

Action is good but speed would be better

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Anthony Scilipoti remembers scouring the books of **Royal Group Technologies**. Something didn't add up. It didn't make sense.

The building products company was spending hundreds of millions of dollars on new plants and equipment. Yet the reported expenses seemed low and the profit margins were suspiciously fat. The boardroom governance seemed suspect, too. Vic De Zen, the chairman, chief executive officer and controlling shareholder, appeared to have absolute power.

But this was 1999, and **Mr. Scilipoti**, an accountant and analyst, still had no inkling of the secret real estate deal that had already gone down, in which Mr. De Zen and his associates allegedly sold land to Royal Group at an inflated cost.

That transaction has now landed Mr. De Zen and three other former Royal Group executives in criminal court.

Ten years from the alleged fraud to the laying of charges. Ten years, and who knows how many more will pass before Mr. De Zen & Co. are tried?

Based on the history of white-collar prosecutions in Canada, it will be a long time. The Livent trial began only last month, 5½ years after charges were laid against Garth Drabinsky and Myron Gottlieb and nearly a decade after their company collapsed, insolvent.

What takes so long?

Why is it that, in the same week that FBI agents are scooping up two Bear Stearns managers over their role in a hedge fund collapse that happened last summer, our Mountie gumshoes are finally getting around to dealing with stuff that happened in another century? They were busy, mind you, for as complicated as the Royal Group case might have been, it was first-grade arithmetic compared to the **Nortel Networks** accounting scandal. The RCMP yesterday outlined criminal charges in that case, too, against three former Nortel executives, including ex-CEO Frank Dunn, for allegedly cooking the books in 2002 and 2003.

"Let's call it bittersweet," said **Mr. Scilipoti**, executive vice-president at **Veritas Investment Research** in Toronto, whose firm's reports were used by class-action lawyers in both the Royal Group and Nortel cases.

"Finally we're seeing some attention, some action, on the part of regulators on behalf of investors. But it's sad that it took this long."

Sad is one word for it. Frustrating might be another. But it's also unnecessary. The U.S. criminal justice system may be different, but the burden of proof is the same - the prosecution must prove guilt beyond a reasonable doubt. Yet, somehow, the Americans still manage to finish highly complex corporate fraud cases in less than a decade.

No one can say that the Enron accounting fraud wasn't mind-numbingly complicated. But within five years of the energy giant's 2001 descent into bankruptcy court, most of the minor characters had pleaded guilty and ex-CEOs Ken Lay and Jeff Skilling had been convicted on most charges.

(Mr. Lay died soon after; Mr. Skilling is serving a prison sentence of 24 years, four months.)

"My perception is it's a question of priorities and resources," says Luis Sarabia, a partner at Davies Ward Phillips & Vineberg who has worked on a number of international fraud cases.

"In the U.S., they have an incredible case management system that can speed cases like Enron ... There's no reason why we couldn't do it [as quickly] here, if we had the resources."

In short: We have a history of being soft on corporate bad guys. Provincial attorneys-general traditionally don't spend much effort on financial crimes; most such cases are handled through the securities commissions, notoriously weak in this country. Not until 2003 - after Livent, Philip Services, YBM Magnex and, worst of all, Bre-X Minerals, and scores of other, smaller alleged stock market scams - did the RCMP set up its first specialized unit for capital markets crime. And while yesterday's charges will take some of the heat off the cops, "I don't think we should be fooled into thinking we have a system that's working really well," says Anita Anand, associate dean of the University of Toronto's faculty of law.

Justice delayed is justice denied for investors, but also for the accused. Frank Dunn can't do what, for example, Frank Quattrone, the famous Wall Street investment banker, has done, and restart his career. Six-and-a-half years after the alleged fraud at Nortel began, Mr. Dunn has finally been charged. But in a 6½ -year period, Mr. Quattrone was investigated, charged with obstruction of justice, tried *twice*, and exonerated. Now he has opened a new firm in the Silicon Valley.

Not that we should shed any tears for Mr. Dunn (Nortel shareholders certainly won't). Whether he and his co-accused are guilty or not, a grand old Canadian company spent several years mopping up the mess created on their watch. Nortel has only recently been able to move on from the post-Dunn era of paralysis. The Royal Group saga ended in tears, too; shareholders accepted a buyout in 2006, but by then, their investment was worth about one-quarter of what it had been at the peak in 1998, when that funny land business was going on.

Corporate crime is not victimless and Canada's past failure to deal with it - even its *perceived* failure to deal with it - carries an economic cost. Our reputation as a haven for corporate scoundrels and scam artists is a stain that has built up over many years, and it's going to take years to get rid of it.

Even a string of guilty verdicts in the Nortel and Royal Group cases will not be enough to do it.

But it would be a start.