Verdict recasts sordid history of Nortel Networks

Theresa Tedesco | Jan 14, 2013 3:07 PM ET | Last Updated: Jan 14, 2013 11:16 PM ET

More from Theresa Tedesco | @tedescott

Chris Mikula / The Ottawa Citizen Not only did the Crown not meet the high standard of proof required in a criminal proceeding, according to Justice Frank Marrocco, he wasn't buying the prosecutor's storyline either.

-
- Twitter
- Google+
- LinkedIn
- Email

- Comments
- More

Amid the millions of documents put forward as evidence during the six-month criminal trial against three former executives of now-defunct Nortel Networks Corp., the presiding judge saw “badges of innocence,” not “road maps to a fraud.”

Ontario Superior Court Justice Frank Marrocco weighed the evidence — four million documents worth — through a criminal law lens, he said Monday, not just whether millions of dollars in excess accrued liabilities that found their way onto Nortel’s balance sheet contravened conservative accounting practices.

> The burden [of proof] in my view was not met

The versions of events put forward during Canada’s largest white-collar criminal trial were vastly different.

The Crown claimed Frank Dunn, Nortel’s former chief executive, and two members of his senior finance team orchestrated an elaborate accounting fraud that ultimately led to the decay at the iconic telecommunications equipment maker. For their part, Mr. Dunn, Michael Gollogly and Douglas Beatty argued any financial sleights-of-hand were mistakes — not fraud — made during a frenetic and turbulent company-wide restructuring.

Darren Calabrese/National PostDoublas Beatty (left), Michael Gollogly (centre) and Frank Dunn (right) were accused of orchestrating an elaborate accounting fraud.

Justice Marrocco agreed with the latter and acquitted the disgraced executives on two counts each of criminal fraud.

“The criminal trial is based on evidence,” he told the Toronto courtroom. “The decision I make is based on that evidence and nothing else.”

The judge’s mantra — “I am not satisfied” — became the preamble to his verdict. “The burden [of proof] in my view was not met. The charges are dismissed,” he announced in court.

Not only did the Crown not meet the high standard of proof required in a criminal proceeding, according to Justice Marrocco, he wasn't buying the prosecutor's storyline either.

Related

- Without a smoking gun, Nortel fraud case was legal suicide
- Nortel executives found not guilty on all counts of fraud

He wasn't persuaded at all by the Crown's argument that Nortel's former top three executives fraudulently manipulated Nortel's earnings in 2002 and 2003 to inflate profits and trigger millions in bonuses for themselves and other senior executives.

In his 141-page written decision, Justice Marrocco said he was "not satisfied beyond a reasonable doubt" that the trio had "deliberately misrepresented" financial results.

Furthermore, not only did he take issue with most of the accounting explanations presented by the prosecution during the trial to allege fraud, the judge also rejected the accounting interpretations upon which Nortel's blue-chip board of directors — including John Cleghorn and Red Wilson — decided to fire the CEO and his senior finance team in 2004.

With that, Justice Marrocco put forth a troubling indictment of what transpired inside the Canadian giant following the bloodbath from the global meltdown in telecom markets when Nortel was scrambling to shore up the balance sheet and win back the confidence of shell-shocked investors who watched their shares plunge to $3 from $124.50 a year earlier.

The unceremonious exit of Messrs. Dunn, Beatty and Gollogly amid a high-profile accounting scandal nine years ago set in motion a downward spiral from which the company never recovered.

In the aftermath of the firing, Nortel needed a turnaround specialist as CEO, but instead Bill Owens, a former admiral and member of the U.S. Joint Chiefs of Staff with limited experience in the business, was installed to stabilize a company many thought wouldn't survive the scandal. That would prove costly.

Mike Zafirovski, a former Motorola Inc. executive, followed in 2005, inheriting a company in a free fall, whose $15-billion market value had evaporated to $160-million by the end of 2008.

During this time, Nortel repeatedly delayed its audited financial statements and restated results four times from 2003 to 2007.

In the end, the accounting scandal, deep cutbacks, a weakened market that was changing rapidly and profoundly, no government bailout and no private-sector saviours all worked against a Nortel comeback.

Coincidentally, Monday's acquittals marked the fourth anniversary when Nortel sought protection from its creditors through the courts in Canada, the United States and the United Kingdom on Jan. 14, 2009, setting in motion one of the most complex legal proceedings, and eventual liquidations, in history.

Clearly, this was not lost on Justice Marrocco. Before delivering his verdict, the judge acknowledged that his role was limited to overseeing the criminal case, and that he was "not responsible for the other things going on" involving Nortel.

Down the street from his courtroom, Ontario Chief Justice Warren Winkler assembled with dozens of beleaguered Nortel stakeholders — bondholders, suppliers, despondent pensioners, and former employees — and their representatives to begin a week-long mediation in a Toronto hotel to haggle over how to carve up $9-billion to $10-billion in assets remaining from the sale of the company's assets.

Meanwhile, the only people making money during Nortel's sunset years are the professional advisors — an estimated $630-million has been paid to lawyers, accountants, consultants and investment bankers staking claims to the carcass on behalf of clients since 2009.

Justice Marrocco's verdict attempts to exonerate the much-maligned former Nortel executives, who publicly became emblems of the company's spectacular flameout. Even so, the criminal acquittals failed to yield closure to the Nortel saga. Instead, by rejecting the reasons for their dismissals, the judge has recast the sordid history of the company's demise.