

## CHAPTER 6

# CONCLUSION

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The initial intention of this monograph was to describe and explain the way the Specialised Commercial Crime Court works and what impact this methodology has on the productivity and effectiveness of the court. A second objective was to use the court as a prism through which to view the policy questions arising from the establishment of specialised courts in general. As will now be clear, however, this latter objective was only partially achieved, as the crucial innovation explaining the methodology and performance of the Specialised Commercial Crime Court does not lie in the court itself, but in the way that the investigators of Pretoria's Commercial Branch and the prosecutors of the Specialised Commercial Crime Unit (SCCU) work together in bringing cases to court.

Some time has been spent examining how the integration of investigation and prosecution works and the pros and cons thereof. It has been argued that, in general, the potential risks associated with the integration of this work have not resulted in material compromises to the goals and principles of criminal justice policy and practice in a democracy. These risks include the loss of prosecutorial independence, undesirable cosiness between actors with distinct tasks, and the potential introduction of bias into decision-making processes that demand independence and objectivity. At the same time, this integrated approach to the management of cases has clearly enhanced the quality of both investigation and prosecution, leading to improved turn-around times and higher conviction rates.

The court, and its unique investigative and prosecutorial processes, can therefore be regarded as a marked success. However, the fact that the portfolio of cases coming to trial in this court is quite different from that of any other court makes it impossible to rigorously compare data on productivity and effectiveness.

It has also been suggested that a full account of the reasons for the success of this innovation must include the fact that this project has had some outside support. Moreover, the prosecution team servicing this court appears to be somewhat less under-resourced and more highly qualified than is the case in other regional courts.

These two issues mean that it is not possible to be entirely confident that the integration of investigation and prosecution in other courts will result in the same improvement in productivity as is evident in this court. It does suggest, however, that a combination of improved working methods and increased resources may well improve the productivity and effectiveness of courts elsewhere in the criminal justice system.

In relation to the broader question of court specialisation it has been argued that there are likely to be both positive and negative consequences associated with setting up institutions reserved for hearing only a limited range of cases. Among the benefits are increased efficiency, the rapid development of the law, and the ability to concentrate people with appropriate skills at those points in the system where society is most likely to reap the rewards of using their particular speciality. The potential difficulties include the awkward problems associated with clearly identifying the remit of the court to ensure that its jurisdiction and the rules of precedence were properly defined; the potential for the eccentric development of the law; and excessive cosiness, potentially opening the door to corrupt practices.

In reviewing the contrast between what we called court specialisation and court dedication, it was argued that dedication, while conveying many of the benefits of specialisation, does so without creating some of the organisational and legal difficulties that arise when courts are established outside of the normal court structure. It is submitted, however, that there are risks associated even with court dedication, and that these need to be borne in mind when members of the criminal justice system propose these measures.

What emerges from this review of the issues, however, is not a recipe for the establishment of specialised courts, or the reservation of court resources for the creation of dedicated courts. Rather, it is suggested that this is a process which needs to weigh up the various trade-offs associated with improving efficiency in ways which may compromise some of the other goals of criminal justice—the integrity of the process and the fairness of the result. For this reason, this monograph does not close with the traditional list of recommendations. Rather, it closes with the hope that the issues raised here will be helpful to persons involved in criminal justice policy development, and that it will go some way in assisting them to think through some of the challenges raised.