

**DEVELOPING A CHECKLIST FOR EXAMINING A FRAUDULENT CHEQUE**

**by**

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## **Preface**

My goal in this research was to develop a checklist for examining a cheque for information that can be used to identify, individualise and trace the perpetrator of a crime. A further intent was to share and introduce a number of important concepts, namely forensic investigation, identification, individualisation, the Locard principle and crime scene.

This research will explain that forensic investigation refers to the using of sophisticated investigation techniques to obtain sufficient information to prove the true facts in a court of law. Further, that identification is the collective aspect of the set of characteristics by which an object is definitively recognisable or known, while the individual characteristics establish the individuality of a specific object. To link an individual with a crime scene, many types of evidence may be used and to associate an individual with the performed illegal handling, many types of evidence may be used. These types of evidence are commonly referred to as “transfer” evidence. This process is also referred to as the “Locard principle”.

Lastly, a crime scene is explained as a place where a crime has occurred. It is also explained to be a “laboratory of information” and therefore, during a cheque fraud investigation, the cheque is in most cases the only link to information to trace, identify and individualise the perpetrator. Therefore, the cheque should be treated as a crime scene. If forensic investigators use their knowledge of these concepts together with the checklist, it should enhance their investigation skills and empower them to become better equipped for the challenges they face in identifying, individualising and tracing the perpetrators in order to ensure successful prosecution and conviction. I believe all forensic investigators will benefit from what I have discovered through this research and I am very pleased to be able to introduce this checklist to you.

## Voorwoord

My doelwit met hierdie navorsing was om 'n lys saam te stel wat as 'n kontrolelys kan dien tydens die ondersoek van 'n tjek vir inligting wat kan help met die identifisering, individualisering en opsporing van die oortreder. 'n Verdere poging was ook om sekere belangrike konsepte te deel, byvoorbeeld forensiese ondersoek, identifikasie, individualisering, die "Locard"-beginsel en die misdaadtoneel. Hierdie navorsing sal verduidelik dat forensiese ondersoek verwys na die gebruik van gesofistikeerde ondersoektegnieke om sodoende voldoende inligting te bekom om die ware feite in 'n geregtelike hof voor te lê. Ook dat identifikasie die gesamentlike aspek van 'n stel karaktertrekke is waarvolgens 'n voorwerp uitgeken word, terwyl die individuele karaktertrekke weer die voorwerp kan individualiseer. Om 'n moontlike verdagte met die misdaadtoneel te koppel, kan van 'n verskeidenheid bewysmateriaal gebruik gemaak word om die misdadige handeling te bewys. Veral tydens enige kontak word daar na oordraagbare bewyse verwys wat bekend staan as die kontak of dan die "Locard"-beginsel.

Laastens word die misdaadtoneel verduidelik as die plek waar die misdaad plaasgevind het. Dit word ook verduidelik dat dit juis as 'n laboratorium van inligting beskou moet word – veral tydens 'n tjekbedrogsaak word dit soms uit die oog verloor dat 'n tjek dikwels die enigste leidraad is met inligting om die oortreder op te spoor, te identifiseer en uiteindelik te individualiseer. Juis daarom behoort die tjek altyd behandel te word soos enige ander misdaadtoneel.

Indien die forensiese ondersoeker die kennis van hierdie konsepte saam met die kontrolelys gebruik, behoort dit die ondersoeker te ondersteun in sy ondersoekvermoëns en help om die uitdaging aan te pak om die oortreder te identifiseer, te individualiseer en uiteindelik op te spoor. Verder kan dit ook ondersteunend bydra tot meer suksesvolle vervolging. Ek wil dus met groot graagte die kontrolelys wat tydens hierdie navorsing ontwikkel is, aan alle forensiese ondersoekers wat daarby kan baat vind, bekendstel.

### **Acknowledgments**

It seems to me, when you are young and starting your career, you think you can take on the world alone. As you grow older, you realise you cannot achieve anything without the support of others. As I mature I slowly but surely realise that I owe a great deal to many people who enrich my life. There are, as always, so many people who contribute in so many ways during research and they all ultimately become a part of this end result.

First of all, I would like to acknowledge the infinite support and belief invested in me over the last three years by my supervisor Dr NJC Olivier, whose coaching helped bring this research alive. Then, to the respondents and many colleagues who contributed in a large or small degree, by granting me interviews, and some just for their enthusiasm and interest in this research. Finally, to my husband Henk, for his encouragement, support and companionship: Thank you all!

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## **Chapter one: General orientation**

### **1.1 Introduction**

Statistics in an information-packed one day seminar that focused on solutions to forged, counterfeit and dishonoured cheques, indicate that the incidence of cheque fraud is rampant and ever-increasing in the corporate environment (Olivier, 2001: 1). Further, based on the experience of the corporate respondent, it appears from interviews with investigators before the research that they are not fully conversant with the latest methods and techniques used in investigating a fraudulent cheque to individualise, identify, and trace the perpetrator.

The problem is that investigators increasingly have the attitude that cheque fraud should be dealt with as part of the business community's bad debts rather than investigated thoroughly. This attitude sanctions the increase of cheque fraud and for some perpetrators cheque fraud has become a lifestyle. It is therefore very important that investigators make a concerted effort when investigating cheque fraud cases to ensure that they understand and know how to examine a fraudulent cheque.

An example of this lack of understanding occurred recently when an investigator overlooked the fact that the perpetrator's correct contact mobile telephone number had been written on the back of a cheque under investigation. The investigator assumed that the cheque was fraudulent, but did not check the telephone number on the back of the cheque against the telephone number of the perpetrator. This resulted in the perpetrator going free, as he could not be linked to the fraudulent cheque.

The researcher realised, after studying case dockets and interviewing investigators, that most investigators do not understand the importance of a fraudulent cheque as a source of information, or how to read a cheque. They do not know how to examine the cheque to utilise it to its fullest potential. It is important to remember the Locard principle in dealing with cheques as exhibits. The Locard principle is based on the

fact that clues are usually left behind when two objects or people come into contact with each other, since a mutual transfer of tracks takes place (Gardner, 2005: 25; Horswell, 2004:46; Chisum & Turvey, 2000:11). The researcher is still active in investigation and has learned from experience over the past 16 years as a forensic investigator that investigators need to be fully conversant with the latest methods and techniques used in the investigation of fraudulent cheques, in order to identify the perpetrator. A cheque is in most fraud cases the only exhibit which can supply information that can be used to identify the crime, after which individualisation, identification and tracing of the perpetrator of the crime can be done.

## **1.2 Aim and purpose of the research**

### **1.2.1 Aim**

The aim of any research is to establish facts, gather new data and to determine whether there are interesting patterns in the data (Mouton, 1996:103). The aim of this research was to develop a checklist for examining a cheque for information that can be used to identify, individualise and trace the perpetrator.

### **1.2.2 Purpose**

The statement of purpose indicates the focus and direction of the research, and provides criteria for the evaluation of the outcomes of the research. There must be a reason for the doing of the research or else there would be no point in spending time, money and effort to undertake the investigation (Denscombe, 2002:25).

Maxfield and Babbie (1995:70) are of the opinion that research serves many purposes, such as exploration, description, explanation, and application. A given research can have more than one of these purposes. In this research the researcher concentrated on exploration, application and empowerment purposes.

The purpose of this research is:

- To evaluate the existing procedures followed by investigators in analysing a cheque to find information to identify, individualise and trace a suspect. This

is to establish of what value the existing procedures are, in an attempt to determine their strengths and weaknesses (Denscombe, 2002:27).

- To explore international procedure used for the investigation of fraudulent cheques. The researcher will attempt to break into new territory, to explore and to report back on her findings (Denscombe, 2002:27), regarding information to identify, individualise and trace a suspect on a cheque.
- To arrive at recommendations for good practices, based on the new information found, that will address the problem and enhance the investigation skills of investigators, if applied (Denscombe, 2002:27).
- To empower investigators. The researcher hopes to conduct lectures with investigators in the future and to publish an article to assist in empowering them to improve their performance (Denscombe, 2002:27).

### **1.3 Research questions.**

At the outset of the project the researcher should think ahead as far as possible to the key areas of thematic interest that he/she envisages addressing, and to design the project accordingly (Noak & Wincup, 2004:122). Research questions should specify exactly what is to be investigated. These are not the broad goals of the research that are directly investigated by the research, but specific things that are to be observed, measured and interrogated in order to shed light on the broader topic (Denscombe, 2002:31).

The research questions of this research are the following:

- What is forensic investigation?
- Could a cheque be a source of information to identify, individualise and trace a perpetrator?
- Could a checklist be developed from a cheque to assist in identifying, individualising and tracing the perpetrator?

### **1.4 Key theoretical concepts**

The key theoretical concepts of this study are defined below:

**1.4.1 Forensic investigation** means to collect facts that can be used as evidence for court purposes, through which the associative part of an accused in the commission of a crime can be proved (Lambrechts & Theart, 1996:1).

**1.4.2 Fraudulent cheque** is a cheque on which the original cheque endorsements have been changed by the perpetrator who has stolen the cheque and who, when presenting the cheque for payment, has no intention of paying it (Learners Guide, 2001:65). Banks, accordingly, refuse to accept cheques for depositing, or for cashing, if any changes have been made to details thereon (Puttick & Van Esch, 2003:452).

**1.4.3 Identification** is defined as “the collective aspect of the **set of characteristics** by which a thing is definitively recognisable or known” (Ogle, 2004:6).

**1.4.4 Locard principle** is based on the fact that some clues are usually left behind when two objects or people come into contact since a mutual transfer of “tracks” takes place (Chisum & Turvey, 2000:11).

**1.4.5 Perpetrator** can be defined as the person who has committed a criminal act (Hawkins, 1994:2).

## **1.5 Research design and approach**

The research design is in essence a clear statement of the research problem as well as plans for gathering, processing, and interpreting the observations intended to provide some answers to the problem (Singleton & Straits, 1999: 91). This research adopted an empirical design as this design best answers the research questions. Empirical research is the production of knowledge based on experience or observation (Maxfield & Babbie, 1995:4). The researcher needed to do fieldwork to focus on the personal and practical experience of the participants, as only limited literature could be found on the topic. (Mouton, 2001:149). According to Mouton (2001:150), this design produces high construct validity and in-depth insights, and assists in establishing a rapport with the research participants. To achieve this, the

researcher had to interview and interact only with experienced investigators (Mouton, 2001:150). According to Mouton (2001:150), the design also has limitations, as the results cannot be generalised because they represent the views of individuals, measurements cannot be standardised, and the collection and analysis of data may be time-consuming. The researcher attempted to reduce these limitations through combining the interviews with literature and case studies.

The researcher made use of a qualitative approach. The researcher decided on this approach as qualitative researchers study things in their natural settings (Creswell, 1998:15). A further reason for the researcher's choice was that the study is of an investigative nature and the researcher needed to interview and listen to the participants in order to obtain new information to build an understanding of their ideas and personal experience (Creswell, 1994:21; Taylor, 1994:208).

Qualitative research is multimethod in focus, involving an interpretive, naturalistic approach to its subject matter. This means qualitative researchers study things in their natural settings, attempting to make sense of or interpret phenomena in terms of the meanings people bring to them. Qualitative research involves the study, use and collection of a variety of empirical materials, such as case studies, personal experience, introspective and extensive examination of documents, interviews, and observational, historical, inter-actionable and visual texts that describe routine problems and meaning in individuals' lives (Creswell, 1998:15; Pope, Lovell & Brandl, 2001: 369).

## **1.6 Population and sampling**

The sum total of all the units of analysis is called the population or universe (Bailey, 1987:81). Population refers to all individuals or cases of a certain type (Taylor, 1994:158). The population of this research is all investigators in South Africa because they are involved in the investigation of fraud.

The study population for this research consisted of fraud investigators in the Scorpions, Old Mutual, SANLAM, Vodacom, MTN, ABSA, Standard Bank and

Momentum Life Insurance Company. Within these sectors the researcher obtained names of investigators with five or more years' experience in fraud investigation, which amounted to 45 names. A study population is that aggregation of elements from which the sample is actually selected (Maxfield & Babbie, 1995:186). These investigators are the most frequently exposed to cheque fraud as cheque fraud investigation is part of their mandate to investigate. The researcher contacted each one telephonically, aware that not everyone would be available to be interviewed and that not everyone would agree to participate, for personal reasons. A list of 30 names was eventually compiled, and 25 participants were randomly selected from this list.

The sample should be carefully chosen so that, through it, the researcher is able to see all the characteristics of the total population in the same relationship that they would be seen were the researcher, in fact, to inspect the total population (Leedy & Ormrod, 2001:211).

The researcher made use of a simple random sampling technique to select the sample (Bailey, 1987:78). Simple random sampling involves a selection process that gives every possible sample of a particular size the same chance of selection (Blaickie, 2003:168). The researcher wrote the names of each of the investigators on separate pieces of paper and put the names in a bowl. The researcher then drew 25 names from the bowl to form the sample.

Due to privacy and confidentiality the respondents requested that their names should not be mentioned, but agreed to participate in the research. To respect this request the researcher allocated a number to each respondent and referred to the person as "Respondent 1 or 2", instead of using a name.

To obtain first hand information on the identification of handwriting the researcher interviewed a document and handwriting examiner experts from the Forensic Laboratory of the South African Police Services.

## **1.7 Data Collection**

Data consists of facts. They are records of the actual state of some aspects of the universe at a particular point in time (Bouma & Atkinson, 1995:22). Bauer & Gaskell (2000:355) explain data as facts or evidence that is at the disposal of the proponent of an argument. According to Mouton (2001:57) and Patton (1980:43), qualitative research involves the following data collection techniques: surveys, experiments, case studies, programme evaluation and ethnographic studies. The researcher decided on literature, interviews and case studies for this research, as it would be the best practical method to collect the primary data needed to address the research questions (Creswell, 1994:148; Leedy, 1997:71).

In this research the type of data used is primary data. Primary data is generated by a researcher who is responsible for the design of the study and the collection analysis and reporting of the data. The new data is used to answer specific research questions. Primary data is characterised by the fact that it is the result of direct contact between the researcher and the source, and has been generated by the application of particular methods by the researcher (Blaickie, 2003:18). Primary data is often the most valid, the most illuminating, the most truth manifesting (Leedy & Ormrod, 2001: 95).

Data was collected in the following ways: firstly, a literature review was conducted, which entailed reviewing the key concepts identified in the current research; secondly, structured interviews based on an interview schedule were held with participants; and lastly, a case study was conducted (Mouton, 2001:57; Flick, 2002:10). The researcher decided on these collection techniques as they were practical and would ensure that the researcher could distinguish clearly between what literature involves and what is taking place in practice. The researcher considered these collection techniques to be the best under the circumstances, as the literature could be tested against the interviews and the case studies.

### **1.7.1 Literature study**

Information in the field of policing, law and criminology was collected from library books, fraud conference proceedings, training material, journals, magazines and the Internet. The researcher could not find literature on the exact topic of her research, and was obliged to look for literature on similar topics, or topics that addressed similar kinds of issues. In the absence of literature with the same topic the researcher checked the library catalogue, the Internet and journals to obtain relevant information on what has been published. To find relevant literature, the topic and research questions were divided into specific concepts. These concepts are:

- Forensic investigation
- Fraud
- Fraudulent cheque
- Evidence
- Identification
- Individualisation
- Locard principle
- Crime scene

### **1.7.2 Interviews**

Interviews were done in a face-to-face situation with one interviewer and one interviewee. The researcher decided to conduct structured interviews. A fully structured interview is where there is a fixed sequence of predetermined questions. It has the advantage of being in a social situation where someone who is good at interviewing can build up greater empathy between herself and the interviewee, hopefully leading to a greater involvement and better quality data. Data obtained is then more easily compared with less risk of bias occurring simply because different people are being asked rather different questions (Robson, 2000:90).

An interview schedule based on research questions and the aims of the research was formalised, after which appointments were scheduled with the participants. Each interview was personally carried out by the researcher and documented by:

- Keeping a record of the dates and times when the interviews were conducted

- Keeping track of the interviewee
- Keeping track of the length of the interview
- Keeping a record of the answers to the questions by recording them

Most of the respondents chose not to reveal their names; the researcher therefore referred to each person interviewed as “Respondent” and accorded each respondent a number.

### **1.7.3 Case study**

The case study approach allows an investigation to retain the holistic and meaningful characteristics of real-life events (Mason, 1998:129). The researcher collected all closed investigation files from Old Mutual, from the beginning of 2000 until 31 January 2004, which dealt with cheque fraud. The reason for only using case file from Old Mutual was that the researcher could not get permission to evaluate closed case files from the police and the Scorpions. There were 50 cases available and all were studied. The analysis of the cases enabled the researcher to get first-hand knowledge of how, in the past, information on a cheque was used to identify, individualise and trace perpetrators, so that this information could be compared with the information received during the interviews (Merriam, 1991:5).

### **1.8 Method of data analysis**

Data analysis takes place whenever theory and data are compared (Singleton & Straits, 1999: 455). After the interviews were conducted, the researcher utilised a process that captured the information obtained from each interview onto a computer spreadsheet. The information gathered from these sources was compared and new information was added. The data was divided into different categories such as number of years’ experience, the participants’ work environment, best practices, and the answers to the questions contained in the interview schedule (Mouton, 2001:198).

The researcher summarised and organised the information obtained from the literature according to the key theoretical concepts. This was done by using a filing system in terms of which a file was opened for each key theoretical concept, and the

information under each category, for example: Forensic investigation, Fraudulent cheque, Identification, Locard principle and Perpetrator, was then filed chronologically. By using this filing system it was easier for the researcher to identify shortcomings and to decide when information was sufficient.

During the analysis stage of the cases studied, the information was also captured onto a computer spreadsheet and divided into different categories such as: incidents, terminology or phrases used, identify ideas, methods used, etc.

All the information gathered from the three different sources was incorporated to obtain the findings of the study and was used as a basis on which to make final recommendations.

### **1.9 Methods used to Ensure Validity**

Robson (2000:98) explains validity as ensuring that the research measures what it is intended to measure. To limit risks during the data collecting stage and to ensure validity, the researcher used different sources such as interviews, literature, and case studies (Mouton, 2001:100). During the interviews the researcher ensured that the same questions were asked of the participants by using an interview schedule based on the aims and the research questions. The respondents could answer these questions according to their own personal experiences. To ensure that the sampling of the participants was correct, the researcher initially asked the participants how many years' experience they had with regard to investigation of fraud, before continuing with the interviews.

According to Welman and Kruger (2001:120), where the random selection of participants is required for population validity, the random assignment of participants promotes internal validity. No leading questions were asked. The answers given by each participant were discussed with that participant to ensure that they were correctly interpreted by the researcher (Creswell, 1994:158). The literature was gathered from subject-specific published books, articles, journals and other sources to ensure its reliability and validity (Mouton, 2001:101). During the case study the

researcher also discussed some of the cases with the investigators responsible for those specific investigations, to ensure that they were being correctly interpreted.

### **1.10 Methods used to ensure reliability**

To ensure reliability a researcher should make certain that if the same methods are used by different researchers and/or at different times, they should still produce the same results (Mouton & Marais, 1990:79). During the sampling the researcher confirmed with the respondents that they have had five years' or more experience in the field of fraud investigation. Later, during their interviews, the researcher again asked them specifically how many years' investigation experience they had. During the analysis process the researcher asked the respondents to indicate how they had interpreted the formulated questions and, at the same time, the researcher watched and noticed non-verbal behaviour on the part of the respondents that might signify discomfort or embarrassment about the content or wording of the questions (Welman & Kruger, 2001:141).

According to Creswell (1994:159), reliability refers to the extent to which the researcher's conclusion can be replicated. During the examination of specific cases, the researcher examined whether the same patterns or events were replicated in different settings. The researcher made use of a selection of respondents, who were interviewed in the Western Cape region. Most of the respondents were from the Western Cape Corporate Forensic Institutions, or previously employed at the Western Cape Commercial Crime Branch of the South African Police Service and would therefore all have had the same training and experience in the field, so that should similar research be done in another region, the conclusions could be replicated (Creswell, 1994:159).

### **1.11 Ethical considerations**

The researcher ensured transparency at all times and did not violate the rules of UNISA by committing scientific fraud or plagiarism (Mouton, 2001:240). Reference was made to all sources that were consulted (Leedy & Ormrod, 2005:102). The researcher did not fabricate data to support any finding or recommendation. The

findings and the recommendations are based on the facts determined in the research (Leedy & Ormrod, 2005:102). The researcher did not use any special equipment and did not make use of a trained fieldworker. The participants who participated in the interviews were not harmed in any way nor was their privacy violated (Mouton, 2001:240-243). The participants all requested that their names should not be used, therefore the researcher decided to refer to them as Respondent 1, Respondents 2, etc. (Leedy & Ormrod, 2005:101). The participants were informed of the nature of the study and given the choice of participating or not participating. They were also told that if they agree to participate, they have the right to withdraw from the study at any time (Leedy & Ormrod, 2005:102).

The researcher made reference to all sources that she had consulted. The researcher maintained objectivity and integrity and ensured that the privacy of the participants was not violated.

### **1.12 Research structure**

To address the aims of the research in developing a checklist for better examination of a cheque, it is necessary to ensure that the field of the research is understood. For this reason the remaining chapters of this study are set out as follows:

#### Chapter 2: Forensic investigation

To obtain a better understanding of the key theoretical concepts used in the study, the researcher used this chapter to discuss the meaning of the term “forensic investigation” along with the purpose and objectives of forensic investigations. Further, in this chapter the researcher discusses the meaning, purpose and categories of identification. The meaning of individualisation and the difference between identification and individualisation is also discussed. The chapter then explores in more detail the role identification plays in forensic investigation, along with specific methods of identification.

### Chapter 3: Cheque as source of information

This chapter discusses evidence and information. It explains the meaning of a cheque and the meaning of fraud with a brief discussion of the elements of fraud. It further explains the cheque as a crime scene and also explains who has the right to investigate and the meaning of the “Locard principle”. It also touches briefly on the investigation of cheque fraud. The presentation of information in general is discussed, followed by an outline of which information features are found on a cheque. The researcher also explains which information found on a fraudulent cheque can be used to trace the suspect.

### Chapter 4: Developing a checklist

In this chapter, a checklist is developed with information on the cheque to identify, individualise and eventually assist in tracing the perpetrator.

### Chapter 5: Findings and recommendations

In the final chapter, a summary of each chapter is presented and the findings of the study are outlined and discussed. Recommendations are then made on the basis of these findings.

## **Chapter two**

### **Forensic investigation**

#### **2.1 Introduction**

In the field of forensic investigation the investigation of fraudulent cheques has two purposes. Firstly, it provides information about the history of the cheque for the benefit of a court of law. Secondly it provides information to an investigating officer seeking evidence present on the cheque in order to identify, individualise and trace the perpetrator. During the criminal investigation process, investigators frequently use various scientific methods found in criminalistics to help identify suspects, gather evidence, and collect information. This all is done in an effort to link criminal offenders to the crime committed and the cheque.

The primary goal of the police is to prevent crime, but this is not always possible; therefore the police should also adopt a reactive approach. Through investigation the police can determine the guilty person and eventually take the perpetrator to court.

This chapter presents a brief explanation of the meaning, purpose and objectives of forensic investigation. It also discusses the mandate to investigate. Further, in this chapter the researcher discusses the meaning, purpose and categories of identification. The meaning of individualisation and the difference between identification and individualisation are also discussed. The chapter then explores in more detail the role identification plays in forensic investigation, along with specific methods of identification.

#### **2.2 The Meaning of forensic investigation**

According to Lambrechts and Theart (1996:12), the term “investigation” means to observe intensely, to question systematically, and to gather information. This process is designed to reveal the truth and ultimately lead to the reconstruction of the crime. Lambrechts and Theart (1996:12) are also of the opinion that all information obtained should be dealt with and noted in such a manner that it is available for use during further investigation, but eventually it should also be introduced as evidence in

a court of law. Further to this, Marais and Van Rooyen (1994:17) are of the opinion that investigation represents the medium whereby facts for positive investigation are detected, identified, collected, preserved, and prepared for the judicial process. The foundation of all forensic investigations is based on the ability of the crime scene investigator to recognize the potential and importance of physical evidence, large and small, at the crime scene (Lee, Palmbach & Miller, 2003:1).

According to the *Concise Oxford Dictionary* (2002: 555), the term “forensic” relates to or denotes the application of scientific methods and techniques to the investigation of crime. According to Odendal (1985:227), “forensics” means that something has to do with a court of law. The latest explanatory dictionary in Afrikaans explains “forensics” as “The application of specialist knowledge as required for legal enquiries used in a court of law” (Odendal, 1994:555. More recent literature, such as Lambrecht (2001:26), is in agreement that forensic investigation is an investigation aimed at instituting court proceedings. According to Owen (2000:26), forensic investigations start with the examination of the scene where the crime was committed.

In response to the question: “What does forensic investigation mean?”, only seven out of the 25 respondents indicated that forensic investigation refers to an investigation in which evidence would be obtained to prove a perpetrator’s guilt in a court of law; the rest provided the following meanings: internal fraud investigations, financial fraud investigations, to analyse fraud during investigations, to seek the truth during investigation, corporate fraud investigations, and to report on investigations. The possible reason for this difference in viewpoints amongst investigators could be the lack of training in die field of forensic investigation and that the concept of forensic investigation is relatively new. The training curricula are not yet adjusted to refer to the terminology of forensic investigation.

### **2.3 Purpose of forensic investigation**

The purpose of forensic investigation, first and foremost, is a search for the truth of what has happened and to establish who were involved, in a manner that is lawful

and does not violate the rights or liberties of those being investigated (Gardner, 2005: 3). According to Lambrechts (2002:83), forensic investigators should not rely on presumptions, but need to prove a crime by means of evidence. The basic purpose of forensic investigation is to collect facts that can serve as evidence before a court of law, through which the associative part of an accused in the commission of a crime can be proved, with the purpose to resolve the crime (Lambrechts & Theart, 1996:1).

To the question: “What is the purpose of forensic investigation?”, the response from 20 of the 25 respondents were that the purpose is to trace evidence and facts which could be presented to prove or disprove a case in a court of law. The other five respondents’ responses varied with answers such as; “to fix control breakdowns in the system”, “to prevent similar losses in future”, and “to recover losses”. These five respondents have not had in-depth training although they have had investigation experience. Two of the five respondents did explain further that by applying their skills as forensic investigators they usually had sufficient evidence to successfully prove their case in court, and by obtaining long jail sentences for the perpetrators, they assist in the long-term prevention of crime.

The corporate investigators who were interviewed explained that the purpose of a forensic investigator is to examine the facts of a criminal enquiry and to gather accurate and reliable intelligence (information), which could be used in making effective decisions which in turn could be used in any legal proceedings such as disciplinary, civil and criminal matters. Respondent 8 (2004), forensic investigator from ABSA, said the purpose of forensic investigation is to get to the bottom of a crime situation, identify the perpetrator, bring him/her to justice, and to implement preventative measures for the future. According to respondent 14 (2004), a forensic investigator from SANLAM, it is of the utmost importance for private and corporate investigators to identify the risks to their company and to take serious action, such as criminal and disciplinary actions, against the perpetrator, to discourage any other staff member from committing fraud. Respondent 8 (2004) supported this view.

## **2.4 Objectives of forensic investigation**

According to Van der Westhuizen (1996:4), the objectives of investigation are: identification of the crime, gathering of evidence, individualisation of the crime, arrest of the criminal, recovery of property, evaluation and involvement in the prosecution (cf. Technikon SA, 1986:4; Dowling, 1997:4; and Van Heerden, 1985:10). Swanson, Chamelin and Territo (2003:28) say the objective of forensic investigation is to establish that a crime has actually been committed, to identify and apprehend the suspect(s), recover stolen property and to assist in the prosecution of the person(s) charged with the crime.

### **2.4.1 Identification of the crime**

Situation identification determines the type of crime committed, if any, and what kind of information or clues can possibly be collected. The crime situation is therefore identified by means of set juridical elements and preliminary observations made at the scene of the crime. The information and facts gathered should confirm that an unlawful deed has taken place and that a specific person/s is/are responsible (Van der Westhuizen, 1996:4). Normally the evidence identified at a crime scene during interviews with complainants, victims and witnesses, can identify the nature of the events. Evidence collected in this way can then be considered to determine the unlawful nature of the event, identifying it as a criminal offence (Dowling, 1997:1; Horswell, 2004:7). The forensic investigator should be able to recognise and identify all relevant information that can shed light on the crime committed before it has been gathered (Byrd, 2004:1).

### **2.4.2 Gathering evidence**

Evidence is defined as all the information presented to the court in order to enable it to settle a factual dispute. This includes the written and oral statements by witnesses as well as objects submitted for inspection. Gathering of information commences at the scene of the crime. A definite distinction regarding the collecting of information can be made between direct and indirect sources of information. Direct information will include victims and complainants, witnesses, persons involved in the events in question, and accomplices or suspects. Indirect information would be physical clues,

which reveal the circumstances of the events. This information can consist of body material such as hair and semen, prints such as fingerprints, trace elements such as flakes of paint, instruments such as weapons and tools, and personal belongings, for example, clothing (Van der Westhuizen, 1996:5).

The gathering of evidence begins at the crime scene, because the crime scene contains visible and hidden information (Byrd, 2004:1). The investigator should take great care to collect all evidence (Ogle, 2004:20; Fisher, 2004:55; Adams, Caddell and Krutsinger (2004:71). Each piece of evidence should be identified, collected and preserved as a separate entity (Van Niekerk, 2000:7; Fisher, 2004:53). If the investigator is unable to detect clues, interpret them correctly, place their relative association on record, submit them to the appropriate expert, and handle them in such a manner as to maximise the examination results, a situation can arise where months of hard work do not end with the desired results (Marais, 1992:7; Adams et al., 2004:1).

#### **2.4.3 Individualisation of the crime**

The involvement of the perpetrator in the act committed should be established from the information and facts collected (Van der Westhuizen, 1996:6). Dowling (1997:2) is of the opinion that a primary task of the investigator is to identify who has committed the crime. Lee and Harris (2000:14) agree with Dowling. The main focus here should be on the perpetrator's involvement in the crime, that is, the probability, based on facts and information collected, that a particular individual could have committed the crime and that the facts collected are sufficient to justify the arrest of the individual (Marais & Van Rooyen, 1994:20; Van der Westhuizen, 1996:7).

#### **2.4.4 Arresting the criminal**

Once all relevant information and facts have been collected and the criminal has been identified, the investigator can proceed to have the perpetrator arrested to ensure that the perpetrator will be present at his trial in court (Van der Westhuizen, 1996:7). A criminal can also be summonsed, or by means of a written warning, brought before the court (section 38, Criminal Procedures Act 51 of 1977).

#### **2.4.5 Recovery of stolen property**

According to Dowling (1997:4) and Van der Westhuizen (1996:7) this can happen in two ways:

- To restrict the victim's losses to a minimum
- To present the recovered property as evidential material at the trial

In practice the investigator could make use of section 300 of the Criminal Procedure Act 51 of 1977. To recover losses the investigator could request the prosecutor to apply for a "section 300" in court. The prosecutor could then request the court to order the accused to repay a specific amount as agreed to in court.

#### **2.4.6 Involvement in the prosecution process**

The successful prosecution of criminals depends to a great extent upon the skills and efficiency of those who conduct the criminal investigation (Van der Westhuizen, 1996:7). A suitable sanction would not be possible without sufficient factual information on which to base this decision. The investigating officer should provide the court with proof of the suspects' involvement in the case and provide proof of previous convictions by handing in the accused's fingerprint record (SAP 69), which is prima facie proof of previous convictions (Bekker, Geldenhuys, Joubert, Swanepoel, Terblanche, Van der Merwe and Van Rooyen, 2003:264).

In response to the question: "What are the objectives of forensic investigation?", the respondents provided the following answers: to identify a crime, gather evidence, arrest the perpetrator and to ensure that he/she appears in a court of law (12 respondents). The remainder of the respondents could not explain what the objectives of forensic investigations are. The possible reason for not knowing the answer to the question may be the lack of proper basic training.

#### **2.5 The Mandate to investigate**

Swanepoel (2001:3-7) says that in terms of the Constitution of the Republic of South Africa, the police do not have the exclusive right to investigate. He further states that legislation confers powers of investigation on various institutions or officials. The

extent of these powers varies from statute to statute. The most extensive investigative powers are conferred on the South African Police Service (SAPS), not only by the South African Police Act 68 of 1995, but also by the Criminal Procedure Act 51 of 1977. For Bekker et al. (2003:50), apart from the powers of the SAPS, the Directorate of Special Operations is given extensive powers in sec. 20(1) of the National Prosecuting Authority Act 32 of 1998. Furthermore, a large number of statutes confer investigative powers of varying degrees on the incumbents of certain posts or on certain institutions. These powers may include the questioning of witnesses under oath, summoning of witnesses to produce books and records and search and seizure. Neither the Constitution nor any legislation reserves the right to investigate crime for the State.

During the last couple of years the capacity of the State to conduct criminal investigations has declined, leading to an increase in the number of private and corporate investigators. The High Court has in fact expressed its acceptance of the fact that private and forensic investigations occur (e.g. in *S v Botha and Others* (1) 1995 (2) SACR 598 (w) and *S v Dube* 2000 (1) SACR 53 (N)).

In *S v Dube*, a private investigator set a trap for an employee of a motor manufacturer who was suspected of being involved in theft. He arranged for his meetings and negotiations with the suspect to be photographed and tape-recorded. The Court held the evidence to be admissible, due to the fact that:

- Section 252(a) of the Criminal Procedure Act 51 of 1977, which regulates the use of traps and undercover operations, does not apply to private and corporate investigators, but only to law enforcement officers or State officials (at p.71d-f);
- The Interception and Monitoring Prohibition Act, 127 of 1992, which does not apply to the recording of the conversation with the suspect (at p. 74j – 77d).

In *S v Botha and Others* (1) 1995 (2) SACR 598 (w) the defence attorney argued that, according to section 215(b) of the South African Constitution Act 200 of 1993, only police officials could investigate crime and that no other possesses this

authority. The judge ruled that it was not the purpose of section 215(b) to prevent someone who is not a member of the SAPS to conduct an investigation, and admitted that there are many private and corporate sectors that conduct their own investigations before handing their results to the SAPS for the institution of a prosecution. This development has created new opportunities for private and corporate investigators, and all indications are that the scope for private and forensic investigations will increase.

According to Swanepoel (2001:4) it is foreseen that, at least in the next couple of years, the State will not have the capacity to investigate all crimes, and especially in cases of a commercial nature, the outsourcing of criminal investigation will continue to increase. It is important to understand that private and corporate sectors are limited with regard to their jurisdiction of investigations. They have no powers to charge or subpoena suspects, but they are able to investigate any criminal activity that affects the company internally according to company policies (Joubert, 2003:49).

## **2.6 The process of identification**

Investigation starts with the examination of the crime scene to obtain information or evidence. The investigator goes to a crime scene to identify who the suspect is, who possible witnesses are, and to trace elements of the crime and aspects that can identify who committed the crime. The identification process continues until the perpetrator is found guilty in court (Marais, 1992:1). In practice this means that from the moment the investigator has identified the cheque fraud, he/she will continue making identifications of different aspects of the crime scene until individualisation takes place. Van Heerden (1986:194) is again of the opinion that identification begins the moment the investigator tries to identify the crime committed. According to Van der Westhuizen (1996:4), the purpose of identification is to establish the type of crime committed, and what kind of information or clues can possibly be collected to determine the identity of the perpetrator.

Seven of the 25 respondents agreed with Van der Westhuizen, as in their response to the question: "What is the purpose of identification?", they stated that it is to establish the crime and to identify clues to link the perpetrator. The remaining 18 respondents tried to give an explanation but were not clear and very uncomfortable answering the question. The reason for that might be that during basic investigation training not enough emphasis is put on the purpose of identification. The crime situation should be identified not only by means of set juridical elements, but also by means of preliminary observations made at the scene of the crime. Cheque fraud should be recognised by its elements. But this still leaves the investigator in the dark in determining the identity of the perpetrator. Therefore, according to Dowling (1997:2), a primary task of the investigator is to identify who committed the crime. Respondent 5 (2004), fraud investigator in forensic investigation, supports the view of Dowling (1997:2) that the primary task of the investigator should be to identify the perpetrator and bring him/her to stand trial before a court of law.

## **2.7 Meaning of identification**

Fisher (2004:5) explains that identification means that the items share a common source and can be classified or placed into groups with all other items having the same properties. For Gilbert (1993:384) identification means "*what*" something is. It refers to information that identifies something beyond question. This is when the first clues are evaluated and the initial impressions formed concerning the nature of the crime and the identity of the perpetrator(s) or possible witnesses (Owen, 2000:26). Lee and Harris (2000:27) explain identification as a process, which takes advantage of class characteristics, and results in classifying an object, substance or material within a group of related objects. According to Marais (1992:1), only people commit crime. Marais (1992:2) further states that a crime is generally committed with physical objects or instruments. Therefore, the forensic investigator needs to identify and involve all objective and subjective tracks. Objective tracks are physical evidence that was either left behind on the crime scene or found in the possession of the criminal, and subjective tracks are evidence of people (complainants, witnesses, eyewitnesses and perpetrators) who are directly or indirectly involved in the commission of the crime. Marais (1992:1) is therefore of the opinion that crime

investigation is a process of identification of people and physical objects from the time the crime is committed until the guilt of the perpetrator is either proved or disproved in court.

The *Concise Oxford Dictionary* (2002:705) states that identification is the process of identifying or the fact of being identified by means of some proof of a person's identity. According to Doyle (2003:2), a characteristic is again the intentional or design characteristic that would be common to a particular group or family of items. Respondent 10 (2004), Handwriting Expert from the Forensic Laboratory of the South African Police Services supported this and explained that identification meant to identify what something was by means of specific characteristics. Take an orange for example. How do you know it is an orange when you look at it? It is because of your previous experience that a fruit which has an orange-coloured peel and when peeled is divided into segments, is an orange. The explanation of Van der Westhuizen (1996:6) is clearer. According to him, the word "identification" means that something belongs to a specific group or category. For example, in a room many documents might be found, but these documents could be grouped together by function because some might be invoices, others bank statements or cheques. Identification is generally used in the various sciences to place objects into specific groups or classes (Technikon SA, 1986:2). Respondent 3 (2004), forensic investigator from the Scorpions, defined identification as "to pigeonhole" something or to classify it as something specific.

In addition to the above, identification also means that the investigator identifies something that can be used as evidence and aspects that can indicate elements of a crime that is committed (respondent 11, 2004). For example, the investigator could recognise a cheque and also that the cheque belongs to a specific bank because of the logo on the cheque. Further to this the investigator could also identify writing on a cheque and could identify it further as a signature but would not be able to identify the author of the signature (respondent 12, 2004). In such a case the investigator might identify that he/she could make use of a handwriting analyst in the specific investigation. According to respondent 10, (2004), the investigator could identify a

fraudulent cheque because of his/her previous experience and does not need to be an expert to do this.

With the question: "What is meant by identification?", 23 of the 25 respondents referred to identification as the linking of the perpetrator with the fraudulent cheque, but they were not clear about how this should be done. The remaining two respondents admitted that they were not sure what was meant by identification in the context of investigation. It might be that during investigation training not enough emphasis is put on the term "identification", as most of the respondents were not very comfortable about explaining what is meant by identification. Wherever possible, forensic investigation starts with the examination of the crime scene to obtain information or evidence. The investigator goes to a crime scene to identify who the suspect is, who possible witnesses are, and to trace elements of the crime and aspects of it that can identify who committed the crime. During a cheque fraud investigation the perpetrator could be identified through possible photos, CCTV footage, the teller or the account holder.

## **2.8 The Categories of Identification**

Van Heerden (1986:195) discusses different categories of identification that could be used in forensic investigation. These categories are: situation identification, witness identification, victim identification, imprint identification, origin identification, action identification, culprit identification and cumulative identification. The researcher will not concentrate on situation identification as it refers to identifying the act. This is not under discussion in this research, because it has to do with the identification of the elements of the crime. Imprint identification will also not be discussed as an identification category, but will be mentioned, as it will assist with individualisation.

### **2.8.1 Witness identification**

Witness identification individualises the part played by the alleged perpetrator by means of the account of events that emerges from the statements of complainants and witnesses (Van Heerden, 1986:195). According to respondent 1 (2004), Fraud Investigator in Forensic Investigation, the teller at the bank may be very important in

identifying the suspect as the perpetrator. The teller is for all practical purposes the complainant because the representation was made to him/her. The teller would hand over the fraudulent cheque to the investigator, which could further contribute to the identity of the suspect. The investigator could examine the cheque for fingerprints of the suspect and also other prints which could lead to the identification of further possible witnesses.

### **2.8.2 Victim identification**

Victim identification concerns in particular the identification of the person who has been prejudiced during the cheque fraud. The victim might have more information about the individual from whom the cheque was received (respondent 12, 2004).

According to respondent 22 (2004), fraud investigator in Forensic Investigations, the complainant must mention if the suspect wrote out and signed the cheque in his or her presence. The cheque can be linked to the suspect and to the specific transaction by the teller or person who accepted the cheque. If it was a stolen cheque, the accountholder might be able to assist in identifying a possible perpetrator.

### **2.8.3 Imprint identification**

Imprint identification attempts to achieve individualisation by comparing a disputed imprint with a controlled imprint of the alleged object (Van der Westhuizen, 1996:6). Imprint identification would therefore only help with individualisation, and not in identifying or tracing a perpetrator. However, the possibility does exist that the handwriting of a specific person could be identified, which could assist the investigation officer in tracing the suspect. Imprint identification is based on the Locard principle that will be discussed in Chapter 3. Fingerprints would therefore also be an imprint. Respondent 11 (2004) was of the opinion that to merely identify an object such as a fingerprint, a handwriting sample is of little significance, but when its individuality was determined, in other words when the fingerprint or handwriting sample was positively compared to that of a particular person, it is of great significance to the forensic investigator.

Identification, therefore, can occur because the characteristics of objects are transferred to the surface of another object with which they come into contact (Van Heerden, 1985:15). According to Owen (2000:147), most people are taught to write by copying a particular handwriting style. Owen is further of the opinion that, as individuals become more accustomed to writing and have to write more quickly, letters and words begin to acquire idiosyncrasies associated with that person's individual experience and coordination. Individual variations from the standard writing styles are the elements handwriting experts are most interested in, especially any differences that may be characteristic of, and so help identify, the writer. Imprint identification would therefore only assist if individualisation can take place; that is, if a possibility exists that the handwriting could be identified as that of a specific person.

Further examples are individualisation of handwriting, signatures, typewriting, printed matter and stamped impressions, the identification of forgeries, erasures and additions and other examinations done by the Questioned Document Unit of the South African Police Service. They are also mainly focused on the basic principle that unique individual characteristics occur between the questioned matter and the specimens used for comparison. The expert must identify these fundamental individual characteristics before individualisation can take place (Learners Guide, 2000:1-2). It is therefore important for the investigator to remember that a cheque could be linked to a printer that was used to print a fraudulent cheque because of its unique printing style. The printer could be linked to a computer. The computer could again be linked to a person who could assist in identifying and tracing the perpetrator.

Five respondents (1, 3, 10, 11 & 12: 2004) cautioned the researcher that the investigator should not subject the cheque to chemical or other investigations before a document expert has been consulted or the document expert has completed the cheque examination. This supports what the Learner Workbook for Questioned Documents stated as already mentioned above. They explained that it often happens that cheques are immediately examined for fingerprints with the result that further technical examinations are impeded. A cheque that has been moistened will

not give results when tested for indentations and moistening can even impede the comparison of handwriting to such an extent that no conclusion is possible. Although not all respondents mentioned this to the researcher, it was found by the researcher from the case studies that it seemed to be normal practice that cheques were firstly sent to the handwriting expert before being sent off for fingerprint examination.

#### **2.8.4 Origin identification**

Origin identification is mainly concerned with the analysis of organic and inorganic solids and fluids, to determine whether the disputed sample and the specimen have a common origin. For example, if a cheque is counterfeited it might be possible to individualise the ink of the printer as the same ink on the counterfeited cheque (respondent 21, 2004). If the printer is identified and connected to the suspect's computer it could assist the investigation by proving that the counterfeited cheque originated from the suspect's printer.

#### **2.8.5 Action identification**

Action identification refers to the identification of human acts that are directly related to the crime and indeed constitute the essential element of the crime. Many criminals have a particular *modus operandi* (MO), which is their characteristic way of committing a crime. Physical evidence can help in establishing a MO (Lee & Harris, 2000: 13). Four of the 25 respondents mentioned that it is important to study the *modus operandi* of the different cheque fraud cases that have been reported, as the *modus operandi* could indicate to the investigator whether the same syndicate was responsible for the specific cheque fraud crimes. During the process of studying case files in nine of the 20 case files, it became apparent that the same printer and printing style had been used to fraudulently change the payee and the amounts on the cheques. As specific syndicate members had previously been identified and traced, and successfully convicted in court for cheque fraud, the investigator could link these new reported cheque fraud cases to the same syndicate members. The *modus operandi* played an important role in identifying the perpetrators; the researcher could clearly see the important role that action identification played in these investigations.

Characteristics of conduct at the time of the crime are naturally of great importance, as not all crimes are necessarily planned ahead. The investigating officer should therefore be on the lookout for *modus operandi* information, which may lead to the identification and detection of the criminal while recording and searching the crime scene (respondent, 21:2004). Crime analysis is attributed to the development and idea of *modus operandi* (Gilbert, 1993:163).

The following aspects are of importance in recognising and recording *modus operandi* information:

- *Day, date and time on which the crime was committed.* It is important to keep in mind that some criminals commit their crimes on specific days of the week only (for example Saturdays) between certain hours (for example 11:00 – 12:00) just before the banks close for the weekend. For this reason it is important that the investigating officer records the exact day, date and time on which the crime was committed. This indicates an individual trademark and must be identified as such by the investigating officer as it may have identification value (Respondent, 21:2004). All investigators perform informal crime analysis, in its simplest sense, as they investigate crimes. Crime analysis consists of examining one crime and comparing it with others like it. Basically, investigators are walking crime analysis units, as they compare their investigations with their own and others' past experiences (Gilbert, 1993:163).
  
- *The place where the fraudulent cheque was negotiated and the type of premises or business concerned.* Full details of the place or the type of premises or business where the fraudulent cheque was negotiated have great identification and detection value, since some fraudsters tend to negotiate cheques only at liquor stores to obtain alcoholic beverages and to get exchange in cash, while others deposit large amounts of fraudulent cheques into a fraudulent bank account and withdraw the money again at an ATM before being discovered. The type of business where the fraudulent cheque has been negotiated is indicative of the criminal's professionalism. The fraudster that prefers the liquor store is normally a juvenile amateur, whereas

the occupational/professional criminal prefers to do thorough planning and work with huge amounts and prefers, therefore, to work with the banks. These are important characteristics of classification, which may aid in the process of identification (respondent, 21:2004).

- *Type of victim being “attacked” during cheque fraud.* Fraudsters often select their victims on the ground of profitability. To defraud a big organisation might be more profitable than an individual persons’ cheque account. This *modus operandi* information is of much greater value to the investigating officer than a vague and incomplete description of a person. If company cheques are frequently used to perpetrate fraud, there is a good chance that the cheques are being intercepted during the mailing stage and the investigation officer can use this as a starting point for the identification process (respondent 21:2004). Many of the offences reported are committed by persons who have committed similar crimes in the past. If not prevented, these persons will commit similar crimes in the future. These criminals have established a *modus operandi* based on past successes (Gilbert, 1993:167).
  
- *Methods and implements used.* The fraudsters perpetrating cheque fraud normally make use of three main “attacks”: stolen originals, forgery (alteration and tampering) or counterfeiting. As soon as it is identified that the fraudster is making use of forgery by cleaning and reprinting the cheque, then the printing style is normally the same and easy to pick up. If it is being done by the same fraudsters or with a counterfeiting cheque, the same paper might be used and will have *modus operandi* value (respondent, 21:2004). Crime-specific factors provide information that the investigator can use to connect crimes with similar characteristics and also to identify *modus operandi* patterns (Gilbert, 1993: 167).

### **2.8.6 Culprit identification**

According to Marais (1992:4-5), perpetrator identification refers to the positive identification of the person rather than to the identification of his unlawful participation

in the crime being investigated. The determination of the identity of the perpetrator or suspected perpetrator of a criminal act is of decisive importance because the detection and, by implication, clarification of the crime situation is hardly possible without it. In this research the researcher has the same concern to identify the perpetrator. The collection of information and facts in order to determine the identity of the offender and his part in the crime remains the crux of any crime investigation. In the collection process the crime investigator can make use of direct and indirect methods of identification. The direct method refers especially to perpetrator identification techniques such as personal descriptions, sketches, identification parades, incidental identifications, photo identifications, voice identification, and *modus operand* (Owen, 2000: 225 –227). As opposed to this, the indirect method has to do with physical evidence by which the identity of the offender and his part in the crime may be determined. Examples of this are physical evidence left behind on the scene by the offender, such as fingerprints, documents, etc. According to the respondents, the tracing of the perpetrator will need to start with the information on the fraudulent cheque. They mentioned all the different types of information found on the cheque, such as fingerprints, handwriting, indentations and signatures, and were of the opinion that these should be carefully evaluated until they could be used as evidence.

To identify a fingerprint found at a crime scene simply as a fingerprint is meaningless until it is compared with a fingerprint of a specific person - then it becomes valuable (Callanan, 1994:2). According to Marais (1992:25), the most reliable method of identification is the comparison by fingerprints. According to Callanan (1994:3), the qualities of the ideal identification medium are that it is:

- Invariable
- Universal
- Unique
- Easily reproducible
- Classifiable

During cheque fraud investigation the perpetrator could be identified through possible photos, CCTV recordings, the teller or an accountholder.

### **2.8.7 Cumulative identification**

Cumulative identification is where the contributions of different specialists are collectively considered within the framework of the history and relevant circumstances of the crime situation as a whole. This means that all the identification categories should be utilised during the forensic investigation, before a conclusion can be made that would assist the forensic investigator to have enough evidence or circumstantial evidence to summons the perpetrator to appear in a court of law (respondent 4, 2004). According to Marais (1992:2), the challenge for the crime investigator is to individualise the particular crime (situation identification) as the act of a specific person (perpetrator identification) against the victim (victim identification). This process of individualisation amounts to sufficient evidence being produced in court to prove the guilt of the accused in the criminal act.

The researcher noticed during the reading of case files at Old Mutual that 14 of the 20 case dockets were linked to a syndicate operating with cloned/fabricated and duplicated cheques via the *modus operandi* and handwriting of that specific syndicate and via descriptions of the suspects. Further to this, the same contact number was used on the back of the cheques. The perpetrators were eventually positively identified through fingerprints. These case files of Old Mutual proved that identification of various aspects such as the *modus operandi*, handwriting and description of suspects and information on the cheque can assist the investigator in identifying the perpetrators, after which they can be positively linked to the crime scene (cheque) by means of their fingerprints.

### **2.9 The Meaning of Individualisation**

Fisher (2004:5) and Lee, et al. (2003:184) say individualisation means that an item of evidence comes from a unique source. The pattern of class and individual characteristics establishes the individuality of a specific object. The questioned item is therefore individualised when the examiner is able to “match” the set of individual

characteristics found in the questioned item to be the same set as the characteristics in the known sample (Fisher, 2004:6 and Lee & Harris, 2000: 12).

According to Ogle (2004:5) individualisation means that an item of evidence comes from a unique source. It can be shown to be directly associated with a specific individual source. A broken piece of plastic physically fitted to reconstruct an item is an example of individualisation. Another example would be handwriting, as by means of comparison an expert can individualise a sample of handwriting to be that of a specific person on the basis of the unique features of that specific person's handwriting (respondent 12:2004).

Lee and Harris (2000:27) explain that the process of individualisation is based upon the presence of individual characteristics. According to Van der Westhuizen (1996:5), individualisation places emphasis on the involvement of the perpetrator or alleged criminal in the act committed and is based on establishing the probability, from the information and facts collected, that the crime was committed by a specific person.

In addition, Van der Westhuizen (1996:6) explains the difference between identification and individualisation is that identification is merely the act of identifying something or somebody belonging to a specific category. In other words, a document on the crime scene is identified as a cheque based on the size, form and the logo on the cheque but no comparisons are drawn. Individualisation, on the other hand, involves comparison to determine uniqueness, usually of the disputed object found at the scene of the crime with one of known origin obtained, for example, from the suspected criminal. For example, a fingerprint could be found on this cheque, which could be compared with the fingerprints of a known criminal. A comparison is thus made to determine whether the print in dispute on the cheque is that of a known criminal (individualisation) with previous convictions whose fingerprints are on record.

The following are variations in response to the question, "What is individualisation?":

- Individualisation is to identify something as something specific (respondents 7 & 13).
- Individualisation assists the investigator to identify the perpetrator (respondents 9, 12 & 14).
- To individualise means to categorise (respondents 1,2 & 16).
- To individualise means to analyse something (respondent 18).
- Individualisation is to compare and identify something specific as unique (respondent 20).

### **2.10 Difference between identification and individualisation**

Only respondent 12 could explain the difference between identification and individualisation. According to Respondent 12 (2004) individualisation is possible only if it has been preceded by a series of identifications. He explained that an object is first identified, for example a printing machine that prints a suspected fraudulent cheque. Thereafter it undergoes a series of comparisons to individualise it as the printer that printed the disputed cheque. The remainder of the respondents had a problem in explaining the difference between identification and individualisation and they seemed to interchange the two concepts. This could be a result of no in-depth training on these two concepts.

The difference between identification and individualisation based on the response of the respondents and the opinions stated by Marias and Van Rooyen (1994:20) and Van der Westhuizen (1996:6), can be illustrated as follows:

<b>Identification</b>	<b>Individualisation</b>
The set of characteristics of what something is.	The pattern of class and individual characteristics establishes the individuality of a specific object.
Identifying something as belonging to a specific class.	Individualisation is only possible if comparison takes place preceded by identifications.
No “match” takes place.	The item could be “matched” to the set of class and individual characteristics found in a questioned item.
No comparison takes place.	Involves comparison with a known sample.
Majority of physical evidence can only be identified if it originates from a common source.	Means that an item comes from a unique source.

## 2.11 Summary

The forensic investigator must know and understand that a clear distinction exists between identification and individualisation (Chisum & Turvey, 2000:6). The truth is however, that the one process usually complements the other (Van Heerden, 1986:194). The researcher realises that there is a distinction between the concepts “identification” and “individualisation”, but that in the investigation of cheque fraud the concepts are always interrelated. It is like a bell: if one strikes any part of it, the whole bell sounds. It is important, therefore, that the forensic investigator understands the meaning, purpose, and categories of identification for individualisation to take place.

The next chapter explains the cheque as a source of information.

## **Chapter three**

### **Cheque as source of information**

#### **3.1 Introduction**

Investigators deal with information on a daily basis. Their ability to obtain, gather and collect information and use it during a criminal investigation to eventually obtain evidence, to a large degree determines their success as investigators.

It is very important that investigation officers use all the information found on a fraudulent cheque correctly, discerningly and scientifically. To ensure effective investigation the investigator should never forget that investigative techniques are based on logic, proven knowledge and scientific principles (respondent 23, 2004). According to Hawkins (1994:137), the successful investigation officer needs a variety of skills, but the most important skill is the ability to know how and where to find information, as information could become important evidence.

#### **3.2 Evidence**

Marais (1992:5) says evidence is factual information. For example, the owner of a cheque might be known, but on the cheque itself there can be further evidence, such as handwriting, signature, prints, identity number and address. Gardner (2005:7) defines evidence as anything that tends to prove or disprove a fact in contention. Evidence is something legally submitted to a competent tribunal as a means of ascertaining the truth of any alleged matter of fact under investigation before it (Fisher, 2004:1; Adams et al., 2004:77). Physical evidence can take any form, from a large house to a piece of fibre. The value of physical evidence is explained by Fisher (2004:1-2) and Byrd (2004:1) as follows:

- Physical evidence can prove a crime has been committed or establish key elements of a crime.
- Physical evidence can place the suspect in contact with the victim or with the crime scene.
- Physical evidence can establish the identity of persons associated with the crime.

- ❑ Physical evidence can exonerate the innocent.
- ❑ Physical evidence can corroborate the victim's testimony.
- ❑ A suspect confronted with physical evidence may make admissions or even confess.
- ❑ Physical evidence may be more reliable than eyewitnesses.
- ❑ Court decisions have made physical evidence more important.
- ❑ Juries in criminal cases expect physical evidence.

Evidence is defined by Van Heerden (1986:191) as any lawful means, except legal argument, whereby the truth of any case or fact is proved or disproved during a judicial investigation. According to Van der Westhuizen (1996:3), evidence is eventually offered at the trial and is in fact the end product of the process of discovering, tracing, evaluating and selecting of relevant information. Schmidt and Rademeyer (2000:3) define the term "evidence" as follows: "It encompasses in its normal meaning all the information presented to a court in order to enable it to settle a factual dispute so that it includes the written and oral statements by witnesses as well as objects submitted for inspection."

Schwikkard, Skeen, Van Der Merwe, De Vos, Terblanche & Van Der Berg (1997:16) support the above statement as it describes evidence as an oral statement and includes documents and objects produced in court. In Zeffertt, Paizes & Skeen (2003:142) evidence is explained as follows: "Evidence tending to prove a person's identity may be direct or circumstantial. Direct evidence is the testimony of a witness who says, for example, that the accused is the person whom he saw emerging from a shop at midnight. Circumstantial evidence may be a characteristic which the accused is shown to have in common with the alleged criminal, such as fingerprints or handwriting or habits of behaviour."

According to Marais (1992:5), physical evidence is a matter of things rather than people. Physical evidence is "real evidence" (Schmidt & Rademeyer (2000:327), it is visible and recognisable as an object, instrument, or print, etc. Real evidence can be measured, photographed, analysed and presented in court as a physical object. "Real evidence" is the term used to cover the production of material objects for

inspection by the court. The following are some of the types of material objects used as real evidence: the weapon used in the commission of a crime, fingerprints, photographs, handwriting, documents and fraudulent cheques (Schmidt & Rademeyer, 2000:327; Fisher, 2004:1). Schwikkard et al. (1997:254) support the statement about “real evidence” made by Schmidt and Rademeyer (2000:327). Byrd (2004:1) explains that physical evidence refers to any material items that are present at the crime scene. He further explains that evidence falls into two categories: testimonial evidence and physical evidence. The investigator is the person responsible for collecting all evidence at the crime scene (Genge, 2002:18). All physical evidence at the crime scene should be collected and kept in such a way that the identity and legal integrity is always protected (Genge, 2002:8).

Evidence can be direct evidence, circumstantial evidence, testimonial evidence or physical evidence (Ogle, 2004:1–2).

### **3.2.1 Direct evidence**

Direct evidence is evidence that proves a fact without the necessity of an inference or a presumption, and that when true, conclusively establishes that fact. An example is testimony by a completely credible witness that proves the fact stated in the testimony (Ogle, 2004:2).

### **3.2.2 Circumstantial evidence**

Circumstantial evidence involves a series of facts that, although not the fact at issue, tends, through inference, to prove a fact at issue. This type of evidence is usually a chain of circumstances from which a fair assumption can be made as to the validity of the fact at issue (Ogle, 2004:2).

### **3.2.2 Testimonial evidence**

Testimonial evidence is evidence given by lay- or expert witnesses. The principal test for this type of evidence is the credibility of the witness (Ogle, 2004:2).

### **3.2.3 Physical evidence**

Physical evidence consists of physical objects that are linked to the commission of a crime (Ogle, 2004:2).

### **3.2.4 Trace evidence**

Trace evidence is a generic term for small, often microscopic material (Fisher, 2004:149). According to Adams et al. (2004:3; Ogle, 2004:3; Chisum & Turvey, 2000:11) this type of evidence could also be called transfer evidence. Trace evidence may easily be overlooked in crime scene investigations unless proper care is exercised in the search. The Locard principle is the basis for studying trace evidence. Example of such trace evidence would be the cheque, which may contain trace evidence such as handwriting and latent fingerprints. Even the paper and ink itself that was used to print the fraudulent cheque may be used to show a connection to paper or ink located at another site.

### **3.3 Information**

The term "information" means to have specific details of something not listed (Wilson, 1989:387). To Marais (1992:18), the essence of the crime investigation process is the gathering of information, of whatever nature, be it subjective or objective, through which the complete truth of a crime situation is revealed. Van der Westhuizen (1996:2) supports Marais in the above statement. Marais (1992:3) is also of the opinion that information originates mainly from two sources: people and objects. According to Marais and Van Rooyen (1994:115), information is obtained during observation and the interviewing of people. All the above statements are supported by Technikon SA (1992:4).

All information gathered must be properly evaluated to ensure that it has positive potential to reveal the whole truth of the event. Not all information collected during the investigation of a crime will necessarily be acceptable or presented as evidence. According to Van der Westhuizen (1996:3), when information is received it has to be evaluated and selected as relevant information that can become the end product known as evidence.

### 3.4 The Locard principle

Edmund Locard, a French criminologist, is considered by many to be the father of the modern crime laboratory (Gardner, 2005:25). *Locard's Principle of Exchange* states simply: "every contact leaves its trace" (Gardner, 2005:25; Horswell, 2004:46). Many types of evidence may be used to associate an individual with the performed illegal handling and to link him/her with the crime scene. These types of evidence are commonly referred to as "trace or transfer" evidence (Adams et al., 2004:3; Ogle, 2004:3; Chisum & Turvey, 2000:11). When the perpetrator fills in all the information needed on a cheque and signs the cheque, he makes contact with the cheque through his signature and through his fingerprint(s) which he leaves on the cheque by touching it. When two bodies or objects come into contact they mutually contaminate each other with minute fragments of material/evidence (Mogotsi, 2002:27). The Locard principle is a scientific principle that implies that clues in some form are left at every crime scene, through which the true facts of the crime can be exposed (Callanan, 1994:7). For example, according to the Locard principle, if the suspect's fingerprints are found on the cheque and it is proven that the handwriting on the cheque is that of the suspect, it immediately puts the suspect at the crime scene. This means that the investigator can confidently assume that there will always be clues at the scene of a crime.

To the question: "What is the Locard principle?", 15 of the 25 respondents gave a variety of explanations:

- When contact between two objects is made it leaves a track.
- Tracks such as handwriting, the signature as well as fingerprints, should be on the cheque and could further link to the suspect.
- Contact between objects leaves traces behind.

The remainder of the respondents could not remember or had never heard of the term "Locard principle". Again, it is important to realise that although these investigators are experienced and have law degrees, they did not have basic investigators' training and therefore lack knowledge of basic investigation techniques.

### **3.5 Crime scene**

A crime scene is a place where a crime has occurred (Horswell, 2004:3). The crime scene is the foundation of a criminal investigation (Gardner, 2005:350; Lee et al., 2003:1). It is not just a place where one can obtain information from witnesses and victims, but also where visible and latent evidence may be found to solve the crime committed (Adams et al., 2004:3). The crime scene can also be explained as a field laboratory where evidence can be found and analysed in a laboratory in order to obtain more information on the crime, and for individualisation purposes (Van Heerden, 1986:217). The collection of clues begins at the scene of the crime as this is the location of observable and concealed information (Marais & Van Rooyen 1994:19). According to Van Heerden (1986:217), a crime scene is a place where direct or indirect evidence of a crime or allegedly committed crime may be found. It is not just a place where one can get information from witnesses and victims but also where visible and latent evidence may be found in order to solve the crime committed. For Horswell (2004:3) any place could become a crime scene and it is usually a place where a crime or an incident that may end in legal proceedings has occurred.

The crime scene could be divided into primary and secondary crime scenes. The forensic investigator should keep in mind that according to Mahoney (2003:1) multiple crime scenes (primary and secondary crime scenes) are possible because of the Locard principle, which refers to the exchange of traces between two objects that have come into contact with each other.

#### **3.5.1 Primary crime scene**

The primary crime scene is an area or place where the incident occurred and where all the elements of the crime occurred, e.g where the fraudulent cheque was deposited (Horswell, 2004:3, Baldwin, 2004:2). Another example would be the place where a murder was committed. Primary focal points are the area to which the forensic investigator would be naturally led, for example the teller at the bank who reported a possible fraudulent cheque that was deposited, or in the case of a murder incident the place where the murder occurred. These scenes normally contain evidence that could prove all the elements of the crime. The primary focal point is

most likely only part of the picture. The actual alterations to the cheque before it was presented to the bank might have been done at the perpetrator's house or, in the murder incident, the body could have been removed to the place where it was found.

### **3.5.2 Secondary crime scene/s**

A significant problem is that forensic investigators may overlook the secondary crime scene (Gardner, 2005:68). Secondary crime scenes are places where some of the elements of the crime may be found. It can be the place where the crime was planned but it can also be the place where some of the criminal elements of the crime were concealed. The potential physical evidence will usually be transported away from the primary crime scene (Horswell, 2004:3). For example, the cheque was altered at the suspect's house, at the house the printer on which the fraudulent cheques were printed might be found, along with other tools used to alter the cheque. This act of misrepresentation on the cheque is a distortion of the truth and this was created at his home. This action is also wrong and the intention was present to make these alterations which would cause prejudice or potential prejudice to another. Therefore, a high concentration of physical evidence would be found at his house and the house of the suspect would be the *secondary crime scene*.

As in a murder incident, the body could be found on premises when it was transported, but the original area where the murder incident took place could contain more evidence such as the murder weapon. It is important for the forensic investigator to understand that the secondary crime scene is also important, because it may have some vital clues that could assist in solving the case (Gardner, 2005:68).

### **3.6 Meaning of a Cheque**

According to the Bill of Exchange Act 34 of 1964, sections 2(1) and 2(3)), a cheque is a bill of exchange drawn on a banker and payable on demand. In the Learners Guide (2000:23), a cheque by legal definition is an unconditional order in writing addressed by one person to a banker, signed by the person giving it, requiring the banker to pay, on demand, a certain sum in money to a specific person or his/her

order bearer. What makes a cheque different from the other negotiable instruments is that it is drawn on a banker and that it is always payable on demand.

A cheque is accepted according to normal auditing principles and practices as a document that evidences settlement of the amount owing to the supplier (Puttick & Van Esch, 2003:450). In *S v Joffe 1934 SWA 108* and *S v Timol 1959 1PH H47 (N)* the court ruled that a cheque is a document.

The following answers were received from the respondents in response to the question: "What is a cheque?":

- lawful method of payment (the most general response), (10 respondents)
- negotiable instrument (two respondents)
- bill of exchange for use by general public as a means of payment (one respondent)
- means of payment (one respondent)
- signed, written instruction to a bank to pay money from your account (one respondent)
- transferable instrument, which can be offered for payment (one respondent)
- instruction to the bank to pay an amount to another (one respondent)
- document that promises a payment in future (one respondent)
- promissory document (one respondent)
- type of promissory note (one respondent)
- document that promises a payment and has a specific value for payment (one respondent)
- payment method with built-in security features (one respondent)
- method to pay without cash (one respondent)
- authorisation for the bank to make a payment (one respondent)

All the above are in line with the definition of a cheque as per the Bill of Exchange Act 34 of 1964.

According to respondent 8 (2004), the contractual relationship between the bank and the client comes into being when the banking account is opened. The bank relationship is preceded by a verbal discussion between a representative of the bank and the prospective client, followed by a written application by the applicant (usually in his handwriting). The application is normally done on an application form, which provides for all the personal particulars of the applicant and all such information as the particular bank needs, before it would be prepared to enter into a formal contract with the individual concerned. The bank officials are normally prompted to request the applicant to fill in the application form as it could serve the purpose of handwriting comparison in the event of fraud being committed in respect of the account at a later stage. The cheque therefore could lead the investigator to further information such as the bank statements of the account holder, the opening documentation, the account information card to verify the identity of the account holder, and the signature card to verify the signature of the account holder on the cheque. With regard to the FICA act (Financial Intelligence Crime Act 38 of 2001), a copy of the prospective client's identity document, together with an utility bill, is requested when a new account is opened, to identify the client to the bank.

### **3.6.1 Formal requirements for a valid cheque**

For a cheque to be valid in terms of the Bill of Exchange Act 34 of 1964, section 2, the following requirements have to be met:

- It must contain an unconditional order
- The order must be in writing
- It must be addressed to a banker
- It must be signed by the person giving the order/accountholder
- It must be for a certain sum of money
- The payee (the person nominated by the customer to receive payment) must be indicated
- It must be payable on demand

Cheques may be prepared manually by the accounts department (using blank pre-numbered cheque forms obtained from the entity's bank), or generated by a

computer which automatically pre-numbers the cheque form. The account holder could also prepare his/her own cheque using the prescribed form in his/her cheque book. Signing of cheques may be done manually by the approved cheque signatories, or be applied electronically by the computer in the cheque payment run (Puttick & Van Esch, 2003:450).

### **3.6.2 Fraudulent cheque**

To Fazekas (2000:8 – 12), the following can be seen as fraudulent cheques:

□ *Stolen originals (both blank and paid cheques).*

With paid cheques the criminal could alter the name of the payee or the amount to be paid using any of the following techniques: mechanical erasure, chemical erasures, obliteration, insertion, alteration or surgical tampering. With a blank cheque there are various methods that can be used to forge the signature on the cheque. The perpetrator will try to obtain the correct signatures by obtaining memos, for example from the Financial Manager and then copying it in the following manner:

1. Muscle forgery – both the memo & blank cheque are placed upside down and the signature is copied.
2. Tracing – the signature is traced using a light-box or window.
3. Rubber stamp – a stamp is made that contains the signature.
4. Hot cheque sandwich – the memo is placed over the blank cheque and the perpetrator “signs” over the signature. The perpetrator then goes over the signature impression on the cheque with a pen.
5. Photocopied – the signature is simply photocopied from the memo onto the blank cheque.
6. Scanned – the signature is scanned and kept on the perpetrator’s computer and applied to cheques.

□ *Counterfeiting.*

This means to reproduce the document in its entirety. Typical of stolen or counterfeit cheques, this type of cheque is normally deposited into a bank

account that has been fraudulently opened. Funds are then removed from this fraudulent account, against the counterfeit or stolen cheque that was deposited.

□ *Forgery (alterations and tampering).*

During forgery one may find mechanical erasures that are being perpetrated with conventional and localised erasure methods, erasable writing ink or adhesive tape, to remove some non-impact toner images from cheques. Chemical erasures can also be used to remove handwritten ink, stamp impressions or other specific images on cheques. In some cases cheques are immersed in a solvent that not only removes the signature, but also removes the printed security background. Although the paper in these cases was chemically sensitised, and flashed up during the process, this did not deter the perpetrators, as these cheques were still presented for payment. They were successfully transacted even though it was obvious that the background of the cheques had been affected. In these situations they were accepted because the teller/sale assistant/cashier was not familiar with the design of a genuine cheque and they were accepted at face value; or, in another situation, there may have been a conspiracy between the cheque holder and the teller/sale assistant/cashier. Other methods such as obliteration of handwritten text, signatures and other entries imaged on cheques are commonplace. Altered amounts, dates and payees are generally inserted to change the cheque. Surgical tampering by “cut and paste” and scanning cheques is also commonly found.

The Bills of Exchange Amendment Act 56 of 2000 was amended in response to prevalent frauds occurring in respect of cheque payments. Section 72b, “Prevention of fraud”, requires entities by law to have financial statement audits and to exercise reasonable care in the custody of its cheque forms and the reconciliation of their bank statements. Further, section 77 inserted into the Bill of Exchange Act 34 of 1964 by the Amendment Act No 56 of 2000, now states that: “it shall not be lawful for any person to obliterate, cancel or, except as authorised by the Act to add to or alter such a crossing”. Banks, accordingly, refuse to accept cheques for depositing, or for

cashing, if any changes have been made to details thereon (Puttick & Van Esch, 2003:452).

As is clear from the aforementioned, cheque fraud can be committed in a number of different ways. Probably one of the most common forms of cheque fraud is when a person buys goods and pays for it with a cheque, on the depositing of which it becomes apparent that the buyer has insufficient, or indeed no funds at his disposal to pay for the purchases. In *S v Strydom* 1962 3 SA 982 (N) the appellant stayed in the complainant's hotel. To settle his account he gave the complainant a cheque for the amount of R100 as well as some cash. The bank dishonoured the cheque because the signature was questioned. The appellant gave the complainant another cheque, which was also subsequently dishonoured by the bank because the appellant did not have sufficient funds in his account. The appellant was convicted of fraud (Sorgdrager, Coertzen & Bezuidenhout, 1997:211).

During the analysis of the investigation files at Old Mutual, it was noticed that the files referred to different forms of fraud perpetrated with cheques, for example: cloned, fabricated, duplicated cheques, stolen cheques, kite flying and altered cheques.

According to the Learners Guide, (2000:36) the following forms of fraudulent cheques exist:

- *Cloned cheques* are cheques which are entirely reprinted with exactly the same information as that of the account holder.
- *A fabricated cheque* is a cheque, which is entirely false, and all the information on it is falsified.
- *Duplicated cheques* refer to the duplication of cheques that were previously issued.
- *Stolen cheques* refer to blank cheques, which are stolen and completed with fraudulent information. During the analysis of the cases it was found in a sample of stolen cheques that in 11 out of 20 cases the payee's name and the amount in figures and words were changed and that the crossing might be cancelled. A fraudster will intercept a cheque that has been issued and will

alter the payee's name to his or her own, or to the name of a client who holds a fraudulent account. The cheque is deposited into a fraudulent account (an account opened with a false identification book) and the funds are withdrawn.

- *Kite flying* is the deliberate creation of artificial credits with valueless cheques on banking accounts for the period required to clear the cheque so deposited, with the intention to defraud. Kite flying is committed when funds are generated in one or more bank accounts, while in reality, the funds do not exist. Kite flying schemes can be perpetrated using one bank and more than one account, or between several banks and several different bank accounts.
- *An altered cheque* refers to a cheque which is altered to show a different amount or payee. During the analysis of cases it was found that fraudsters had intercepted salary and tax refund cheques from the Receiver of Revenue and altered the payees in six out of 20 case dockets.

In response to the question "What is a fraudulent cheque?", the respondents explained as follows:

- When a signature is falsified on the cheque (four respondents)
- When misrepresentation is made with a cheque (three respondents)
- Misrepresenting that a payment will be done (four respondents)
- An instrument making a misrepresentation that a payment will be made (two respondents)
- An altered cheque (six respondents)
- Alterations done to the original amount, signature, payee, etc. (six respondents)

### **3.7 The Cheque as a crime scene**

Normally a cheque can be considered as an exhibit, because it proves the elements of a crime. A cheque is a document on which changes were made. When this takes place according to the Locard principle there will be a transfer of evidence. The identification and tracing of this evidence is crucial in proving a crime. When analysed, a cheque could provide evidence from witnesses and victims, but it can also provide visible and latent evidence to solve the crime committed. A cheque also

answers to the description of Van Heerden (1986:127) as a field laboratory, because it has been used to fabricate and illustrate false information, and if analysed in a laboratory this information could be used for individualisation purposes (Van Heerden, 1986:217). As a crime scene the cheque should also be analysed because it contains concealed information to prove a crime (Marais & Van Rooyen 1994:19). A cheque also contains direct or indirect evidence that a crime was committed. In the case of fraud it contains evidence of misrepresentation, which is the handling element of fraud. One cannot only get information from witnesses and victims on a cheque but also visible and latent evidence may be found to solve the crime committed. An example of this is the fingerprints and handwriting of the perpetrator, which could undoubtedly link him/her to the crime.

A feature of cheque fraud is that there could be distance between the perpetrator and the crime scene. It is, for example, possible that the suspect might be operating from his/her house where he/she has made changes to the original stolen cheque, after which he/she has negotiated the cheque at a shop. In other forms of crime, evidence is mainly sought at the spot where the crime has taken place, but the crime scene in a cheque fraud covers all the places from which the suspect has operated (Learners Guide, 2002:3). The investigator should always ask if the location "identified" as being the crime scene is the place where it was originally committed, or just the location where it was found, or whether there were other areas that might be part of the crime scene as well (Lee, Palmbach & Miller, 2003:2). In this regard a cheque fulfills the requirements of both a primary and a secondary crime scene as previously discussed.

Horswell (2004:3) agrees with Baldwin's statement; for example, if the fraudulent cheque was negotiated at a bank, the bank would be the primary crime scene. The reasoning for this is that the bank is the location where the crime was committed and the majority of the interaction took place. The element of misrepresentation would be found, as an alteration is made on the cheque. The cheque is then presented as a true, original cheque to the bank. Therefore, if a fraudulent cheque is negotiated at

the bank, both the fraudulent cheque and the bank can become primary crime scenes.

The following question was posed to the respondents: "Could a fraudulent cheque be a crime scene?" Seven of the 25 respondents answered "no", instead referring to the cheque as documentary evidence. These seven respondents are not wrong, as it has already been indicated that a cheque is a document containing evidence (respondent, 12:2004). The reason why they do not regard the cheque as a crime scene could be based on the fact that they have limited knowledge on the Locard principle.

The remainder of the respondents argued that evidence from the disputed cheque could indicate whether a crime had been committed, and could possibly link the person who perpetrated the crime, and that therefore a fraudulent cheque should be regarded and protected as a crime scene. Respondent 24 (2004), forensic investigator in Forensic Investigations, explains that if a person touched a cheque he/she would leave fingerprints on the cheque, and if he signed the cheque he/she would leave his/her handwriting on the cheque. This is what the investigator should look for. If an investigator applies the Locard principle during the investigation of a fraudulent cheque, then a cheque can be acknowledged as a crime scene.

### **3.8 Meaning of fraud**

The latest commentary on this subject is Snyman (2002:521), who defines fraud as the unlawful and intentional making of a misrepresentation which causes actual prejudice or is potentially prejudicial to another (Burchell & Milton, 1997:579; Learners Guide, 2000:4). Snyman (2002:521) explains the elements of fraud as the following: (a) a misrepresentation; (b) prejudice or potential prejudice; (c) unlawfulness and (d) intention.

The main element an investigator has to prove is the element of *misrepresentation*, because this is related to the handling element of the crime. According to Snyman (2002:521), misrepresentation is the distortion of the truth. In practice this means that

a perpetrator signs a cheque posing to be the legal owner of the cheque and the other information on the cheque is true, although it could be altered. The perpetrator further negotiates this cheque by misrepresenting that he/she is the legal signatory.

*Prejudice or potential prejudice* is the next general requirement for fraud. The mere telling of a lie is not punishable as fraud, but the crime is committed if the telling of a lie brings some form of harm to another. For example, in Lala 1934 TPD 123 the accused represented to the complainant that he owned a shop. This influenced the complainant to grant him credit. Before the period of credit expired, the complainant discovered that the accused did not own a shop. The accused was charged with fraud, and convicted. The fact that the period of credit had not expired was irrelevant as the crime was committed at the time when the misrepresentation was made. The complainant suffered actual prejudice as he now had a debtor to whom he would not have granted credit had he known that he did not own a shop. Merely the possibility of prejudice is sufficient.

*Unlawfulness* is in contrast to a violation of a statutory provision, which either prescribes or prohibits an act. It is often difficult to determine which acts or omissions will be regarded as unlawful as there are no hard and fast rules as to how unlawfulness is to be determined. Where a particular act or omission has not previously been identified as being unlawful the courts take it upon themselves to determine the matter. According to “The Minister of Police v Ewels 1975 (3) SA 590 (AD) the general rule is, however, that the unlawfulness of an act or omission is determined according to the perceptions of society as to what is legally “wrong” or right” at any given time.

*Intention* is an element that applies both to the act (misrepresentation) and the consequences thereof (prejudice) as determined in Kruse 1946 AD 524, Harvey 1956 (1) SA 461 and Heyne 1956 (3) SA 604 (AD). The perpetrator must have the intention to both deceive, that is, the intention to induce another to believe that something is true which, in fact, is untrue, and to defraud, that is, the intention to induce somebody to act to his prejudice on the ground of the misrepresentation.

During an interview with respondent 14 (2004), it was strongly argued that it was of the utmost importance that, from the outset, an investigator understood what constituted fraud and the essential elements that must be present before the crime of fraud could be said to have taken place. All the other respondents (24 of the 25) also knew the elements of fraud and in answer to the question, “What are the elements of fraud?”, said the following:

- Misrepresentation
- Unlawfulness
- Intent
- Prejudice or potential prejudice

### **3.9 Summary**

Forensic investigation requires the specific skills required to gather evidence and present this evidence to a court of law. Apart from skills required to investigate, the investigator needs legal knowledge, for example: what evidence is, how to preserve it and how to present it in court. These skills and knowledge are obtained through training and years of experience. It is common knowledge that all crime scenes are of a temporary nature. It is unlikely that the forensic investigator will get a second chance to find or uncover any evidence that he/she missed in the course of his/her first investigation of that scene. Thoroughness, therefore, is the keyword, and a sound understanding is required of what constitutes physical evidence. The forensic investigation process revolves around the collection of information, by means of which the whole truth may be determined (Van der Westhuizen, 1996:2).

In the following chapter the researcher discusses what information is to be found on a fraudulent cheque.

## **Chapter four**

### **Developing a checklist**

#### **4.1 Introduction**

The aim of this chapter is to develop a checklist for examining a cheque for information that can be used to identify, individualise and trace the perpetrator. This checklist will empower investigators to become better investigators and be more effective (Denscombe, 2002:27). This can only be achieved by starting at the most important source of information, namely: the crime scene, (Horswell, 2004:3; Gardner, 2005:18), the cheque.

In this chapter the researcher will explain what information on the cheque can identify, individualise and assist in tracing the perpetrator. This chapter will concentrate on applying these principles to develop a checklist. The checklist will assist the forensic investigator in identifying facts that can serve as evidence before a court of law, through which the perpetrator could be traced and individualised. To give a visual explanation the researcher made a copy of a vague cheque. From which points were explained.

#### **4.2 Information on the cheque that can identify the perpetrator**

If one analyses a cheque, some of the features and information on it can be helpful in identifying the perpetrator. Those features are illustrated in figures 1 and 2.

##### **4.2.1 Branch code**

At the bottom or top right hand corner of each cheque a branch code is printed (Wells, 2004:128). Each branch has its own branch code, which differ from bank to bank and identifies the specific branch. This information is valuable in tracing the branch where the account holder opened the account and where the account is kept (respondent, 8:2004). At this branch further information on the accountholder of that specific cheque could be found. It is important to trace the account holder because he/she could give information on who stole the cheque, if it was a stolen cheque. If

the cheque was endorsed as “refer to drawer”, bank statements could be obtained to check sufficient funds (Learners Guide, 2000: 35).

#### **4.2.2 Amount both in figures and in words**

The amount is stipulated twice on a cheque (Wells, 2004:128). It is printed or written in figures and in words to ensure the correct amount is paid to the payee. Sometimes the investigator would find a spelling mistake on the written amount and that same spelling mistake might be found on other fraudulent cheques that could prove the *modus operandi* and that the same suspect is involved (respondent 9:2004). *Modus operandi* can be used to link the suspect with other cases.

#### **4.2.3 Drawer’s details**

Particulars of the account holder (who is also the drawer) normally appear printed below the signature and can be used by the payee to identify the drawer. These particulars can also be used by any recipient to identify the drawer. It might be that a business address, telephone number, and registration number is printed with the drawer’s details. For example, if a closed corporation or company number is printed on the cheque, the Registrar of Companies can be contacted for particulars. One may find additional details on these documents, which might lead to the identification of the perpetrator. The investigator should try and confirm whether the drawer’s information is correct and that the business registration number does exist. If so, the cheque might have been stolen from the business and the investigator might obtain valuable information from the financial department of the business of possible staff members involved. As previously indicated by the ABSA bank cheque fraud specialist (respondent 8:2004), in most cases some particulars of the drawer or account holder appears on the cheque, beneath the area where the drawer is required to sign. In some cases a telephone number is given, in other cases the physical address, and in other cases both are given. All the respondents agreed that the details of the account holder are a starting point for the investigator to use in identifying the possible perpetrator.

#### **4.2.4 Co-signatories**

Depending on the account and the requirements set by the account holders, one or more signatures are needed on a cheque. A cheque could have a joint account holder which needs more than one signature before the cheque can be paid out. In certain instances only certain members of an organisation have the signing power to carry out transactions on an account. For example in a company Mr Joe Bloggs can withdraw funds up to R5000.00 per month on the company's account under his own signature. However, for amounts greater than R5000.00 both Mr Joe Bloggs and Mr Joe Soap need to sign the cheque. The particulars of the co-signatories are normally printed on the cheque, which can assist in identifying the perpetrator, or they could give other information which may assist in the identification process (Learners Guide, 2001:32).

#### **4.2.5 Account number**

Each account holder is issued with a unique account number, which identifies the account (Wells, 2004:128). From the account number one can obtain opening documentation from the bank that will contain the identity number and other personal details of the person to whom the account belongs. Other information is also available along with the opening documentation, as currently the strict FICA legislation compels banks and clients to provide proof of address, for example a municipal account. With the identity number the investigator could confirm the information with Home Affairs and obtain a photograph. Further to this, it is possible that SAP 69 (criminal record) information might be available. The identity number could be used to obtain the criminal record information of that specific person. This criminal record information might reveal further personal details such as the last home address, contact numbers and previous crimes committed. The account number can therefore easily identify the account holder if the forensic investigator applies with a subpoena for the opening documentation from the bank (Learners Guide, 2001: 34).

#### **4.2.6 The teller stamp**

When a cheque is offered to a bank for payment the teller at that bank puts the branch stamp on the cheque that states that it was received for payment. This stamp contains the date of deposit, branch code and teller number. Each teller has his/her own teller number, which is printed on the teller stamp. The teller number can identify whom the teller was who received the cheque on behalf of the bank. The teller could be interviewed; the teller could perhaps even describe the suspect or have further information that could assist in identifying the suspect. The teller stamp also contains the date on which the cheque was negotiated. Perhaps CCTV footage is available at the bank or place where the cheque was presented on that specific date that could be checked for possible footage of the events. This could be helpful in the identification of the suspect (respondents 1, 2, 4, 6, 7, 9 & 23).

#### **4.2.7 Payee**

This section indicates to whom the bank is required to pay out the money (Wells, 2004:128). It can be to a specific person, a business, or cash. If made out to a specific person or business, that person or responsible person at the business should explain from whom the cheque was received and for what purpose. This person might give valuable information regarding the suspect such as whether the suspect is a regular customer, perhaps the suspect has an account with the business, or if not a business, the person must have had some sort of interaction with the suspect and might know his/her name. If the cheque is paid out in cash at the bank, the possibility of CCTV footage exists which could be used in the identification of the person, but if the cash cheque is paid into an account, then the account number can be checked for information about the account holder which could enable identification of the suspect from whom the funds were received and for what purpose (Wells, 2004:131).

When an employee of a company intercepts a cheque and alters the name of the payee so that the cheque becomes payable to him- or herself and deposits it into his/her own bank account, it may be easier to identify the perpetrator (Wells, 2004: 87).

#### **4.2.8 Indentations on a cheque**

The discovery of indentations can be of great value in the examination of a cheque (Lee & Harris, 2000:5). Such previous writings can contain names and addresses, and when followed up could give investigators very useful clues (respondent, 24: 2004).

#### **4.2.9 Handwriting**

Handwriting is formed by a series of subconscious patterns which occur out of habit and are as much a part of an individual as any other personal habit (Palm, 2000:3).

It is possible that someone could identify handwriting on a cheque as belonging to a specific person that he/she knows. It is also possible that an experienced forensic investigator who deals with syndicate investigations on a daily basis might identify the handwriting on a cheque as that of a suspect previously investigated. This very rarely happens in practice, however (James & Nordby, 2003:359).

#### **4.2.10 Information on the back of the cheque**

##### **4.2.10.1 The contact telephone number and address**

According to the ABSA bank cheque fraud specialist (respondent 8:2004) it can occur that when a cheque is presented to a teller, the presenter is requested to write his/her particulars on the reverse side of the cheque; sometimes the teller does so for the client. It is important to follow up this information. If an address was written on the reverse side of the cheque it might be worthwhile to interview the occupier of the address given on the cheque, as the occupier could possibly lead the investigator to the suspect.

##### **4.2.10.2 The identity number**

Respondent (5: 2004) mentioned that an identity number could be checked with the Department of Home Affairs or the Criminal Record Centre of the police. If an identity number is available, it can help with a photo and criminal record (SAP 69). The criminal record can lead to several other addresses given in previous cases. The reason for the other respondents not mentioning to check the identity number

could be because of their attitude that the information on the reverse of the cheque is often false. Some mentioned that the suspect does this to frustrate the complainant.

#### **4.2.10.3 Handwriting**

Handwriting cannot identify a person, but if the investigator has the address of the account holder, he/she could take the cheque to the address of the account holder and ask the resident whether they recognise the signature and the handwriting (respondent 5, 7 & 11). If the cheque was stolen, it could be that the account holder recognises the handwriting if he or she knows the perpetrator. If the cheque was not stolen, a comparison could be drawn between the handwriting on the cheque and the handwriting on the opening documentation.

#### **4.2.10.4 Fingerprints**

Fingerprints can be found on the front and back of the cheque. But as these are not visible, the investigator has to have the cheque examined by a fingerprint expert.

Possibly the best evidence for identifying a perpetrator is his/her fingerprints. A fingerprint found at a scene, and later identified as belonging to a particular person, results in an unequivocal identification of that person as having been at the scene (Palm, 2000:6).

### **4.3 Information on the cheque that can individualise the perpetrator**

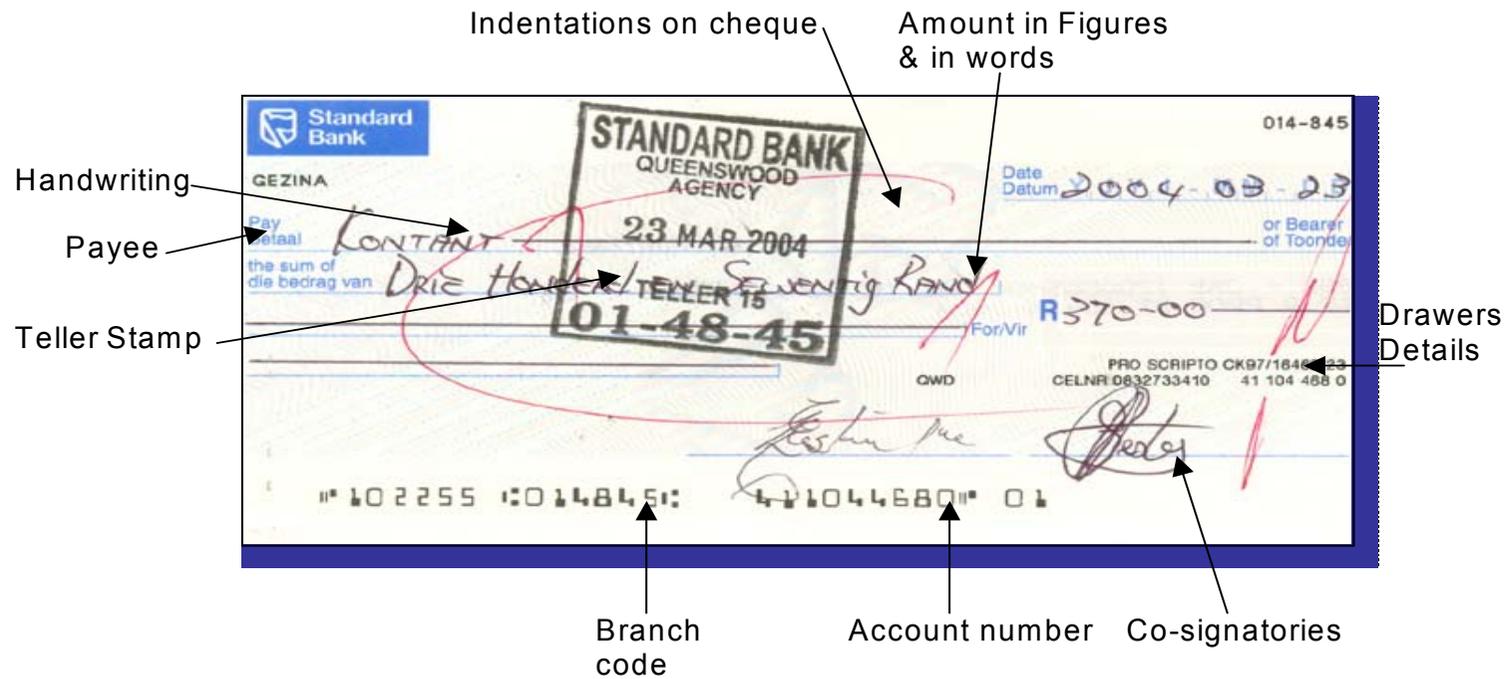
In answer to the following question: "What information on the cheque could individualise the suspect?", the respondents replied as follow:

- Physical evidence such as fingerprints on the cheque (respondents 6 to 12, 2004)
- Handwriting on the cheque (respondents 1 to 12 & 23, 2004)
- The paper, ink and printer used (respondents 10,11,12 & 24, 2004)
- Signature on the cheque (respondents 24 & 25, 2004)
- Indentations made on the cheque (respondents 1 to 25, 2004)

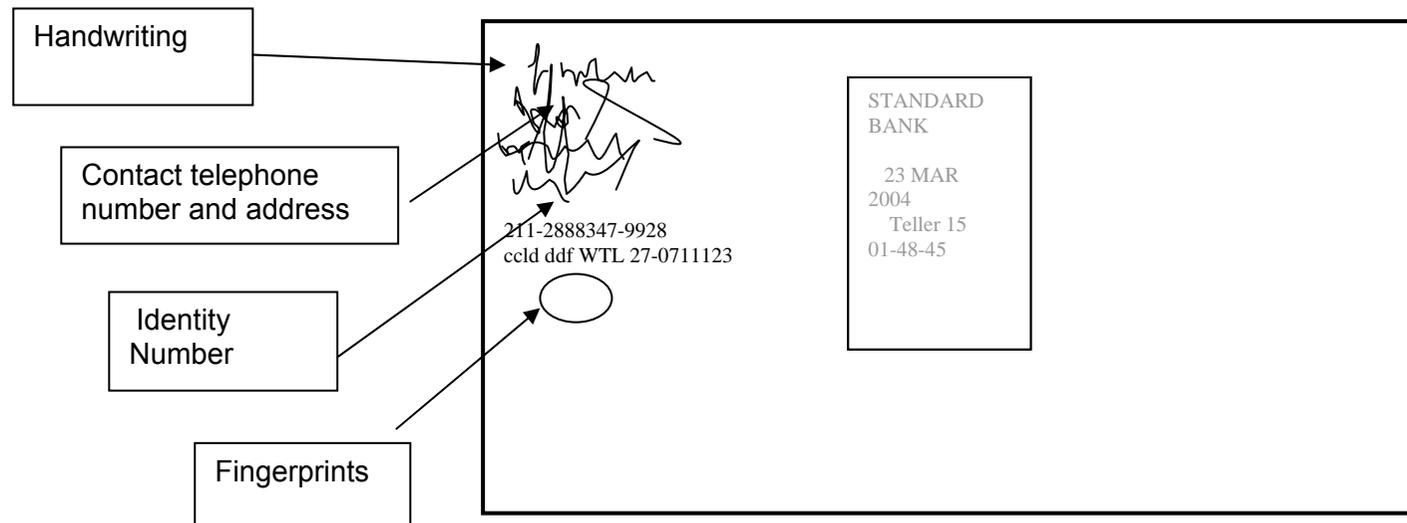
#### **4.3.1 Fingerprints on the cheque**

According to Gilbert (1993:385), all cheques should be very carefully handled to secure evidence as fingerprints might possibly be found. To this end, investigators should see that all cheques are immediately protected in a plastic sleeve as soon as the case is opened.

**Figure 1: Information on the cheque that can identify the perpetrator**



**Figure 2: illustrate the *back* of a cheque with features that could identify the perpetrator**



As the suspect handled the cheque, the chances that his/her fingerprints might be found on the cheque are good; an explanation would then have to be given as to how his/her fingerprints got onto a fraudulent cheque. The fingerprints of the suspect could be vital, as they will link the suspect directly with the crime; the suspect would need to explain why he/she had contact with the disputed cheque. The cheque should therefore be sent to the Criminal Record Centre for examination and the prints should be compared with those on record. If positively identified, the criminal record with full particulars can be obtained (respondent 6, 2004). The best example of individualisation for the identification of a perpetrator is the use of fingerprint evidence (Lee, Palmbach & Miller, 2003: 12).

#### **4.3.2 Paper used**

If the paper was stolen from a printer, then it might be that a trend is revealed, in that the same paper is being used by one specific syndicate (respondent 24, 2004). During a search of a suspect's house, the investigator might find paper and this paper might be identical to the paper used to print counterfeit cheques. This could link the suspect with the crime (Van der Westhuizen, 1996:311). If not, it would not be possible to individualise the suspect and would count as circumstantial evidence, as it could be argued that the paper was similar to the paper that was stolen and previously used.

#### **4.3.3 Printer and ink used**

Experts can often determine the types of writing implements, ink, paper and mechanical devices and compare them by using a variety of physical and chemical techniques (Lee & Harris, 2000:99 -102). It could be determined if the same type of instrument/printer was used in compiling a document and if the same printer used the same ink. A specific printer might have a defect, and an expert might determine whether the defects in writing on the fraudulent cheque are those of the printer found in the suspect's possession (Van der Westhuizen, 1996:313) and (Van Heerden, 1986:86). Further, if the cheque was filled in by using a pen, according to Marais (1992:185) the nip of the pen contains many characteristics that could indicate to an expert that a specific writing instrument has been used and it might be possible to

prove that a pen found in the possession of the suspect has been used to fill in the fraudulent cheque.

The most important factor in the individualisation of a printing apparatus is that every moving part is subject to wear and tear since it has been in use. As this wear and tear will occur at random, it will, if sufficient in quantity to exclude coincidental correspondence with another machine, in combination enable a particular printer to be individualised (Learners Guide, 2000:3). The ink can be individualised with that on the paper or coming from a specific printer; the investigator can then argue that it is connected to a computer in the suspect's office, but still needs to prove that the suspect has printed it. The investigator can thus link up the paper and ink to a printer, and the printer to a computer, and in that manner identify the user. However, the investigator cannot individualise the real producer of the cheque except if fingerprints are found that would individualise him or her; otherwise, it would again just be circumstantial evidence.

#### **4.3.4 Handwriting**

Handwriting consist of patterns, which give rise to handwriting characteristics. These patterns are unique and ideal for individualisation (Lee & Harris, 2000:102). A person is, however, capable of consciously changing these patterns, which can be influenced by inner as well as outer factors. In spite of this, handwriting can be individualised. The principle of handwriting individualisation is the same as with anything where a large number of possible variations can be identified as belonging to a specific class (Learners Guide, 2000:2).

The respondents explained that it often happens that cheques are immediately examined for fingerprints with the result that further technical examinations are impeded. A cheque that has been moistened will not give results when tested for indentations, and moistening can even impede the comparison of handwriting to such an extent that no conclusion is possible. Although not all respondents mentioned this to the researcher, it was found by the researcher from the case studies (from the Old

Mutual investigation files) that it seemed to be normal practice for cheques to first be sent to a handwriting expert before being taken for fingerprint examination.

#### **4.3.5 Indentations on a cheque**

The discovery of indentations as abovementioned in paragraph 4.2.11 can be of great value in the examination of a cheque. Impressions are sometimes left on a surface underlying the one upon which the writing occurred. Indentations can sometimes be made so clearly visible that it is possible to individualise the handwriting (Learners Guide, 2000:6; Lee & Harris, 2000:111).

#### **4.3.6 Signatures**

Signatures contain certain elements not normally found in handwriting and contain a restricted number of letters. When the elements of a signature concur with all the identifying elements of comparison specimens, the conclusion is reached that it was signed by the same person (Learners Guide, 2000:3).

A summary of the information on a cheque that can individualise the suspect is illustrated in figure 3 below.

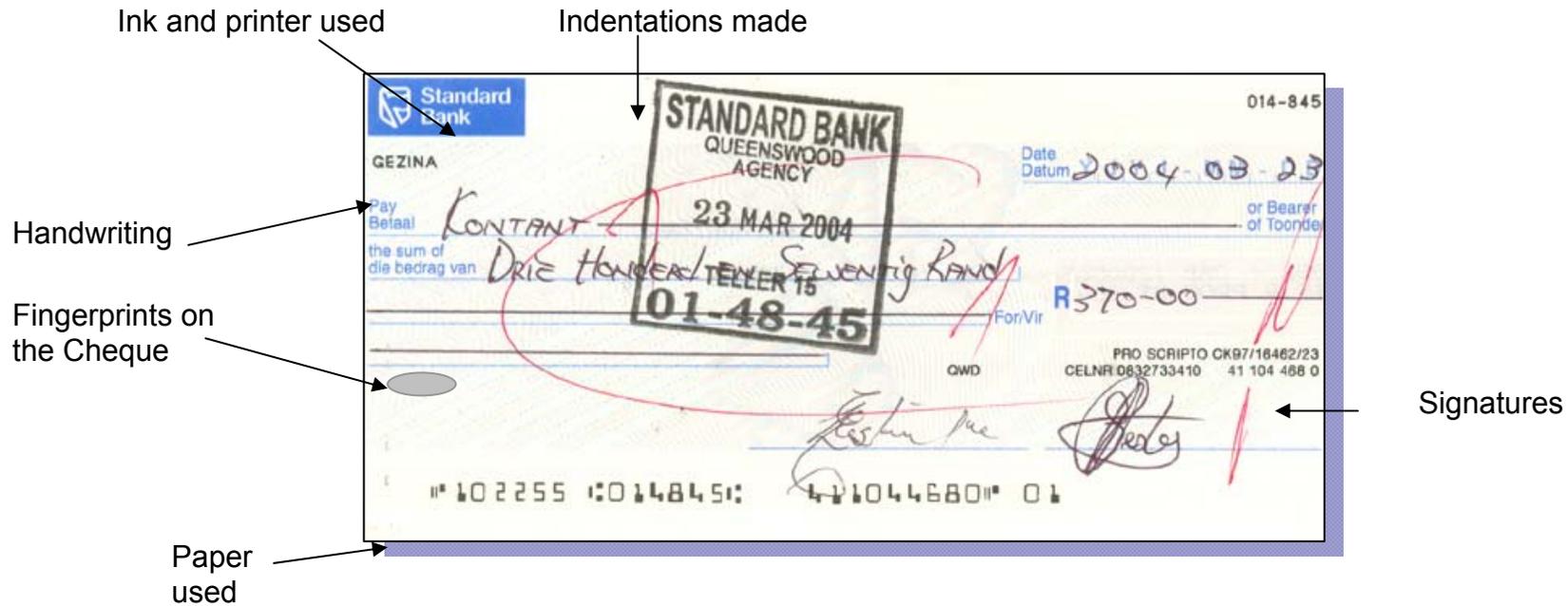
### **4.4 Information on the cheque that can assist in tracing the perpetrator**

An ABSA bank cheque fraud investigator (respondent 8, 2004) explained that certain features on a cheque were more important to take note of than others, during the investigation of cheque fraud, to trace the suspect. These features are illustrated in figure 4 below.

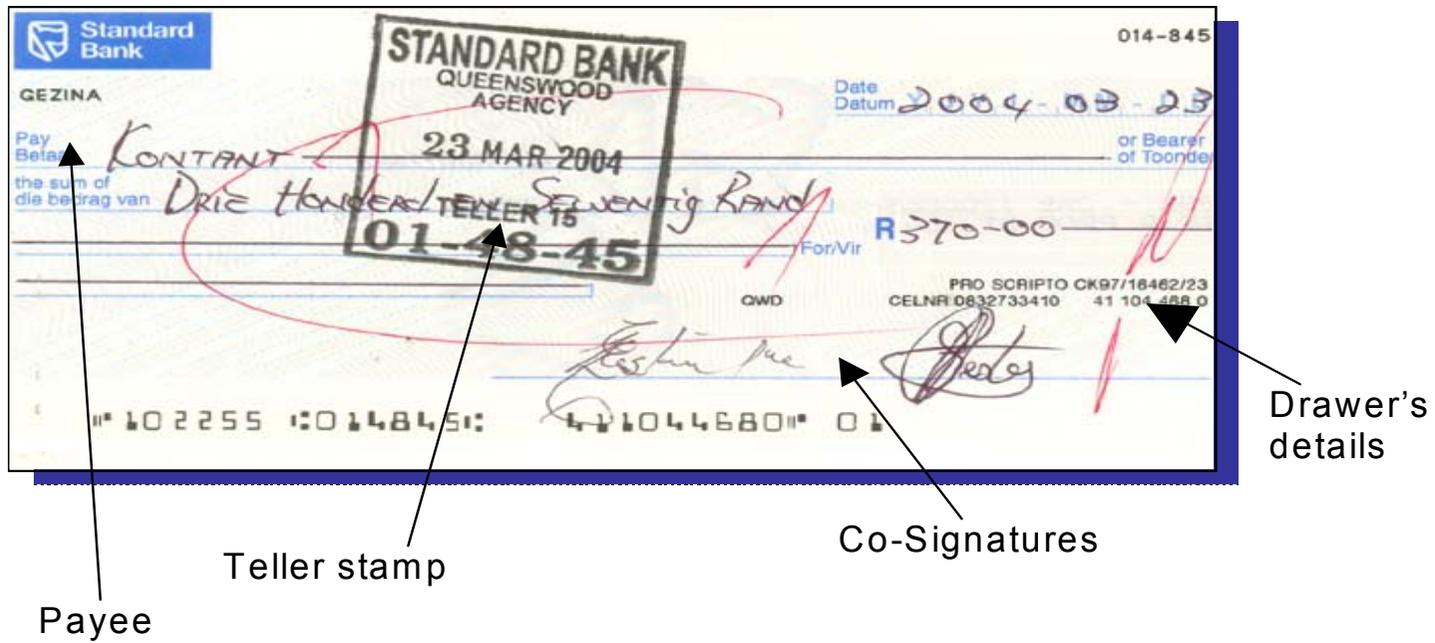
#### **4.4.1 Drawer's/accountholders details**

The drawer's details are the particulars of the account holder and can be used by the payee to identify the drawer; unfortunately this would only apply to a cheque that is not stolen. These particulars can also be used by any recipient to identify the drawer. It might be that a business address and registration number are printed with

**Figure 3: Information that can individualise the perpetrator**



**Figure 4: Information that can assist in tracing the perpetrator**



the drawer's details on the cheque. The investigator should try to confirm if the drawer's information is correct and that the business registration number does in fact exist. If so, it might be that the cheque has been stolen from the business and the investigator might obtain valuable information from the financial department of the business of possible staff members involved.

As previously indicated by respondent 8 (2004), in most cases some particulars of the drawer or account holder appear on the cheque, below the area where the drawer's signature is required. In some cases a telephone number is given, in other cases the physical address, and in yet other cases, both. The entire group of respondents was in agreement that this is a starting point for the investigator to use in tracing the perpetrator. If the information appears to be wrong, the investigator can apply for a subpoena under section 205 of the Criminal Procedure Act 51 of 1977 to get full particulars of the account from the bank. The investigator can then obtain the opening documents and all supporting documentation relating to when the account was opened. It was noted during the case studies that the perpetrators sometimes do use their genuine contact phone numbers on the opening documentation and it was explained by respondent 8 (2004) that the perpetrators do this as they would like to be contacted when the bank needs to inform them of money being deposited into the account. When business account particulars appear on the cheque, information on the business can be obtained from the Registrar of Close Corporations & Companies in Pretoria.

#### **4.4.2 The teller stamp**

The teller stamp is not printed on the cheque. When a fraudulent cheque is offered to a bank for payment the teller at that bank puts the branch stamp on the cheque, which states that it was received for payment (respondent, 8:2004). This stamp contains the date of deposit, the branch code and the teller number. The teller number can identify which teller received the cheque on behalf of the bank. It is possible that the teller may know the person who negotiated the fraudulent cheque or can assist by giving a description of the person and could assist in tracing the perpetrator. The date on the stamp could also assist when he/she can identify the

person on the CCTV footage requested. A printout of the footage could also be made and handed to patrolling officers in an attempt to trace the suspect. If a photo of the perpetrator is available, it can be forwarded to the newspapers or put on police file for possible identification and more information on where to trace the suspect (respondents, 17, 21 & 23:2004).

#### **4.4.3 Payee**

This section indicates to whom the bank must pay out the money (Wells, 2004:130). It can be to a specific person, a business or cash. If made out to a specific person or business, the onus should be on either entity to explain from whom the cheque was received and for what purpose. In the case of a business, particularly, records might exist of contact addresses and numbers that could assist in tracing the perpetrator.

#### **4.4.4 Co-signatories**

A company may issue a cheque and most likely two signatures are needed, or in the case of a joint account, the co-holders of the account must also sign the mandate to the bank to pay the money. The co-signatory may have information that could assist in tracing the possible suspect (Wells, 2004:131).

#### **4.5 Summary**

Success in tracing a perpetrator of cheque fraud is closely linked to the competence and attitude of the investigating officer. A cheque fraud case which is important enough to require investigation, definitely deserves above average investigation to ensure that the perpetrator is traced. Handling and searching the cheque for information and evidence should therefore receive thoughtful consideration during the investigation. There is specific information on a fraudulent cheque that can identify, individualise and assist in tracing the perpetrator. As Gilbert (1993:385) mentions, all cheques should be very carefully handled to secure evidence, as fingerprints could possibly be on the cheque. Every cheque will contain evidence such as handwriting, signatures and indentations to mention but a few. By developing a checklist for examining a fraudulent cheque it could support the forensic

investigator during his/her training and serve as a basis for easy reference in future when it is needed to investigate a fraudulent cheque.

## **Chapter five**

### **Findings and recommendations**

#### **5.1 Introduction**

The researcher used a fraudulent cheque as a source, because the purpose was to see if it contains information that may be used to identify, individualise and trace the perpetrator. A cheque is like an informer because it contains much information with which most members of the public are unfamiliar. For example, according to the Locard principle, without realising it a person leaves many traces on a cheque that may be used to identify, individualise and/or trace that person. The process and the findings of this research have provided a window into the investigation of a fraudulent cheque. The process of investigation requires the investigator to observe intensely, to question systematically, and to gather information, evaluate the information and eventually have proof of the identity of the perpetrator.

#### **5.2 Findings**

At the beginning of the research, specific questions were developed to be researched. These research questions will now be addressed under primary findings. Smaller issues arising from the research will be discussed under secondary findings. Based on information from literature, case studies and interviews the following findings were made:

##### **5.2.1 Primary findings**

###### **5.2.1.1 *Research question one: "What is forensic investigation?"***

In this research it was established by interviews and from the literature that "forensic investigation" refers to the utilisation of sophisticated investigation techniques to obtain sufficient information to prove the true facts in a court of law. Seven of the respondents indicated that forensic investigation refers to an investigation in which evidence would be obtained to prove a perpetrator's guilt in a court of law. The remainder of the respondents did not know what forensic investigation was.

**5.2.1.2 Research question two: “Could a cheque be a source of information to identify, individualise and trace a perpetrator?”**

To the question whether a cheque could be a source of information to identify, individualise and trace a perpetrator, the answer would be yes, because of the Locard principle. The cheque should be regarded as a crime scene, and would contain information to identify, individualise and trace a perpetrator. Only seven of the 25 respondents did not agree that a cheque could contain information to assist in identifying individuals and tracing a perpetrator, therefore also not realising the importance of the cheque as a source of information. They rather referred to the cheque as a document containing evidence. Proper training in the application of this principle could address this area of ignorance in investigators.

**5.2.1.3 Research question three: “Could a checklist be developed from a cheque to assist in identifying, individualising and tracing of the perpetrator?”**

Based on literature and the experience of the respondents, it is clear that a checklist can be developed to identify, individualise and trace the perpetrator.

Based on the research, the following checklist could assist in identifying the suspect:

**5.2.2 A checklist to identify the perpetrator**

1	<b>Branch code</b>	Will identify the branch where the accountholder opened the account, which will lead to the accountholder or the presenter.
2	<b>Amount both in figures and in words</b>	Spelling mistakes on written amount could occur frequently which could assist in identifying the same person perpetrating the cheque fraud by means of modus operandi.
3	<b>Drawer’s details</b>	It might be that a business address and registration number is printed with the drawer’s details which could lead to the perpetrator.
4	<b>Co-signatures</b>	The co-signatory may have information that could assist in identifying the possible perpetrator.
5	<b>Account number</b>	Each accountholder is issued with a unique account number which identifies the account, which again can easily identify the accountholder.
6	<b>The teller stamp</b>	The teller stamp could identify the teller who received the cheque on behalf of the bank and the teller could identify the perpetrator.

7	<b>Payee</b>	This section identifies to whom the bank must pay out the money and this person could identify from whom he/she is receiving the payment.
8	<b>Indentations on cheque</b>	Indentations could contain names and addresses, which could assist in identifying the perpetrator.
9	<b>Handwriting</b>	Someone could identify handwriting on the front and back of the cheque as that of a specific person.
10	<b>Information on the back of the cheque</b>	Information such as contact telephone number, address, ID number could be found on the back of cheque that could assist in identifying the perpetrator.
11	<b>Fingerprints</b>	Fingerprints could be found on the front and back of the cheque.

### 5.2.3 A checklist to individualise the perpetrator

1	<b>Fingerprints</b>	If a suspect is later identified, his/her fingerprints can be checked against the prints found on the cheque.
2	<b>Paper used</b>	If the suspect's house is searched and the same paper is found as that being used to print the fraudulent cheques, it could link the perpetrator to the crime.
3	<b>Printer and ink</b>	Comparison of the same printer and ink with the printer and ink found in the suspect's house could be made.
4	<b>Handwriting</b>	Compare the handwriting and signature on the cheque with those on the opening documents of the bank account and other fraudulent cheques, from which the investigator might already recognise the perpetrators.
5	<b>Indentations</b>	Indentations can sometimes be so clearly visible that it is possible to individualise the handwriting.
6	<b>Signature</b>	The drawer's signature on the cheque can be compared to the signature of the account holder.

### 5.2.4 A checklist to assist in the tracing of the perpetrator

1	<b>Drawer's details</b>	The drawer's details on the cheque should be the starting point for the investigator to use in tracing the perpetrator. The particulars of the drawer/accountholder are found on the cheque beneath the area where the drawer signs.
2	<b>Teller Stamp</b>	Check the teller stamp to see at which bank the cheque was negotiated and the teller could perhaps assist with a description of the perpetrator or that day's CCTV record might still be available, together with the video material of the clients visiting the specific teller.
3	<b>Payee</b>	The payee might know the person from whom the cheque was received.
4	<b>Co-signatures</b>	The co-signature may have information that could identify the possible suspect.

### 5.3 Secondary findings

Different discussions have been presented in each chapter and, on the basis of the most important issues, the researcher made secondary findings, which are:

#### 5.3.1 Locard principle

Only seven of the 25 respondents could explain the Locard principle. This is a major problem and could be the reason for the low solving rate. Basic investigating techniques are of great importance to any investigator's competence. The fact that the respondents were all from the corporate world and did not receive basic investigation training could be the reason for this lack of knowledge.

#### 5.3.2. Fraudulent cheque as a crime scene

Seven out of 25 respondents regarded the fraudulent cheque as a document, which is not wrong but problematic. The fact that they do not understand the Locard principle results in their disregard for the cheque as a crime scene; this could result in the oversight of important evidence on the cheque. This lack of knowledge could also be as a result of no basic investigation training.

### **5.3.3 Purpose of forensic investigation**

The purpose of forensic investigation is to resolve crime by investigating the crime, collecting evidence, and proving the case in a court of law.

It may be concluded from the literature and the interviews, that the purpose of forensic investigation is to gather evidence by means of sophisticated methods and techniques that could trace and link the perpetrator to the crime and bring him/her before court. This would eventually prevent further crimes from taking place and to deter other persons from committing crime. Only two out of 25 respondents supported the above statement defining forensic investigation; the rest were found to be unfamiliar with the term “forensic investigation”.

### **5.3.4 Objectives of forensic investigation**

Based on the research, the following was found to be the objectives of forensic investigation:

- ❑ Identification of the crime
- ❑ Gathering of evidence
- ❑ Individualisation of the crime
- ❑ Arresting the criminal
- ❑ Recovery of stolen property

Thirteen respondents could not give an answer to this question. A possible reason for this is the lack of basic and continuous training.

### **5.3.5 The difference between the two concepts investigation and forensic investigation**

Based on the research, the concept investigation means to observe intensely, to question systematically, and to gather information. The literature and the respondents are in agreement on this point. On the other hand, forensic investigation refers to using sophisticated investigation techniques to obtain sufficient information to prove the true facts in a court of law (four out of 25 respondents). The main difference between the two concepts is that *investigations are a systematic*

*search for the truth* where forensic investigation is *aimed at instituting court proceedings* (Lambrecht, 2001:26). A possible reason for the lack of knowledge could be that the term forensic investigation is relatively unknown, is not covered in any training curriculum, and the topic is covered by very few authors.

The research sums up the difference as follows:

<b>Investigation</b>	<b>Forensic Investigation</b>
Gathering information on an alleged crime.	Gathered information on all incidents.
A systematic search for the truth.	Obtain information by using sophisticated investigation techniques.
By definition not court orientated.	By definition court orientated.
Mainly an action by the police.	Corporate orientated actions.

### **5.3.6 The mandate to investigate**

Legislation confers powers of investigation on various institutions and officials. The State does not have the capacity to investigate all crimes, especially cases of a commercial nature. If a criminal action needs to be instituted, only the SAPS have the power to do so. According to the South African Constitution Act 108 of 1996, the Criminal Procedures Act 51 of 1977 and the Police Act 68 of 1995, the SAPS is the main body to investigate criminal activities, but the Constitution does make provision for other bodies to investigate criminal cases. It became evident to the researcher during the research that total confusion existed amongst the respondents with regard to who all have the mandate to investigate.

### **5.3.7 The purpose of identification**

Identification means that it could be identified that the action belongs to a specific person; for example, the print on the cheque is a fingerprint of a person, but it does not prove which person committed the crime. Individualisation needs to take place before the perpetrator can be identified.

The purpose of identification is:

- To identify the elements of the crime
- To establish the type of crime committed
- To establish what clues, information and evidence can be collected
- To determine the identity of the perpetrator
- To individualise the perpetrator

Only seven out of 25 respondents supported the above statement defining identification; the rest were found to be unclear as to the purpose of identification.

### **5.3.8 The crime scene**

A crime scene is a “laboratory of information” and the starting point of all investigation. The respondents understood what a crime scene is and that it plays an important role in forensic investigation.

### **5.3.9 Difference between identification and individualisation**

Through identification it can be established that something belongs to a specific class. Through individualisation something or action can be identified, based on their specific unique features. Twenty four out of 25 respondents were totally confused by these two concepts and used them interchangeably. It is evident that in-depth training is lacking with regard to these concepts.

### **5.3.10 Difference between information and evidence**

Through the research it has been established that evidence is physical. Information on the other hand is not physical but intellectual in nature and should be evaluated before use. The respondents have some knowledge regarding the difference between information and evidence and are in general agreement on how it could be applied in forensic investigation.

## **5.4 Recommendations**

In this research a variety of concepts based on the research questions and the aims were discussed. On some of the concepts not much literature is available, and partly

due to that, there is a lack of knowledge amongst investigators, which has serious implications for investigation.

It is recommended, for clarity and sufficiency, that more research is needed on the following:

- Forensic investigation it's purpose and objectives
- Mandate to investigate
- Difference between identification and individualisation

To enhance investigation skills and improve the knowledge of investigators regarding the investigation process, it is recommended that the training curriculum for investigators should address the following:

- Forensic investigation: its purpose and objectives
- Mandate to investigate
- Cheque as a source of information - which includes the checklist developed in this research
- The Locard principle

## **5.5 Conclusion**

To resolve any unlawful deed, it is very important that investigators should enhance their investigation skills and use the best and most effective investigation methods and techniques available. Given that forensic investigation has evolved very rapidly in recent times and become more closely based on scientific concepts, it is important to evaluate the education and training given to crime scene investigators (Horswell, 2004:57).

The aim of the research was to develop a checklist for examining a cheque for information that may be used to identify, individualise and trace the perpetrator. In Chapter four a cheque was analysed to ascertain what information on the cheque could identify, individualise and trace the perpetrator. It was found that it was possible to develop such a checklist which could be used to guide the investigator during his/her investigation of a fraudulent cheque. Cheque fraud has become so commonplace that the business community has, to a large extent, already taken on an attitude of considering it as part of bad debt and, rather than reporting it to the

police, they hand it over to their legal advisers to recover the loss or to write it off as a bad debt. Syndicates thrive on this attitude and therefore it would be worthwhile for the forensic investigator to trace these perpetrators and bring them to a court of law to deter these types of crime.

It is clear that the respondents did not understand and realise the value of a cheque during investigation. A cheque should be recognised and dealt with, with the same respect and care as any crime scene and exhibit, because it can be both. To ensure that forensic investigators are effective in cheque fraud investigations they need to be trained to realise the importance and value of a cheque in the investigation process.

To assist forensic investigators to be more effective in cheque fraud investigation, they need to be trained in aspects identified in this research to be weak points.

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## INTERVIEW SCHEDULE (Annexure “A”)

### Developing a checklist for examining a fraudulent cheque

The aim of this research is to develop a checklist for examining a cheque for information that can be used to identify, individualise and trace the perpetrator.

The research questions of this research are the following:

- What is forensic investigation?
- Could a cheque be a source of information to identify, individualise and trace a perpetrator?
- Could a checklist be developed from a cheque to assist in identifying, individualising and tracing the perpetrator?

I give permission to be interviewed and that the information I supply could be use in the research:

#### A. Historical Information

1. Are you an investigator?
2. For how many years are you involved in investigations?
3. In what crimes do you specialised?
4. For how long have you been in this field?
5. Specify your tertiary qualifications?
6. What is your current status of employment?
7. Where is your current status of employment?
8. Did you undergo any training in the investigation of crime?
9. Specify the training you referred to in question 8.
10. Did you receive any training in the examination of a fraudulent cheque?

B. Forensic Investigation

11. What does forensic investigation mean?
12. What is the purpose of forensic investigation?
13. What are the objectives of forensic investigation?

C. Identification

14. What is meant by identification?
15. What is the purpose of identification?
16. What is witness identification?
17. What is victim identification?
18. What is imprint identification?
19. What is origin identification?
20. What is action identification?
21. What is cumulative identification?

D. Individualisation

22. What is individualisation?
23. What is the difference between identification and individualisation?

E. Fraudulent Cheque

24. What is the Locard principle?
25. What is a cheque?
26. What is a fraudulent cheque?
27. Could a fraudulent cheque be a crime scene?
28. What are the elements of fraud?

F. Information

29. What information on a cheque can identify the perpetrator?
30. What information on the cheque could individualise the suspect?
31. What information on the cheque can assist in tracing the perpetrator?