study, however, despite this limitation, the findings raise concerns about equal access to justice in the New Zealand legal system.

Internationally, a similar discrepancy in sentencing has been observed between ‘white-collar’ and ‘blue-collar’ crime. ‘White-collar’ crime can be defined as “crime committed by a person of high respectability and high social repute in the course of his occupation.”⁴ In contrast, the terms ‘blue-collar crime’, is often used to refer to either violent crime, or alternatively, merely to crime that is committed by someone of lower socio-economic status than that of a white-collar offender. The above-mentioned New Zealand study equated white-collar crime with tax evasion and blue-collar crime with welfare fraud.⁵

Several studies have concluded that white-collar crime tends to be punished less harshly than blue-collar crime.⁶ In the United States, the Sentencing Commission reported that the annual average imprisonment sentence for a white-collar criminal between 1991 and 2001 was between 19.0 and 20.8 months, as opposed to between 71.7 and 88.2 months for drug offenders.⁷ Since the end of the 1980s this disparity has decreased due to new sentencing guidelines from the US Sentencing Commission.⁸

Whether the terms ‘white-collar’ and ‘blue-collar’ are used to describe the type of *offence* or the type of *offender* makes a significant difference for the applicability of findings about the disparity between the categories to the present study. The conclusions drawn from previous studies are limited by the vague nature of the terms ‘white-collar’ and ‘blue-collar’ crime, and also by the difference in types of crime committed which fall within each category. Violent and drug-related offending differs greatly from financial offending. Thus,

³ At 409-414.

⁴ Harriet Pollack and Alexander B Smith “White-Collar v. Street Crime Sentencing Disparity: How Judges See the Problem” (1983) 67 *Judicature* 17 at 177.

⁵ Marriot, above n 2, at 405.

⁶ See, for example, John Hagan, Ilene H Nagel and Celesta Albonetti “The Differential Sentencing of White-Collar Offenders in Ten Federal District Courts.” (1980) 45(5) *ASR* 802.

⁷ Michael D Silberfarb “Justifying Punishment for White-Collar Crime: A Utilitarian and Retributive Analysis of the Sarbanes-Oxley Act” (2003) 13 *BU Int Pub LJ* 95 at 105.

⁸ Carlton Gunn and Myra Sun “Sometimes the Cure is Worse than the Disease: the One-Way White-Collar Sentencing Ratchet” (2011) 38(3) *Human Rights* 9 at 9.

research suggesting that white-collar criminals receive more lenient sentences than blue-collar criminals needs to be assessed within the context of the direct comparability of the offences.

Overall, the previous research on white-collar and blue-collar crime generally, and New Zealand tax and welfare fraud sentencing specifically, raises concerns warranting further investigation. This paper builds on prior research by:

- (1) Providing a longitudinal comparative study, including several legislative developments.
- (2) Providing a larger sample of welfare fraud cases for analysis.
- (3) Providing a more nuanced analysis of a discrepancy in sentencing outcomes by:
 - (a) Examining the sentencing outcomes according to the Act used for prosecution.
 - (b) Examining welfare and tax cases according to the monetary value of the offending.
 - (c) Examining welfare and tax cases according to the relative severity of the offending. (i.e. the cases representing the least severe 20% by monetary value in each category).
 - (d) Examining the possibility of tariffs influencing sentencing outcomes.

III Study Methodology and Limitations

A Methodology

Data was collected from publicly available cases on New Zealand legal databases. A sample of cases between 1989 and 2016 were included. 1989 was chosen as a starting point because of welfare fraud landmark cases such as *Faiers v Police* (1989) and *R v Goodin* (1991); these cases are important in understanding the principles behind welfare fraud sentencing.

The following information was required to be available in the judgment for inclusion in the study:

- (1) The offences the defendant was charged with.

- (2) The monetary level of offending, i.e., the amount of benefit illegitimately obtained or the amount of tax illegitimately withheld. Cases were excluded if the monetary level was not specified.
- (3) The sentence imposed at trial and on appeal (when applicable). If a conviction was overturned on appeal, the case was excluded.

In total, 76 welfare cases (83 individual offenders) and 53 tax cases were included in the study. The cases can be divided into three sub-groups: cases decided according to the CJA (1989-2001), cases decided according to the Sentencing Act 2002 (2002-2006), and thirdly, cases decided post-2007, incorporating the new and amended sentence types established by the Sentencing Act Amendment 2007.

B Limitations

An attempt was made to have the sizes of the sub-groups relatively consistent to facilitate better comparisons, however due to the availability of publicly-accessible cases, the tax cases are heavily biased towards the post-2007 period. Unfortunately, this means that it is not possible to track and identify a sentencing trend for tax offending. The distribution of the welfare cases over these periods is better and allows for more certainty when tracking a sentencing trend over time.

A crucial limitation is that the sample of cases is biased towards cases which went on to appeal. 94% of the welfare cases in this study were appealed. 40% had the sentences amended, of which 90% resulted in a reduced sentence. Two-thirds (66%) of the tax cases included were also appealed.

Further research needs to be done to determine the effect of including more non-appealed cases. At present it is impossible to say how the absent cases would impact the data or the validity of the conclusions in this study.

The sample size of welfare cases improves on previous research, however, the sample size of 83 for welfare and 53 for tax remains small and expansion in further research is needed.

Due to the limitations, all conclusions formed on the basis of the data collected should be read and understood with the caveat that further research with additional cases, especially non-appealed cases, needs to be done in order to confirm the validity of the conclusions formed in this study.

IV Legislative Framework

A Comparability of Offences under the different Acts

Tax evasion and welfare fraud “fall into the same broad genus.”⁹ Both constitute non-violent, financial offending with the State as the main victim.

The criminal provisions of both the SSA and the TAA penalise omissions-based offending, something that the criminal law is generally reluctant to do.¹⁰ Furthermore, both categories of offences involve a breach of a duty, be that a duty to inform of any change in circumstances which would alter a beneficiary’s benefit entitlement,¹¹ or a duty to comply with tax obligations.¹²

The maximum term of imprisonment is 12 months for SSA offending versus five years for TAA offending. However, in both instances charges can alternatively be laid under the Crimes Act, for example, under s 228 (Dishonestly taking or using a document) which carries a maximum penalty of seven years imprisonment. Consequently, the maximum penalty for each category of offending can be the same.

The points of similarity between the two types of offending justifies a comparative study of sentencing outcomes; the conceptually similar nature of the offending together with the similarity in offences creates a presumption that the offences should be treated consistently by the courts.

Specific legislative provisions are discussed below.

B Social Security Act 1964

The relevant offence provisions are sections 127, 127A and 129 of the SSA. For the present study, s 127 is the most significant. It provides:

Every person who makes any statement knowing it to be false ... or who wilfully does or says anything or omits to do or say anything for the purpose of misleading ... any officer concerned in the administration of this Act or any other person whomsoever, for the purpose of receiving or continuing to receive (for himself or for any other person), or which results in himself or any other person receiving or continuing to receive—

⁹ *Barron v Commissioner of Inland Revenue* [2014] NZHC 2249, (2014) 26 NZTC 21-102 at [14].

¹⁰ David Ormerod *Smith and Hogan’s Criminal Law* (13th ed, Oxford University Press, Oxford, 2011) at 65.

¹¹ Social Security Act 1964, s 80A.

¹² Tax Administration Act 1994, s 15B.

a) any benefit under this Act ;

...

commits an offence and shall be liable on conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$5,000, or to both imprisonment and fine.¹³

Section 127 is particularly broad; positive acts and omissions are both penalised, and it can apply to people other than the beneficiary. A beneficiary's friend who wilfully omits to do or say something for the purpose of enabling the friend to receive a benefit could potentially be charged with an offence under s 127.¹⁴

Section 127A makes it an offence for the spouse or partner of a beneficiary to benefit directly or indirectly from their partner's fraud. Section 129 penalises conduct which constitutes an offence against the Act, for which there is no penalty provided elsewhere in the SSA.¹⁵

C Tax Administration Act 1994

The TAA's criminal regime is found in sections 143, 143A and 143B.

Sections 143 and 143A establish absolute liability and knowledge offences, for which the penalties are fines of varying amounts. As an absolute liability offence, s 143 only requires proof of the actus reus for conviction. The knowledge offences require that the person deliberately carried out the actions compromising the actus reus.¹⁶

Section 143B creates the criminal offence of tax evasion. Tax evasion is a "true crime" in that it has an actus reus and a mens rea element.

The actus reus is the evasion of tax through one or more of the five ways specified in s 143B(1)(a)-(e), (for example by providing false tax returns).¹⁷ Section 143B(2) functions

¹³ Social Security Act 1964, s 127.

¹⁴ *Nicholson v Department of Social Welfare* [1999] 3 NZLR 50 (CA) at [23] per Richardson P and Keith J.

¹⁵ Sections 127A(1)(a) and 127A(1)(b).

¹⁶ Philip Ascroft "The Criminal Aspects of Tax Evasion in New Zealand" (2010) 16 NZJTLP 21 at 24.

¹⁷ S 143B(1)(c).

as a general provision that is used to prosecute tax evasion that is not covered by s 143B(1)(a)-(e).¹⁸

The mens rea element for tax evasion requires that the evasion was committed with *intent* to evade tax.¹⁹

If convicted, the maximum sentence is a term of imprisonment not exceeding five years, or a fine of up to \$50,000, or both.²⁰

D Crimes Act 1961

Section 10 of the Crimes Act provides:

- (1) Where an act or omission constitutes an offence under this Act and under any other Act, the offender may be prosecuted and punished either under this Act or under that other Act.

This gives the prosecution discretion as to which Act to lay charges under. In several of the cases studied, charges were laid under the Crimes Act in addition to either the TAA or the SSA. Where charges were laid under the Crimes Act, the most common section used was section 228, or its historical equivalents. Section 228 provides:

- (1) Every one is liable to imprisonment for a term not exceeding 7 years who, with intent to obtain any property, service, pecuniary advantage, or valuable consideration,—
 - (a) dishonestly and without claim of right, takes or obtains any document; or
 - (b) dishonestly and without claim of right, uses or attempts to use any document.

Section 228 is applicable to SSA and TAA offending because of the document-based nature of the welfare and tax systems.²¹

¹⁸ Inland Revenue, “Criminal Offence – Evasion or Similar Offences: Standard Practice Statement INV-225”, (1998) 10(3) Tax Information Bulletin 22, at 23.

¹⁹ S 143B(1)(f)-(h).

²⁰ S 143B(3).

²¹ Ascroft, above n 16, at 42.

V *Data Analysis and Results*

Overall, this study found that the discrepancy between rates of imprisonment for welfare and tax fraud sentencing is not as severe as reported in other studies. However, there are three key differences evident:

- (1) The average monetary value of tax offending is much greater than welfare offending.
- (2) The average term of imprisonment for tax offending is also much greater than welfare offending.
- (3) However, the length of prison term *relative* to the money obtained is much greater for welfare offending, showing that welfare offending is punished more harshly dollar-for-dollar.

In order to further explore this identified discrepancy in sentencing, three key variables were analysed:

- (1) The different Acts which offenders were prosecuted under.
- (2) The amount of money obtained (and the potential impact of a de facto sentencing tariff operating once a certain monetary threshold was reached).
- (3) The legislative change from the CJA to the Sentencing Act and Sentencing Amendment Act.

A *Data Overview*

The below tables summarise the data. Where a sentence included multiple elements, (e.g. community detention and community work), the case was categorised under the highest penalty according to the hierarchy of sentences in the Sentencing Act 2002.²² Sentences adjusted on appeal were categorised under the adjusted sentence.

²² Sentencing Act 2002, s 10A.

Table 1 Welfare Fraud sentence results by frequency and percentage

Period	Sample size	Average amount of offending	Imprisonment	Home Detention	Community Detention	Periodic Detention	Supervision	Community Service/Work	Fine
1989-2001	30	\$34,447	21 (70%)	0	0	8 (27%)	1 (3%)	0	0
2002-2006	16	\$62,929	13 (81%)	0	0	0	1 (6%)	2 (13%)	0
2007-2016	37	\$64,965 ²³	18 (49%)	11 (30%)	3 (8%)	0	0	5 (14%)	0
Total	83²⁴	\$54,114	52 (62%)	11 (13%)	3 (4%)	8 (10%)	2 (2%)	7 (8%)	0 (0%)

Table 2 Tax Fraud sentence results by frequency and percentage

Period	Sample size	Average amount of offending	Imprisonment	Home Detention	Community Detention	Periodic Detention	Supervision	Community Service/Work	Fine
1989-2001	9	\$641,727	5 (55%)	0	0	0	0	1 (11%)	3 (33%)
2002-2006	7	\$259,966	6 (85%)	0	0	1 (15%)	0	0	0
2007-2016	37	\$331,591	20 (54%)	11 (30%)	0	0	0	6 (16%)	0
Total	53	\$377,571	31 (58%)	11 (21%)	0 (0%)	1 (2%)	0 (0%)	7 (13%)	3 (6%)

Table 3 Welfare Fraud imprisonment

Period	Average sum resulting in a prison sentence	Average term of imprisonment
1989-2001	\$43,622	6.7 months
2002-2006	\$72,140	14.6 months
2007-2016 ²⁵	\$78,897	16.2 months
Overall²⁶	\$62,460	11.8 months

²³ This is excluding the case of *R v Patterson* [2008] NZCA 75 which involved fraud of \$3.4m, a clear outlier.

²⁴ 76 welfare cases were studied, however *Jones and Ballantyne, Hogan, Huddleston and Lauina* involved multiple defendants who received distinct sentences, thus, each offender is treated as separately in the study, resulting in the total of 83.

²⁵ Excluding *Patterson*.

Table 4 Tax Fraud imprisonment

Period	Average sum resulting in a prison sentence	Average term of imprisonment
1989-2001	\$793,340	28.0 months
2002-2006	\$299,815	33.5 months
2007-2016	\$514,637	32.8 months
Overall	\$518,956	32.0 months

B Discussion of Data Overview

There is little overall discrepancy between the sentencing outcomes for tax and welfare cases in the study: 58% of tax cases received a prison sentence, compared with 62% of welfare cases. However, there is a clear difference between welfare cases decided prior to and after the passing of the Sentencing Act 2002. The average term of imprisonment is over twice as long since the Sentencing Act passed. A further difference is evident after the Sentencing Amendment Act 2007, after which the rate of imprisonment reduced from between 70-80% to 49%. This difference between time periods is not mirrored in the tax data, however the small sample size of the first two time periods is an obvious limitation and so it cannot be definitively concluded whether or not the same occurred in tax fraud sentencing over the same time period.

While the overall imprisonment rates are consistent, the average sum resulting in a prison sentence and the average term of imprisonment for tax fraud is significantly larger than welfare fraud. One explanation for the longer prison sentences imposed for tax offending is that it reflects this increased monetary value of the offending. However, the monetary value of offending is just one factor that the sentencing judge will take into consideration. For example, in *R v Hirawani*, the monetary value of the offending was comparatively low, (\$212,361), but the defendant received a four year imprisonment sentence due to aggravating factors such as the defendant's attempt to destroy evidence and the fraud's sophistication.²⁷

While the monetary value of the offending is just one factor to be considered, there is a clear discrepancy between the prison sentences imposed for tax and welfare offending relative to the monetary scale of offending. During the first period studied, (1989-2001),

²⁶ Excluding *Patterson*.

²⁷ *R v Hirawani* CA110/04, 30 May 2005, at [6]-[8]; [18]-[19].

based on the average term of imprisonment divided by the average monetary scale of offending, each month of imprisonment represented approximately \$6,500 of illegitimately obtained welfare benefits. In comparison, for the same time period, each month of imprisonment represented approximately \$28,500 of tax evasion. During the final period, 2007-2016, each month of imprisonment represented approximately \$4,800 of social welfare benefits but approximately \$15,700 of tax evasion.

It is important to acknowledge that “sentencing is not a mathematical exercise”²⁸ and the above calculations greatly simplify the sentencing process. However, it does show the difference in magnitude between the relative monetary value of the offending and the term of imprisonment.

The difference in the punishment relative to the monetary magnitude of offending may reflect a difference in treatment by the judiciary of welfare and tax offenders. Arguably, it reflects more lenient treatment of tax offending, in that offending on a comparable basis in monetary terms might be punished more harshly if it was welfare offending than if it was tax offending. This raises concerns about equal access to justice in the New Zealand legal system

C Charges laid under the Crimes Act versus the SSA or the TAA

Assessing the data according to which Act the offending was prosecuted under is useful for two reasons:

- (1) Different sentencing outcomes for cases charged under the TAA compared with the SSA is to be expected due to the different maximum penalties, however, greater consistency could be expected between welfare and tax cases charged under the same section of the Crimes Act. By analysing the data according to each Act, the validity of these expectations can be assessed.

It could also be expected that prosecutorial discretion might be used to lay charges under the Crimes Act for more serious welfare and tax offending, both to increase the maximum penalty available and also because a Crimes Act conviction may be perceived as more serious and carry more societal condemnation of the wrongful conduct.²⁹ While it is difficult to evaluate the exercise of prosecutorial discretion

²⁸ *R v Beech* CA314/01, 6 December 2001 at [11].

²⁹ Ascroft, above n 16 at 42-43.

without access to the prosecution files, assessing the data according to which Act was used for prosecution can indicate whether the more serious offending by monetary value is being charged under the Crimes Act as opposed to the SSA or TAA.

The data demonstrates that:

- (1) Crimes Act welfare convictions have a slightly higher imprisonment rate than convictions solely under the SSA. More noticeably, the average prison sentence imposed is significantly longer.
- (2) Crimes Act tax convictions also have a higher rate of imprisonment than TAA convictions, but the average sentence length is similar across Acts.
- (3) Crimes Act tax convictions also have a higher rate of imprisonment than Crimes Act welfare convictions.
- (4) The difference in sentencing outcomes between Acts is more obvious for welfare cases than tax cases. In particular, the monetary value of the offending is considerably larger for cases charged under the Crimes Act.

Table 5 Welfare Fraud Sentencing outcomes by Act (imprisonment in months)

	Sample size	Minimum amount of offending	Max. amount of offending	Average amount of offending	Imprisonment rate	Min. prison length	Max. prison length	Average prison length
Crimes Act and SSA	38	\$6,500	\$250,913	\$74,849	26 (68%)	1.5	45	13.3
Crimes Act only	18	\$19,987	\$181,572	\$66,482	12 (67%)	4	29	14.3
SSA only	27	\$19,987	\$75,590	\$18,344	14 (52%)	2	9	6.2
Overall	83	\$977	\$250,913	\$53,225	52 (62%)	1.5	45	11.3

Table 6 Tax Fraud Sentencing outcomes by Act (imprisonment in months)

	Sample size	Minimum amount of offending	Max. amount of offending	Average amount of offending	Imprisonment rate	Min. prison length	Max. prison length	Average prison length
Crimes Act and TAA	4	\$19,000	\$2,300,000	\$648,713	3 (75%)	12	78	34
Crimes Act only	14	\$48,000	\$2,600,000	\$601,393	12 (86%)	6	54	33
TAA only	24	\$14,899	\$2,000,000	\$328,675	14 (58%)	5	78	31.4
Other³⁰	11	\$50,000	\$408,000	\$98,997	2 (18%)	12	42	27
Overall	53	\$14,899	\$2,600,000	\$560,452	31 (58%)	5	78	31.3

While limited by the small sample size, (especially of the tax data), there appears to be a difference in sentencing outcomes for welfare and tax cases that were prosecuted under the Crimes Act. Again, the average length of imprisonment and average monetary amount of tax offending is significantly greater than the welfare equivalent. Additionally, tax offenders prosecuted under the Crimes Act receive terms of imprisonment more frequently than welfare offenders prosecuted under the Crimes Act. That said, as with the overall data, dollar-for-dollar, welfare offenders prosecuted under the Crimes Act received, on average, longer prison sentences than tax offenders prosecuted under the Crimes Act.

As expected, welfare offenders charged under the Crimes Act, either solely or in addition to the SSA, generally defrauded more money and generally received a longer imprisonment term. There is a clear difference between cases in which charges were solely laid under the SSA and cases in which charges were laid under the Crimes Act, both in terms of the average amount of offending in monetary terms and the minimum and maximum monetary value of offending. This supports the conclusion that the more serious offending is prosecuted under the Crimes Act.

³⁰ This includes charges laid under the Goods and Services Act 1985, the Income Tax Act 1976, the Income Tax Act 2007, or alternative sections of the Crimes Act, such as perverting the course of justice (s 116).

There is a small difference in rates of imprisonment between the welfare groups of cases, however given the small sample size of the data, the difference in rates of imprisonment is unlikely to be significant.

The validity of conclusions based on the tax data are limited by the small sample size. In particular, the size of the group of cases in which charges were laid under the TAA in addition to the Crimes Act is too small to draw any firm conclusions. However, when comparing the cases in which charges were laid solely under each Act, there does seem to be some difference between the TAA cases and the Crimes Act cases. While the minimum, maximum or average length of prison term does not greatly differ between the groups, there is a difference in the monetary value of offending and the rate of imprisonment. Both the average monetary value of the offending and the rate of imprisonment is lower for cases charged solely under the TAA. As with the welfare cases, it appears the Crimes Act is being used for the more serious offenders. Further research using prosecution files is needed to assess this hypothesis.

There appears to be a larger difference between the welfare cases that are charged under the Crimes Act and the SSA than there is between the tax cases that are charged under the Crimes Act and TAA, as expected due to the difference in maximum terms. However, it may also indicate that the monetary amount of offending for welfare cases is seen as more significant than in tax offending. Because the different tax groups are relatively comparable compared to the difference between welfare groups, it is possible that the decision of which Act to lay charges under is based less off the monetary figure for tax cases than it is in welfare cases. The smaller monetary difference between the tax groups suggests that other factors influence which Act an offender is charged under; potentially factors like the sophistication, method and duration of the fraud have more influence in tax cases than in welfare cases.

The IRD prosecution guidelines on the decision of which Act to lay charges under states³¹:

The choice of charges depends on the evidence, the avoidance of technicalities and the ease of explaining specific crimes to juries. Public interest factors also bear on the choice of charges. A serious obstruction of the Commissioner may be more suitably prosecuted as perverting ... the course of justice under the Crimes Act rather than obstructing the Commissioner under section 143H TAA. A person who

³¹ Inland Revenue Department "Commissioner of Inland Revenue's Prosecution Guidelines" <www.ird.govt.nz>.

phoenixes companies as part of systematic program of tax evasion may be more effectively dealt with by a Crimes Act charge that upon conviction disqualifies the person from being a company director.

The Ministry of Social Development has a prosecution policy but it does not mention the question of which Act to lay charges under.³²

If the decision to lay charges under the Crimes Act *is* more influenced by the monetary magnitude of offending in welfare cases than in tax cases, then this is arguably unfair to certain welfare fraud offenders. To a certain extent, the monetary amount obtained in welfare fraud is determined by factors other than the moral culpability of the offender. The benefit rate, and therefore the amount able to be obtained, is determined by factors such as the number of dependents the beneficiary has, or medical conditions and disabilities. Subsequently, the fact that one beneficiary obtained a larger sum than another beneficiary may be less because one has committed a more grievous crime, and more to do with their personal circumstances.

In *Ministry of Social Development v White*, the court addressed this point. The sentencing judge noted that:³³

... social welfare fraud is no different to any other sort of fraud when it comes to sentencing. It is no worse and it is no better. But it has one characteristic that I am not entirely sure has always been emphasised to the higher Courts ... part of the reason ... for the very large amount of money, is the number of children you had and that affected the benefit level that was paid to you.

Of course, the beneficiary perpetuates their dishonesty each time they receive a payment to which they are not entitled. In this respect the amount obtained is within the beneficiary's control, and if the fraud continues for a long time, courts will rightly treat this as an aggravating factor.³⁴

However, in two situations where the majority of the factors relevant to the offending are comparable (i.e. similar method, duration, plea, remorse and so on), the fact that one offender obtained a larger amount because of having more dependents should not, in itself, count against that defendant. While a long *duration* of offending should be taken into

³² Ministry of Social Development "Prosecution Policy" <www.msd.govt.nz>.

³³ *Ministry of Social Development v White* DC Gisborne CRI 2011-016-428, 27 July 2011 at [8].

³⁴ *Hai v Ministry of Social Development* [2014] NZHC 2043; *Huirua v Ministry of Social Development* [2013] NZHC 2785.

account in sentencing, an increased *quantum* of offending will not always equate to increased culpability.

In contrast, the amount of tax evaded or GST refunds claimed potentially *does* reflect an increased degree of culpability amongst certain tax cases, if the increased monetary figure for tax cases is obtained through more active dishonesty. For example, in *Lindup v IRD*, the defendant procured his company to make false GST refund claims, and defrauded the IRD of \$866,773.82.³⁵ The fraud continued over nine months, and the amount claimed steadily increased over the time period.³⁶ In such cases, the amount dishonestly obtained reflects increased severity of the offending in a way which increased benefit acquisition may not.

It is important to acknowledge that for both categories of offending, while increased quantum of offending may indicate more serious offending, there is no linear relationship between quantum and culpability. Insufficient information is publicly available to determine whether prosecutorial discretion as to which Act to lay charges under is properly taking this into account.

What *is* evident from the data is that there is a large difference between the sentencing outcomes between the different Acts for welfare fraud, but a smaller difference for tax evasion, (as expected due to the difference in maximum penalties). Further information regarding prosecutorial decision-making is required in order to determine whether the quantum of offending is having too strong an influence in welfare fraud, once the fact that the personal circumstances of a defendant can impact on the amount able to be obtained is acknowledged and accepted.

D Tariffs in Sentencing

Cases were analysed according to monetary ‘threshold’ groups to further investigate the sentencing discrepancy relative to the amount obtained, and also to investigate the possibility of a de facto sentencing tariff. While some judgments have stated that there is no tariff in welfare fraud sentencing (as with other kinds of fraud sentencing)³⁷, there have

³⁵ *Lindup v Inland Revenue Department* (2008) 23 NZTC 22,025 at [2].

³⁶ At [7].

³⁷ See for example, *Paki v Ministry of Social Development* [2012] NZHC 2803 and *Hogan v Ministry of Social Development* (2005) 23 CRNZ 500.

also been comments made such as by Panckhurst J in *Hansen v Ministry of Social Development* who noted that “apparently the custody threshold for benefit fraud occurs at about \$10,000 or thereabouts.”³⁸ This suggests the possibility of a de facto sentencing tariff influencing welfare sentencing outcomes. A sentencing tariff would mean that once the monetary value of offending surpassed a certain level, a certain sentence would follow, almost as a matter of course.

The data shows that:

- (1) Welfare offending tends to be punished more harshly than tax offending of a comparable amount.
- (2) Mid-range welfare offending results in a prison sentence more frequently than mid-range tax offending.
- (3) The opposite is true for high-range offending; the most serious tax offending resulted in imprisonment more frequently than the most serious welfare offending.

³⁸ *Hansen v Ministry of Social Development* HC Christchurch CRI-2007-409-183 1 November 2007 at [5].

Table 7 Imprisonment data for welfare cases according to amount obtained (imprisonment in months) ³⁹

Amount obtained	Sample size	Imprisonment rate	Minimum sentence (months)	Maximum sentence (months)	Average sentence (months)
Up to \$10,000	13	4 (31%)	1.5	6	3.9
\$10,001-20,000	12	6 (50%)	3	6.5	5.6
\$20,001-30,000	9	6 (67%)	1.5	15	6.6
\$30,001-40,000	9	8 (89%)	3	14	7.0
\$40,001-50,000	9	5 (56%)	6	9	7.2
\$50,001-75,000	7	6 (86%)	6	20	11.3
\$75,001-100,000	8	5 (62%)	2	29	14.0
\$100,001-150,000	10	6 (60%)	9	27	18.0
\$150,001-200,000	3	3 (100%)	22	42	30.7
\$200,001 and over	3	3 (100%)	27	96	56.0
Overall	83	52 (62%)	1.5	96	16.0⁴⁰

³⁹ N.B. the amount of the monetary threshold increases from \$10,000 increments to \$25,000, and then further increases to \$50,000 increments in order to ensure that the sample sizes do not become too small.

⁴⁰ This includes *Patterson*, which is why the overall average prison sentence in this table differs from the initial overall average stated in the second table in the data section.

Table 8 Imprisonment data for tax cases according to amount obtained (imprisonment in months)

Amount obtained	Sample size	Imprisonment rate	Minimum sentence (months)	Maximum sentence (months)	Average sentence (months)
Up to \$50,000	9	3 (33%)	5	24	13.7
\$50,001-100,000	9	3 (33%)	8	16.5	12.2
\$100,001-150,000	8	3 (38%)	6	28	15.3
\$150,001-200,000	7	4 (57%)	12	24	21.3
\$200,001-500,000	8	7 (88%)	24	54	40.3
\$500,001-800,000	5	5 (100%)	12	48	33
\$800,001-1,000,000	3	3 (100%)	36	48	43
Over \$1,000,000	4	3 (75%)	48	78	68
Overall	53	31 (58%)	5	78	32

From this data, several things are evident. Firstly, it reinforces that the majority of the welfare cases in the sample concerned a relatively small amount of money, when compared with the tax cases. Fifty two of the welfare cases sampled (62%) involved fraud of under \$50,000, and 25 of the cases (30%) obtained under \$20,000. Only 3 welfare offenders (0.04%) obtained over \$200,000 from their offending in comparison to 38% of the tax offenders.

If there was a de facto tariff affecting sentencing for welfare fraud, the data would likely show a significant difference in the imprisonment rates between different monetary thresholds. However, the data does not clearly show this. With the exception of the lowest threshold, of up to \$10,000 obtained, and the highest two thresholds, of over \$150,000, the rate of imprisonment is relatively similar across the remaining thresholds, (allowing for some fluctuation). Again, the conclusions on the basis of this data are limited by the small sample size in each group, however the data does suggest that a term of imprisonment is not a foregone conclusion once the monetary amount crosses a particular threshold.

The data shows an increase in the length of prison terms as the monetary amount increases, as expected. However, the fact that the same trend is not also seen in the rate of

imprisonment suggests that allowances for personal circumstances or other elements of the offending in question is properly being taken into consideration when judges are sentencing offenders.

As with the welfare data, the tax data also shows a gradual increase in the length of prison sentences imposed as the monetary magnitude of the offending increases. However, while the overall trend is that the sentence increases as the money increases, this does not occur as consistently in the tax data as in the welfare data. This could suggest that the monetary value of the offending is more influential in the sentencing process for welfare offending than for tax offending. Because the increase in sentence length is less consistent in tax offending, it appears that the sentencing exercise for tax offending is more greatly influenced by factors other than the monetary value.

There is a gradual increase in the rate of imprisonment as the amount of the offending increases, but there does not appear to such a change between any of the thresholds such as to suggest a de facto tariff.

The data in Tables 7 and 8 further shows the difference in sentencing outcomes for those convicted of tax and welfare offending of a comparable amount of money. Those convicted of welfare offending of up to \$50,000, (the first five threshold groups; 63% of the welfare cases), received a sentence of imprisonment 56% of the time. Tax offending of up to \$50,000 (the first threshold group; 17% of the tax cases) received a sentence of imprisonment only 33% of the time. Welfare offending of up to \$100,000, (the first seven threshold groups; 81% of the welfare cases), received a sentence of imprisonment 60% of the time, but tax offending of the same amount (the first two threshold groups, 34% of the cases) received a term of imprisonment 33% of the time. This reinforces the earlier conclusion in this paper that welfare offending is punished more harshly, dollar-for-dollar, than tax offending.

However, the discrepancy between the sentencing outcomes is less when sentences are compared not between the monetary amounts, but between cases at each end of the severity of the offending. For example, the bottom 30% of the welfare offending, made up of the first two threshold groups (up to \$20,000), received a sentence of imprisonment 40% of the time. In comparison, the bottom 30% of the tax cases, also the first two threshold groups, (up to \$100,000), received a sentence of imprisonment 33% of the time. Therefore, while welfare offending appears to be punished more harshly dollar-for-dollar,

the least serious cases within each group appear to being treated in a more comparable manner.

The difference in sentencing outcomes for offending of the same severity within the groups of cases widens for the middle 30% of offending, and also for the most serious of offending. The middle 30% of welfare offending, (the threshold groups from \$20,001 to \$50,000), received a sentence of imprisonment 70% of the time. The middle 30% of the tax offending, (the threshold groups from \$100,001-200,000), received a sentence of imprisonment 46% of the time. However, the top 40% of welfare offending, (the threshold groups from \$50,001 and above), received a sentence of imprisonment 74% of the time, compared with 90% of the time for the top 40% of the tax cases (the threshold groups from \$200,001 and above).

Bearing in mind the limitations inherent in the small sample sizes, overall the data discussed in this section reinforces the earlier-observed discrepancy in sentencing outcomes for welfare and tax offending of a comparable monetary amount. However, mid-range welfare offending results in a prison sentence more frequently than mid-range tax offending, but the opposite is true for high-range offending.

Before discussing the effect of the Sentencing Act and Amendment Act as compared with the CJA, it is worth making one final comment about sentencing tariffs.

New Zealand currently has no formal tariff for any kind of fraud. However, the Court of Appeal in *Patterson* seemed to note with approval the United Kingdom Sentencing Advisory Panel recommendation of a guideline for fraud cases. The Court observed that:

But for the imminent start-up of our new Sentencing Council, this court would have had to give serious consideration to whether we should follow the English example and deliver a guideline judgment for fraud cases.⁴¹

If New Zealand were to follow this English example in the future and develop a guideline for fraud cases, it would be hoped that it would bring the welfare and tax cases more in line with each other in regards to the punishment relative to the amount of money obtained by an offender.

⁴¹ *R v Patterson*, above n 23, at [15].

E The Criminal Justice Act versus the Sentencing Act and Amendment Act

Due to the limited number of tax cases prior to 2007, this discussion focuses on the welfare data only.

I Overview of Legislative Change

The Sentencing Act 2002 and subsequent Sentencing Amendment Act 2007 brought about several changes from the CJA. Most significant for the present study were the removal of section 6 of the CJA, and the change in available sentence types.

Section 6 of the CJA provided a presumption against imprisonment for property offences unless the court is satisfied that, “because of the special circumstances of the offence or of the offender, any other sentence that it could lawfully impose would be clearly inadequate or inappropriate.”⁴²

The High Court in *Faiers v Police*, the earliest case in the study, considered that welfare fraud could amount to special circumstances rendering any sentence other than imprisonment inadequate and inappropriate because welfare fraud was “easy to commit, hard to detect, and potentially highly profitable”.⁴³ *Faiers* came to be authority for the proposition that welfare fraud was a special circumstance in and of itself due to a special need for deterrent sentences. Thus, in the early 1990s there was something of a presumption for imprisonment for welfare fraud that underlies the judgments in cases such as *Barrett v Police*, *Singh v Police* and *Roycroft v Department of Social Welfare*, all of which resulted in six-month prison terms for offending of between \$5000 and \$10,000.⁴⁴

The High Court in *Edgar v Police* and the Court of Appeal in *R v Prior* rejected the proposition that welfare fraud was a special circumstance in and of itself.⁴⁵ However, even by the end of the 1990s, the idea that imprisonment was required for welfare fraud was still influential. The High Court in *Wilson v Department of Social Welfare* addressed this point:⁴⁶

⁴² Criminal Justice Act 1985, s 6.

⁴³ As above.

⁴⁴ *Barrett v Police* HC Hamilton AP78/90, 16 July 1990; *Singh v Police* HC Hamilton AP80/90, 25 June 1990; *Roycroft v Department of Social Welfare* HC Hamilton AP50/90, 14 May 1990.

⁴⁵ *Edgar v Police* (1991) 7 CRNZ 659 (HC); *R v Prior* (1993) 10 CRNZ 147 (CA) at 5.

⁴⁶ *Wilson v Department of Social Welfare* HC Whanganui HB89/98, 10 December 1998.

... there is some authority to the effect that [welfare fraud] ... may be in a special category that create[s] special circumstances for the purposes of s 6 of the Criminal Justice Act. However in my judgment that is not a decision for the Court to make. There is research which suggests that a substantial deterrence arises from a person being apprehended, the publicity associated with conviction and the other circumstances involved in any penal sanction being invoked. It is not apparent why ... imprisonment has some additional deterrent aspect which excludes other possibilities from being appropriate or adequate in the circumstances of this case.

As a result of cases such as *Edgar, Prior and Wilson*, by the time the Sentencing Act came into force, welfare fraud does not seem to have been being treated as a special circumstance in and of itself.

Section 6 of the CJA was repealed and replaced with the Sentencing Act 2002. The new relevant sentencing principle was that the sentence imposed must be “the least restrictive outcome that is appropriate in the circumstances”.⁴⁷

The Sentencing Amendment Act 2007 amended the existing available sentences and created new sentence types. For example, home detention was created and community work replaced the previous community service and periodic detention sentences.⁴⁸

2 *Application of legislative change to this study*

Legislative change is one aspect that may influence sentencing outcomes. However, as all the variables that may have had an effect are not able to be isolated, it is not possible to form definitive causal conclusions on the impact of the Sentencing Act and Sentencing Amendment Act versus the CJA.

While remaining cognisant of this limitation, when tracking a welfare sentencing trend across the time periods and legislative changes, the data suggests that:

- (1) The Sentencing Amendment Act 2007 has had the most visible and explainable impact on sentencing outcomes for welfare fraud, most prominently through the

⁴⁷ Sentencing Act 2002, s 8(g).

⁴⁸ Sentencing Amendment Act 2007.

availability of home detention. Home detention appears to be being used as an alternative to imprisonment for less serious offending.

- (2) Imprisonment rates do not differ greatly between cases decided under the Sentencing Act 2002 or the CJA. This is likely in part because case law developed over the late-1990s to treat welfare fraud more leniently than during the late 1980s/early-1990s. Consequently, the impact of removing s 6 of the CJA was not as profound as it perhaps could have been.
- (3) The overall trend for welfare fraud sentencing over the past 27 years is that the imprisonment rate has reduced. However, the average prison sentence length has increased.
- (4) The longer prison sentences cannot be explained solely by an increase in home detention leaving only the most serious offenders to receive prison sentences. The increase in prison sentence length occurred before the increase in home detention sentences.
- (5) The increased monetary value of offending post-2002 may partly explain the longer prison sentences received, however it is unclear why the monetary figure has increased.

Tables 1 and 3, which provide an overview of the welfare data related to each time period are reproduced for convenience below.

Table 1 Welfare Fraud sentence results by frequency and percentage

Period	Sample size	Average amount of offending	Imprisonment	Home Detention	Community Detention	Periodic Detention	Supervision	Community Service/Work	Fine
1989-2001	30	\$34,447	21 (70%)	0	0	8 (27%)	1 (3%)	0	0
2002-2006	16	\$62,929	13 (81%)	0	0	0	1 (6%)	2 (13%)	0
2007-2016	37	\$64,965 ⁴⁹	18 (49%)	11 (30%)	3 (8%)	0	0	5 (14%)	0
Total	83	\$54,114	52 (62%)	11 (13 %)	3 (4%)	8 (10%)	2 (2%)	7 (8%)	0 (0%)

⁴⁹ Excluding *Patterson*.

Table 3 Welfare Fraud imprisonment

Period	Average sum resulting in a prison sentence	Average term of imprisonment
1989-2001	\$43,622	6.7 months
2002-2006	\$72,140	14.6 months
2007-2016⁵⁰	\$78,897	16.2 months
Overall⁵¹	\$62,460	11.8 months

Since 2007, the imprisonment rate has decreased from between 70-80% to around 50%. This decrease may be partly due to the fact that 30% of offenders post-2007 received a home detention sentence, likely indicating that less serious offending is now being dealt with through home detention rather than imprisonment. Home detention has been recognised as adequately giving effect to the sentencing principles of deterrence and denunciation.⁵²

If courts had still been treating welfare fraud as a special circumstance for the purposes of section 6 of the CJA at the time the Sentencing Act came into force in 2002, it is possible that the Sentencing Act would have had a greater effect on the rate of imprisonment for welfare offending. However, as discussed, cases such as *Edgar*, *Prior* and *Wilson* shifted the principles guiding welfare fraud sentencing to become more lenient and open to non-custodial sentences. Thus, the rate of imprisonment did not drastically change after the Sentencing Act came into force. Instead, a significant decrease in imprisonment rate did not occur until after the passing of the Sentencing Amendment Act.

However, while the *rate of imprisonment* has decreased since 2007, the average prison sentence *length* has increased since 2002. If the average prison sentence had only increased since 2007, then it could be argued that the average prison term had increased because less serious offending was being dealt with through home detention, leaving only the more serious offending to receive a term of imprisonment. However, the fact that the average prison term increased before home detention became available means that this cannot fully account for the increase in prison term length.

An explanation for the increase in average prison length could be that the average monetary amount of offending has also increased since 2002. While the monetary amount

⁵⁰ Excluding *Patterson*.

⁵¹ Excluding *Patterson*.

⁵² *Aupouri v Ministry of Social Development* [2013] NZHC 581 at [7].

is just one element to be taken into account in sentencing, an increase in the amount of money fraudulently obtained can, (subject to the qualification of the personal circumstances of the offender discussed earlier), indicate increased culpability and thus justify an increased prison term. Beyond allowing for the usual annual increase in benefit rates to account for increased living costs and inflation, it is not clear why the monetary value of offending is markedly different post-2002. Further research needs to address this point.

VI Conclusion

Courts must have regard to the desirability of consistency between sentences for comparable offending. Welfare fraud and tax evasion are comparable offences which should receive broadly comparable sentences. This study analysed a sample of 83 welfare offenders and 50 tax offenders from the period 1989-2016 to examine the extent of a previously reported sentencing discrepancy.

The data in this study showed that the discrepancy in sentencing outcomes is not as pronounced as seen in other research. However, there is a significant difference between the punishment received by those convicted of welfare fraud and tax evasion of a comparable monetary figure, with welfare offenders being more likely to receive a sentence of imprisonment than a tax offender for the same amount of money.

The data shows that across both tax and welfare offending, those convicted of an offence under the Crimes Act generally receive a harsher sentence than those convicted under the SSA or the TAA. However, the difference is more pronounced for welfare offending. In contrast, tax offenders convicted under the Crimes Act are sentenced to prison at a higher rate than welfare offenders convicted under the Crimes Act.

There does not appear to be any de facto tariff influencing the sentencing outcomes for either welfare or tax offending.

The Sentencing Amendment Act 2007 appears to have had significant impact on sentencing outcomes; the rates of imprisonment after 2007 notably decreased. This is likely due to the availability of home detention as a viable alternative for less serious offending.

It would be desirable if welfare and tax fraud sentencing of a comparable monetary amount was more consistent, however, on the basis of the data in this study the overall discrepancy is not as bad as hypothesised. In particular, it is positive that home detention is being used to provide a way to keep offenders in the community and as an alternative to a sentence of imprisonment for those whose offending is not as serious.

Further research with access to prosecution files and more non-appealed cases is needed in this area in order to provide the data missing from this study.

Word count: the body of this essay, including substantive footnotes but excluding bibliographical footnotes, the bibliography and the appendix comprises 7986 words.

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Appendix A – Raw Data

This appendix contains tables for the cases used in the welfare fraud and tax fraud sentencing analysis conducted for this dissertation. The cases are from New Zealand between 1989 and 2015, generally at the High Court level and above. The cases are listed in alphabetical order. Where there are multiple listings for the same case name, generally this is because appeals are listed separately as sentences may have changed. It does not purport to be a comprehensive or complete list of all cases in these areas. All data was extracted from case files available on Westlaw New Zealand and/or LexisNexis New Zealand.

Welfare Fraud Sentencing Data

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Afu	CA only	\$67,000	Initial	1992	Imprisonment	6 months	
Afu	CA only	\$67,000	Appeal	1992	Imprisonment	6 months	
Agnew	SSA only	\$5,855	Initial	1999	Periodic Detention	5 months	
Agnew	SSA only	\$5,855	Appeal	1999	Periodic Detention	5 months	
Albert	CA only	\$80,095	Initial	2015	Community Work/Service	250 hours	and 6 months community detention, 12 months intensive supervision, \$75,000 in reparation
Albert	CA only	\$80,095	Appeal	2015	Home detention	7 months	
Aupouri	SSA and CA	\$201,978	Initial	2013	Imprisonment	32 months	
Aupouri	SSA and CA	\$201,978	Appeal	2013	Imprisonment	27 months	
Barrett	SSA only	\$5,005	Initial	1990	Imprisonment	6 months	and reparation of \$1500
Barrett	SSA only	\$5,005	Appeal	1990	Imprisonment	6 months	and reparation of \$1500
Batt	SSA and CA	\$138,000	Initial	2001	Imprisonment	9 months	and reparation
Batt	SSA and CA	\$138,000	Appeal	2001	Imprisonment	9 months	no reparation
Beech	SSA and CA	\$87,000	Initial	2001	Imprisonment	15 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Beech	SSA and CA	\$87,000	Appeal	2001	Imprisonment	15 months	
Beedell	SSA and CA	\$45,523	Initial	2010	Imprisonment	8 months	
Beedell	SSA and CA	\$45,523	Appeal	2010	Home detention	5 months	and 50 hours community service
Boe	SSA only	\$10,159	Initial	1991	Imprisonment	6 months	
Boe	SSA only	\$10,159	Appeal	1991	Supervision	12 months	
Brownlow	CA only	\$181,572	Initial	2013	Imprisonment	22 months	
Brownlow	CA only	\$181,572	Appeal	2013	Imprisonment	22 months	
Cameron	SSA and CA	\$42,958	Initial	2015	Home detention	7 months	Real net loss was not calculated.
Cameron	SSA and CA	\$42,958	Appeal	2015	Community detention and community work	7 months	
Clement	SSA and CA	\$41,198	Initial	2004	Imprisonment	6 months	and 5 years on other charges; cumulative
Collier	SSA and CA	\$105,595	Initial	2009	Imprisonment	20 months	
Collier	SSA and CA	\$105,595	Appeal	2009	Imprisonment	20 months	
Coulter	SSA and CA	\$40,014	Initial	2009	Home detention	4 months	
Creeks	SSA and CA	\$86,000	Initial	2004	Imprisonment	18 months	
Creeks	SSA and CA	\$86,000	Appeal	2004	Imprisonment	18 months	
Davey	CA only	\$110,280	Initial	2009	Imprisonment	17 months	
Davey	CA only	\$110,280	Appeal	2009	Imprisonment	17 months	
Dey	SSA only	\$9,604	Initial	1991	Imprisonment	6 months	
Dey	SSA only	\$9,604	Appeal	1991	Periodic Detention	6 months	
Edgar	SSA only	\$75,590	Initial	1991	Imprisonment	15 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Edgar	SSA only	\$75,590	Appeal	1991	Imprisonment	2 months	Had already served time, immediate release instead of community work
Faiers	SSA and CA	\$41,000	Initial	1989	Imprisonment	6 months	
Faiers	SSA and CA	\$41,000	Appeal	1989	Imprisonment	6 months	
Findlay	SSA only	\$3,336	Initial	2004	Community Work/Service	60 hours	
Findlay	SSA only	\$3,336	Appeal	2004	Community Work/Service	60 hours	
Fitzgerald	SSA and CA	\$104,008	Initial	2010	Imprisonment	16 months	
Fitzgerald	SSA and CA	\$104,008	Appeal	2010	Home detention	6 months	and 75 hours community work
Frost	CA only	\$27,084	Initial	2013	Imprisonment	9 months	
Frost	CA only	\$27,084	Appeal	2013	Home detention	5 months	and 100 hours community work
Ghanbari	SSA and CA	\$12,788	Initial	2008	Community Work/Service	100 hours	
Ghanbari	SSA and CA	\$12,788	Appeal	2008	Community Work/Service	50 hours	
Goodin	SSA only	\$15,269	Initial	1991	Community Work/Service	200 hours	
Goodin	SSA only	\$15,269	Appeal	1991	Imprisonment	3 months	
Gordon	CA only	\$41,640	Initial	2005	Community Work/Service	200 hours	
Gordon	CA only	\$41,640	Appeal	2005	Community Work/Service	200 hours	
Green	CA only	\$36,496	Initial	2010	Imprisonment	28 months	
Green	CA only	\$36,496	Appeal	2010	Imprisonment	14 months	
Hai	CA only	\$115,471	Initial	2014	Imprisonment	20 months	
Hai	CA only	\$115,471	Appeal	2014	Imprisonment	20 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Hannan	SSA only	\$9,100	Initial	1990	Imprisonment	5 months	
Hannan	SSA only	\$9,100	Appeal	1990	Periodic Detention	6 months	
Hansen	SSA only	\$2,952	Initial	2007	Community Work/Service	150 hours	
Hansen	SSA only	\$2,952	Appeal	2007	Community Work/Service	150 hours	
Harlen	SSA and CA	\$120,355	Initial	2001	Imprisonment	15 months	
Harlen	SSA and CA	\$120,355	Appeal	2001	Imprisonment	15 months	
Harrison	SSA and CA	\$6,500	Initial	2005	Imprisonment	2 months	
Harrison	SSA and CA	\$6,500	Appeal	2005	Imprisonment	2 months	
Heta	SSA only	\$51,000	Initial	2012	Imprisonment	12 months	
Heta	SSA only	\$51,000	Appeal	2012	Imprisonment	8 months	
Hills	SSA only	\$21,770	Initial	2000	Imprisonment	6 months	
Hills	SSA only	\$21,770	Appeal	2000	Imprisonment	6 months	
Hogan- Hapi	CA only	\$38,600	Initial	2005	Imprisonment	4 months	
Hogan- Hapi	CA only	\$38,600	Appeal	2005	Imprisonment	4 months	
Hogan-Hawkins	SSA and CA	\$22,800	Initial	2005	Imprisonment	6 months	
Hogan-Hawkins	SSA and CA	\$22,800	Appeal	2005	Imprisonment	6 months	
Hogan-Hogan	SSA and CA	\$22,766	Initial	2005	Imprisonment	6 months	
Hogan-Hogan	SSA and CA	\$22,766	Appeal	2005	Imprisonment	6 months	
Hogan-Kupa	SSA and CA	\$48,322	Initial	2005	Imprisonment	9 months	
Hogan-Kupa	SSA and CA	\$48,322	Appeal	2005	Imprisonment	9 months	
Hogan-Sapati	SSA and CA	\$48,586	Initial	2005	Imprisonment	9 months	
Hogan-Sapati	SSA and CA	\$48,586	Appeal	2005	Imprisonment	9 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Huddleston - Huddleston	SSA and CA	\$19,039	Initial	2007	Imprisonment	6 months	
Huddleston - Huddleston	SSA and CA	\$19,039	Appeal	2007	Imprisonment	6 months	
Huddleston - Kawenga	SSA and CA	\$6,969	Initial	2007	Imprisonment	6 months	
Huddleston - Kawenga	SSA and CA	\$6,969	Appeal	2007	Imprisonment	1.5 months	6 weeks substituted
Huirua	CA only	\$53,173	Initial	2013	Imprisonment	16 months	
Huirua	CA only	\$53,173	Appeal	2013	Imprisonment	16 months	
Igal	SSA and CA	\$98,000	Initial	2010	Imprisonment	13 months	
Igal	SSA and CA	\$98,000	Appeal	2010	Home detention	6 months	and 100 hours community work
Ioane	SSA and CA	\$22,668	Initial	1994	Imprisonment	7 months	
Ioane	SSA and CA	\$22,668	Appeal	1994	Imprisonment	5 months	
Isakko	SSA and CA	\$250,913	Initial	2004	Imprisonment	45 months	
Isakko	SSA and CA	\$250,913	Appeal	2004	Imprisonment	45 months	
Jones and Ballantyne - Ballantyne	SSA only	\$31,768	Initial	1990	Imprisonment	9 months	
Jones and Ballantyne - Ballantyne	SSA only	\$31,768	Appeal	1990	Imprisonment	9 months	
Jones and Ballantyne - Jones	SSA only	\$30,496	Initial	1990	Imprisonment	8 months	
Jones and Ballantyne - Jones	SSA only	\$30,496	Appeal	1990	Imprisonment	8 months	
Katoa	SSA only	\$3,938	Initial	1991	Imprisonment	5 months	
Katoa	SSA only	\$3,938	Appeal	1991	Periodic Detention	6 months	
Keelan	SSA and CA	\$41,037	Initial	2003	Imprisonment	6 months	
Keelan	SSA and CA	\$41,037	Appeal	2003	Imprisonment	6 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Kemble	SSA and CA	\$26,080	Initial	2008	Imprisonment	15 months	
Kemble	SSA and CA	\$26,080	Appeal	2008	Imprisonment	15 months	
Kitto	SSA only	\$50,918	Initial	2012	Imprisonment	9 months	
Kitto	SSA only	\$50,918	Appeal	2012	Imprisonment	9 months	
Lambert	SSA only	\$30,818	Initial	1992	Imprisonment	7 months	
Lambert	SSA only	\$30,818	Appeal	1992	Imprisonment	3 months	and reparation
Lauina-Lauina	SSA only	\$16,016	Initial	2015	Community Work/Service	400 hours	
Lauina-Lauina	SSA only	\$16,016	Appeal	2015	Community Work/Service	400 hours	
Lauina- Sioli	SSA only	\$16,015	Initial	2015	Community Work/Service	400 hours	
Lauina- Sioli	SSA only	\$16,015	Appeal	2015	Community Work/Service	300 hours	
Lawrence	SSA and CA	\$24,432	Initial	2009	Community Work/Service	200 hours	and 3 months community detention
Linsell	SSA and CA	\$19,280	Initial	2009	Imprisonment	8 months	
Linsell	SSA and CA	\$19,280	Appeal	2009	Imprisonment	6.5 months	
Linton	SSA and CA	\$58,314	Initial	2009	Imprisonment	9 months	
Maa	CA only	\$34,946	Initial	2013	Home detention	7 months	and 100 hours of community work
Maa	CA only	\$34,946	Appeal	2013	Community Work/Service	400 hours	and 6 months community detention and \$100/month reparation
Maaka	SSA and CA	\$81,000	Initial	1993	Imprisonment	18 months	
Maaka	SSA and CA	\$81,000	Appeal	1993	Imprisonment	6 months	
Manakau	SSA only	\$11,724	Initial	1994	Imprisonment	6 months	
Manakau	SSA only	\$11,724	Appeal	1994	Imprisonment	6 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Marsh	SSA only	\$977	Initial	1995	Reparation only	-	
Marsh	SSA only	\$977	Appeal	1995	Periodic Detention	2 months	and reparation
McKay	SSA and CA	\$22,038	Initial	2004	Imprisonment	6 months	
McKay	SSA and CA	\$22,038	Appeal	2004	Imprisonment	1.5 months	Had already served time, so immediate release given instead of community work
Motuga	CA only	\$33,200	Initial	1993	Imprisonment	10 months	
Motuga	CA only	\$33,200	Appeal	1993	Imprisonment	4.25 months	4 months and 1 week
Osborne	SSA and CA	\$173,120	Initial	2004	Imprisonment	42 months	
Osborne	SSA and CA	\$173,120	Appeal	2004	Imprisonment	42 months	
Paki	CA only	\$51,000	Initial	2012	Imprisonment	20 months	
Paki	CA only	\$51,000	Appeal	2012	Imprisonment	20 months	
Patterson	CA only	\$3,400,000	Initial	2008	Imprisonment	96 months	
Patterson	CA only	\$3,400,000	Appeal	2008	Imprisonment	96 months	
Prior	CA only	\$35,500	Initial	1993	Imprisonment	10 months	Amount estimated as between \$34,000-\$37,000
Prior	CA only	\$35,500	Appeal	1993	Imprisonment	5 months	Husband's sentence amended to 5 months from 10 months in interest of parity
Ransom	CA only	\$127,986	Initial	2010	Imprisonment	18 months	
Ransom	CA only	\$127,986	Appeal	2010	Home detention	9 months	and 75 hours community work
Richards	SSA only	\$32,000	Initial	1990	Imprisonment	9 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Richards	SSA only	\$32,000	Appeal	1990	Imprisonment	9 months	
Roycroft	SSA only	\$10,166	Initial	1990	Imprisonment	6 months	and full reparation
Roycroft	SSA only	\$10,166	Appeal	1990	Imprisonment	6 months	and \$4000 reparation
Saywell	SSA only	\$8,481	Initial	2009	Community Work/Service	100 hours	
Saywell	SSA only	\$8,481	Appeal	2009	Community Work/Service	100 hours	
Singh	SSA only	\$7,235	Initial	1990	Imprisonment	6 months	and \$2000 reparation
Singh	SSA only	\$7,235	Appeal	1990	Imprisonment	6 months	and \$2000 reparation
Smith	SSA and CA	\$55,000	Initial	2005	Imprisonment	12 months	
Smith	SSA and CA	\$55,000	Appeal	2005	Supervision	12 months	
Squibb	SSA only	\$4,586	Initial	1992	Imprisonment	5 months	
Squibb	SSA only	\$4,586	Appeal	1992	Periodic Detention	6 months	and 2 years supervision
Tau	SSA only	\$12,000	Initial	1990	Periodic Detention	7 months	
Tau	SSA only	\$12,000	Appeal	1990	Periodic Detention	7 months	
Taylor	SSA only	\$18,500	Initial	1991	Imprisonment	6 months	
Taylor	SSA only	\$18,500	Appeal	1991	Imprisonment	6 months	
Te Weri	SSA and CA	\$121,617	Initial	2010	Imprisonment	20 months	
Te Weri	SSA and CA	\$121,617	Appeal	2010	Home detention	7 months	and 150 hours community work
Vu	SSA and CA	\$27,254	Initial	2009	Home detention	4 months	
Walker	SSA and CA	\$109,000	Initial	2014	Imprisonment	21 months	
Walker	SSA and CA	\$109,000	Appeal	2014	Home detention	5 months	
Werahiko	SSA and CA	\$85,723	Initial	2008	Imprisonment	12 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Werahiko	SSA and CA	\$85,723	Appeal	2008	Home detention	4 months	6 months, reduced for time already spent in prison
White	SSA and CA	\$150,517	Initial	2011	Imprisonment	28 months	
White	SSA and CA	\$150,517	Appeal	2011	Imprisonment	28 months	
Whitelaw	CA only	\$76,164	Initial	2012	Imprisonment	29 months	
Whitelaw	CA only	\$76,164	Appeal	2012	Imprisonment	29 months	
Williams	SSA and CA	\$105,000	Initial	2002	Imprisonment	27 months	
Williams	SSA and CA	\$105,000	Appeal	2002	Imprisonment	27 months	
Wilson	CA only	\$19,987	Initial	1998	Imprisonment	4 months	
Wilson	CA only	\$19,987	Appeal	1998	Periodic Detention	7 months	

Tax Fraud Sentencing Data

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Adams	CA only	\$693,209	Initial	2006	Imprisonment	45 months	
Adams	CA only	\$693,209	Appeal	2006	Imprisonment	45 months	
Armitage	CA only	\$141,875	Initial	2007	Imprisonment	15 months	
Armitage	CA only	\$141,875	Appeal	2007	Imprisonment	6 months	
Barron	TAA only	\$73,435	Initial	2014	Imprisonment	16.5 months	
Barron	TAA only	\$73,435	Appeal	2014	Imprisonment	16.5 months	
Brown	Other	\$65,000	Initial	2013	Home detention	5 months	
Butler	TAA only	\$20,878	Initial	2002	Periodic Detention	6 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Butler	TAA only	\$20,878	Appeal	2002	Periodic Detention	6 months	
Clemm	CA only	\$271,696	Initial	2005	Imprisonment	30 months	and theft from clients of \$46,456.09
Clemm	CA only	\$271,696	Appeal	2005	Imprisonment	30 months	
Dempsey	TAA only	\$183,350	Initial	2011	Community Work/Service	200 hours	and 6 months community detention
Dempsey	TAA only	\$183,350	Appeal	2011	Community Work/Service	200 hours	and 6 months community detention and reparation
Dhillon	TAA only	\$2,000,000	Initial	2009	Imprisonment	78 months	\$2m estimate only. 6 years 6 months
Dhillon	TAA only	\$2,000,000	Appeal	2009	Imprisonment	78 months	
Dickson	CA only	\$2,600,000	Initial	1990	Imprisonment	48 months	Served concurrently
Dickson	CA only	\$2,600,000	Appeal	1990	Imprisonment	48 months	
Eade	TAA, CA and GST	\$408,504	Initial	2009	Imprisonment	42 months	2 years 6 months for TAA and 1 year CA cumulative.
Easton	TAA only	\$204,213	Initial	2014	Fine and reparation	-	Fine and reparation only
Easton	TAA only	\$204,213	Appeal	2014	Community Work/Service	80 hours	and 4 months community detention and reparation
Fuller	CA only	\$605,497	Initial	1991	Imprisonment	12 months	
Fuller	CA only	\$605,497	Appeal	1991	Imprisonment	12 months	
Gautum	TAA only	\$200,000	Initial	2010	Home detention	12 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Gell	CA only	\$124,000	Initial	2010	Home detention	7 months	and 120 hours community work and reparation
Gill	Other	\$2,210	Initial	1999	Fine	-	Fine
Gill	Other	\$2,210	Appeal	1999	Fine	-	Fine upheld on appeal
Haggie	unknown	\$50,000	Initial	2010	Imprisonment	12 months	and reparation
Hawken	CA and TAA	\$100,000	Initial	2006	Imprisonment	12 months	
Hawken	CA and TAA	\$100,000	Appeal	2006	Imprisonment	12 months	
Heald	CA only	\$657,204	Initial	1999	Imprisonment	48 months	
Heald	CA only	\$657,204	Appeal	1999	Imprisonment	48 months	
Hirawani	CA only	\$212,361	Initial	2005	Imprisonment	60 months	
Hirawani	CA only	\$212,361	Appeal	2005	Imprisonment	54 months	
Ili	Other	\$133,512	Initial	2012	Home detention	4 months	and 200 hours community work
James	TAA only	\$174,206	Initial	2010	Imprisonment	24 months	
James	TAA only	\$174,206	Appeal	2010	Imprisonment	24 months	
Jermy	Other	\$15,123	Initial	1989	Fine	\$400	Fines of \$150 and \$250
Jermy	Other	\$15,123	Appeal	1989	Fine	\$3400	Fine increased on appeal to \$3400 made up of various fines
Jukich	TAA only	\$516,713	Initial	2012	Imprisonment	30 months	
Jukich	TAA only	\$516,713	Appeal	2012	Imprisonment	30 months	
Kahlon	TAA only	\$312,000	Initial	2010	Imprisonment	48 months	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Kamal	Other	\$55,738	Initial	2013	Home detention	3 months	and 150 hours community work
Khanda	CA and TAA	\$175,853	Initial	2003	Imprisonment	30 months	
Khanda	CA and TAA	\$175,853	Appeal	2003	Imprisonment	12 months	
Klintcharov a	TAA only	\$146,859	Initial	2013	Home detention	6 months	and reparation
Klintcharov a	TAA only	\$146,859	Appeal	2013	Home detention	6 months	
Lamelangi	TAA only	\$167,277	Initial	2010	Imprisonment	27 months	
Latimer	ITA	\$109,389	Initial	1995	Fine	\$16,000	10 separate fines totalling \$16,000
Lindup	CA only	\$866,774	Initial	2008	Imprisonment	48 months	
Lucy	Other	\$71,039	Initial	2011	Home detention	4 months	and 150 hours community work
Marsters	CA only	\$345,768	Initial	2005	Imprisonment	42 months	
McLean	TAA only	\$14,899	Initial	2010	Imprisonment	5 months	
Mehmood	TAA only	\$1,000,000	Initial	2015	Imprisonment	36 months	
Mehmood	TAA only	\$1,000,000	Appeal	2015	Imprisonment	36 months	
O'Connor	TAA only	\$360,000	Initial	2013	Imprisonment	42 months	
O'Neil	Other	\$100,000	Initial	2011	Community Work/Service	80 hours	and 6 months community detention and reparation of \$7,500
Pandey	TAA only	\$46,937	Initial	2013	Community Work/Service	120 hours	
Pandey	TAA only	\$46,937	Appeal	2013	Community Work/Service	120 hours	

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Pearce	TAA only	\$92,807	Initial	2015	Home detention	4 months	and 120 hours community work and reparation
Pearce	TAA only	\$92,807	Appeal	2015	Home detention	4 months	and 120 hours community work and reparation
Petherick	CA only	\$1,657,116	Initial	1994	Community Work/Service	200 hours	
Petherick	CA only	\$1,657,116	Appeal	1994	Community Work/Service	200 hours	
Prakash	TAA only	\$171,000	Initial	2012	Imprisonment	22 months	
Prakash	TAA only	\$171,000	Appeal	2012	Imprisonment	22 months	
Rangitawa	TAA only	\$120,505	Initial	2016	Imprisonment	14 months	
Rangitawa	TAA only	\$120,505	Appeal	2016	Home detention	4 months	and 300 hours community work. Reflects time already served
Rasekh	unknown	\$78,454	Initial	2010	Home detention	8.5 months	and 300 hours community work
Rowley	CA and TAA	\$2,300,000	Initial	2015	Imprisonment	78 months	and cumulative sentence for attempting to pervert the course of justice
Rowley	CA and TAA	\$2,300,000	Appeal	2015	Imprisonment	78 months	and cumulative sentence for attempting to pervert the course of justice
Sellers	TAA only	\$38,969	Initial	2016	Community Work/Service	250 hours	and 5 months community detention and reparation

Case name	Charged under	Amount Obtained	Decision Type	Year	Sentence	Duration	Notes
Sellers	TAA only	\$38,969	Appeal	2016	Community Work/Service	175 hours	and 5 months community detention and reparation
Singh	CA only	\$115,000	Initial	2007	Imprisonment	28 months	Estimated loss
Singh	CA only	\$115,000	Appeal	2007	Imprisonment	28 months	
Smith	TAA only	\$570,000	Initial	2008	Imprisonment	30 months	
Smith	TAA only	\$570,000	Appeal	2008	Imprisonment	30 months	
Steel	CA only	\$81,000	Initial	1990	Imprisonment	15 months	
Steel	CA only	\$81,000	Appeal	1990	Imprisonment	8 months	
Suckling	TAA only	\$106,219	Initial	2016	Imprisonment	12 months	
Suckling	TAA only	\$106,219	Appeal	2016	Imprisonment	12 months	
Sula-Wongsee	CA and TAA	\$19,000	Initial	2012	Community Work/Service	175 hours	and 6 months community detention
Tahaafe	TAA only	\$201,824	Initial	2009	Imprisonment	36 months	
Tahaafe	TAA only	\$201,824	Appeal	2009	Imprisonment	24 months	
Trask	CA only	\$48,000	Initial	1989	Imprisonment	24 months	
Trask	CA only	\$48,000	Appeal	1989	Imprisonment	24 months	
Wang	TAA only	\$1,000,000	Initial	2016	Imprisonment	45 months	
Wang	TAA only	\$1,000,000	Appeal	2016	Imprisonment	45 months	
Zaheed	TAA only	\$166,121	Initial	2010	Imprisonment	19 months	
Zaheed	TAA only	\$166,121	Appeal	2010	Home detention	6 months	