
INSIDER TRADING - CHINESE WALLS FOR BANKERS**QUESTIONS AND ANSWERS****Question - Richard Youard:**

Can I ask Elspeth a question? You talked about reversing the onus of proof. It offends me utterly as a liberal but as an investigator with my magnifying and my deer stalker I would dearly love to have the onus of proof reversed because I can see one or two situations building up where there was a certain fact known to somebody one day and he immediately dealt. Now we know from looking at the share register in tracing dealings thanks to computers that somebody else who had not dealt for months before and did not deal for months afterwards just happened to make a sudden purchase that day and only two other people did and they were both in the know. Now if I go to that guy and say "Why did you do it?" he is going to say "Well, you know, it is a funny thing. I was just lying in my bath that morning ...". And there is no way that I can prove that he knew. But common sense indicates that if somebody who has never dealt before effectively and did not deal afterwards and it just happened to be on that one price sensitive day that somebody said something to somebody. Now if I had the onus of proof reversed that would be fun. The black market would be buzzing round within seconds.

Response - Elspeth Arnold:

I think one of the major criticisms that have been made of the existing situation in Australia is that the Commission just isn't enforcing the existing laws and certainly reversing the onus of proof may make the Commission's task a lot easier. But there has been a great deal of opposition to reversing the onus of proof, quite understandably and at this stage I am not sure what position the Commission will adopt on that.

Question - Greg Burton:

The question related to difficulties in the movement of personnel between law firms.

Response - Roland Brandel:

In answer to the first question, yes. If you are separately incorporated that ought to solve your problems because the issue we are talking about when we talk about the attribution

principles has to do with attribution within the body, the entity, which is in most instances the corporation.

The second question on movement of personnel in the law firm context is a problem and there are some principles with regard to the movement of personnel into and out of government with regard specifically to the creation of Chinese Walls and the ability of law firms to undertake representation before agencies etc. from which one of the partners may recently have come. That partner will be forbidden from engaging in that representation in any way. With regard to whether there will be attribution of knowledge that might have to do with a conflict - I have got to tell you that that problem exists and exists in a very major way, and I am simply trying to remember how we deal with it on a very personal level because I do not think that there are any legal principles that I know about that would protect us in any way. What I think we do is simply isolate that person (I am using another word for the creation of a Chinese Wall) but I know of no legal principle that would protect us if that practice were challenged and if we were alleged to be acting improperly with regard to the continued representation of a client in spite of having had a person recently join us with information that could prove detrimental to someone else. I do not know if that is a very helpful answer. I guess I am telling you that we are struggling with that latter issue right now in a major way in the US.

Comment - Richard Youard:

Roland, isn't it worth emphasising that incorporation only helps with regard to attribution and that no amount of legal jiggery pokery like that will help when the case is simply a question of who said what to whom. It is only when you get a notional situation, attribution, that organizational barriers will make a difference.

Response - Roland Brandel:

That is fair enough and correct.

Question - Cathy Walter (Clayton UTZ):

A question for Robert Heathcote on the conflict of duty question. You worried me when you said your position would have been different had Equiticorp Tasman told you or your partner - whoever was acting for them - of their plans because you would then have had to have sent both away without explanation. If that had happened and if you had done that, wouldn't the very fact of your having sent them both away say something to Bell as to what Equiticorp Tasman were up to?

Response - Robert Heathcote:

The answer to that is in part yes. It would not have told Bell what Equiticorp were up to because we would have given no

explanation and they would not have been aware, unless the daily press picked up the fact, that at the time that we indicated we could not act further for Bell we came to the same decision in relation to Equiticorp Tasman. In part the answer is yes but that is really the lesser of two evils because in a situation that I described we take the view that there is a clear conflict of duty and that cannot be ignored and there is no satisfactory answer to that other than to recognise the conflict and to cease to act. To have continued in that situation to act for Bell we would clearly then have remained in breach of our duty to Bell and that would be an intolerable situation. I think the true answer probably lies in what Richard has described as a policy of his firm and I might say it is a policy of ours too but we are all wise after the event and that is to be ever conscious of potential conflict of interest and to avoid those conflicts arising.