

The National Companies and
Securities Commission

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Mr Lawrence Robert Connell, who was until recently Chairman of Directors of Rothwells, in evidence in the Supreme Court of Victoria claimed that the National Companies and Securities Commission had undertaken not "to take or recommend the taking of any action in respect of events prior to 27 November 1987 against Rothwells Limited ("Rothwells"), myself or my companies, LR Connell & Partners (the partners in which are myself and my wife), or any of their officers or employees and not to continue or open investigations of any such matters in respect of them".

27 November 1987 is the date of the infamous Rothwells bale out.

In response, Mr Schoer of the National Companies and Securities Commission (NCSC) contended that the undertaking not to investigate was "conditional". Mr Schoer now states in sworn evidence that he is concerned "that if the Commission is enjoined from taking action...in relation to events prior to 27 November 1987 that serious offences may not be discovered".

It seems that the NCSC regards the undertaking to stay its hand to be void because of new evidence coming to hand that indicated prejudice to third parties. The Commission is now aware that the rescue document "materially overstated the value of the loan portfolio and the value of the investments held by Rothwells", "that Rothwells continued to accept deposits from the public, frequently and on an unsecured basis" and "from preliminary investigations that approximately \$45 million of this [Mr Connell's] supposed contribution to the capital base of Rothwells was in fact borrowed from Rothwells itself through intermediate companies".

What if Rothwells had not voided the agreement? According to the NCSC deposition, this was what the NCSC thought the state of affairs was at the time the State Government lent its name and our money to Rothwells: "In mid 1987 the Commission received information that the price of shares in Vital Technology Limited (Vital) was likely to be manipulated. It was suggested that Rothwells would be involved in procuring

purchases of the shares by its associates with a view to raising the price of shares in Vital....As the investigation progressed it became evident that similar activity probably occurred in relation to other companies, beside Vital, in which Rothwells had an interest".

"...in about September 1987 I asked Commission officers to concentrate their investigations into whether Rothwells...was acting efficiently, honestly and fairly."

Yet the NCSC agreed not to proceed! The reason proposed by Rothwells' lawyer, and apparently accepted by the NCSC, for not proceeding, in the words of Mr Schoer, was that "if outside inspectors were seen at Rothwells this would lead to a collapse of confidence and withdrawal of funds by depositors which Rothwells would have been unable to meet".

If the role of the NCSC is not to ensure that people like depositors are acquainted with the facts, what the devil IS its role? If the public had known what was going on, could Rothwells have "continued to accept deposits from the public, frequently on an unsecured basis"?

Appearing before a Joint Select Committee of the Federal Parliament, on February 2, Mr Bosch, who is chairman of the NCSC, said, "We have made it absolutely clear that we are for an informed market and that we have no interest in covering up the secrets of those we investigate". In view of what Mr Schoer said in his deposition to the Supreme Court of Victoria, what mind-boggling hypocrisy!

Mr Bosch also said this to the Select Committee: "I would like you to note particularly that we are completely independent of political pressure. I cannot think of an occasion when it has even been tried, but I assure you that if it was, we would take no notice of it". Mr Bosch must be taking a very narrow view of political pressure. When officers of the NCSC agree, on request, not to continue investigations during a political rescue how can they not have been subject to political pressure? Just by knowing about the terms of the rescue they came under intense political pressure. Would the NCSC have given an undertaking to a company which it suspected of jacking up a share price that was not closely associated with a State Government?

About the investigation of another WA Inc. affair, the alleged collusion between Bond and the State Government Insurance Commission, Mr Bosch said in evidence to the Select Committee that, "the Western Australian Government was never involved at any time in those matters, except that I suppose on two or three occasions I let the Minister know by telephone what we were doing". For Pete's sake! It was a State Government agency that was being investigated and Mr Bosch had a little telephone tete-a-tete with a member of the relevant government! If it were my duty to let someone whom I was investigating know just what I was doing, I would do so in writing. Then no one could say that I said a word more than was necessary or, what could be worse, accuse me of yielding

to a request made by the Minister. Mr Bosch did not say whether the Minister undertook not to pass on the conversations to SGIC personnel.

In such circumstances, how could any public agency not experience political pressure? In fact, before the Select Committee, Mr Bosch himself had this to say about the Rothwells event: "...in October 1987 we were at a late stage of investigation of a market manipulation antic. The Western Australian Government drew our attention to the fact that it was carrying out a rescue that might run onto the rocks if our investigation went public at that time. So what we said was, we are prepared to settle in the normal way. You give us what we want and we won't say anything public about it".

The NCSC did not just settle in the normal way---it also agreed, however conditionally, not to enquire further. It received a request from politicians to keep the public in the dark---and it agreed. Mr Bosch denies that the lack of action in those circumstances constitutes yielding to political pressure.

I leave the reader to judge, but observe that, if the NCSC cannot act without fear or favour, and be seen to do so, then the sooner it is wound up the better.

ENDS