

# Nortel Compensation Claims Process Webinar

September 22 and 30, 2011

**KOSKIE  
MINSKY<sub>LLP</sub>**  
BARRISTERS & SOLICITORS



# Agenda

1. Background
2. What is the Compensation Claims Process?
3. Developing the Compensation Claims Process
4. Compensation Claims Procedure
5. Compensation Claims Methodology – Valuing Your Claims
6. What Happens Next

# Background

NORTEL FILES FOR CCAA PROTECTION  
JANUARY 14, 2009

All supplemental pension benefit,  
severance and transitional retirement  
payments stopped.

PENSION PLAN WIND-UP  
OCTOBER 1, 2010

All pension contributions stopped  
September 30, 2010

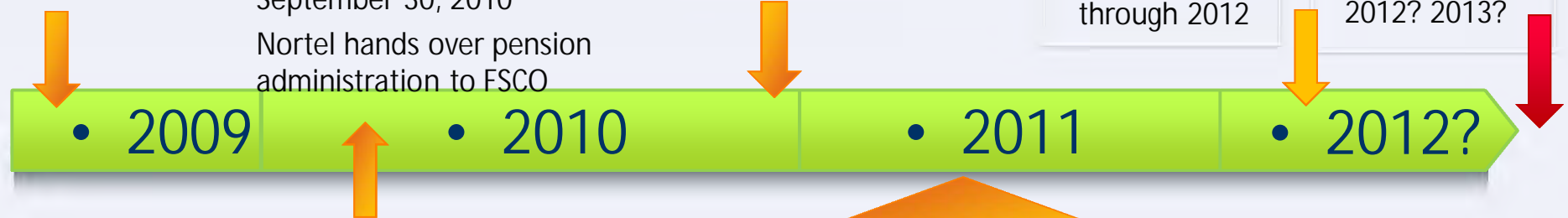
Nortel hands over pension  
administration to FSCO

ALL BENEFITS STOPPED  
DECEMBER 31, 2010

All benefit coverages and  
payments stopped; LTD  
employment terminated,  
alternate health plan  
(Manulife).

COMPLETION OF  
COMPENSATION  
CLAIMS PROCESS  
Will continue  
through 2012

DISTRIBUTION  
ON CLAIMS.  
2012? 2013?



SETTLEMENT AGREEMENT  
MARCH 2010

Nortel's contribution to pension plans  
continue to September 30, 2010;  
medical and dental coverage and LTD,  
SIB, STB payments continued to  
December 31, 2010; Termination  
Fund payments

NEGOTIATION AND FINALIZATION  
OF CLAIMS COMPENSATION  
PROCESS

JANUARY-SEPTEMBER 2011

All court-appointed representatives,  
counsel and advisors engage in  
negotiation with Monitor and Nortel.

DETERMINATION OF  
ALLOCATION OF ASSETS  
Timing uncertain  
Mediation in 2011?  
Arbitration?  
Court?

# Background

- January 14, 2009, Nortel and all of its subsidiaries filed for creditor protection under the Companies' Creditors' Arrangement Act ("CCAA").

# Background

- Representatives were appointed by the Court:
  - **Former Employees**, including pensioners and surviving spouses in receipt of a Nortel pension, and former unionized employees other than those that retained the CAW: **Don Sproule, David Archibald, and Michael Campbell.**
  - **Disabled Employees**, including employees of Nortel not working due to illness or injury, and in receipt of Long Term Disability benefits: **Susan Kennedy**
  - **Current Employees**, including those still working for Nortel, and those who have transferred to a buyer post-CCAA filing.

# Background

- In 2010, the various employee and former employee representatives entered into a Settlement Agreement relating to:
  - Nortel's registered pension plans;
  - Certain employee benefits; and
  - employment-related issues.
- The Settlement Agreement:
  - Continued payment of benefits to pensioners and LTDs to the end of 2010;
  - Pension contributions to September 30, 2010;
  - confirmed that claims to the HWT ranked as ordinary unsecured claims; and
  - released directors, officers, trustees and others from all direct and indirect claims related to the HWT.

# Background

- Under the Settlement Agreement, eligible terminated employees received payments from the Termination Fund – these payments will be deducted from their Compensation Claims amount
- The Court also approved an allocation of the HWT; interim distributions have been made to beneficiaries – these distributions will be deducted from their Compensation Claims amount

## 2. What is the Compensation Claims Process?

- There are approximately 20,000 employees, former employees, pensioners and their survivors, and LTD Beneficiaries that may have employment-related claims (i.e. non-registered pension claims) against Nortel under its various compensation and benefit programs.
- Valuing the various claims is an enormous and complicated task.
- Normally, “Call for Claims” – all creditors file claims with the company.
- **The Compensation Claims Process is different from the norm. This process has been used successfully in other insolvency proceedings. It is an agreed-upon methodology for the calculation of compensation claims and a streamlined process to deal with them.**
- **Without the benefit of this process, employees would have to value their own claims as well as engage their own advisors (including actuarial advisors) for assistance.**



# What is the Compensation Claims Process?

- Kinds of Claims:
  - Termination and severance pay;
  - Medical/dental benefits;
  - LTD income benefits;
  - Life insurance;
  - RAP/TRA benefits;
  - Patent awards;
  - Supplementary pensions;
  - Survivor Income Benefits (SIB/STB)

**NOT PENSIONS FROM NORTEL REGISTERED PLANS**

# What is the Compensation Claims Process

Estimated Total Compensation Claims  
(exclusive of registered plans)

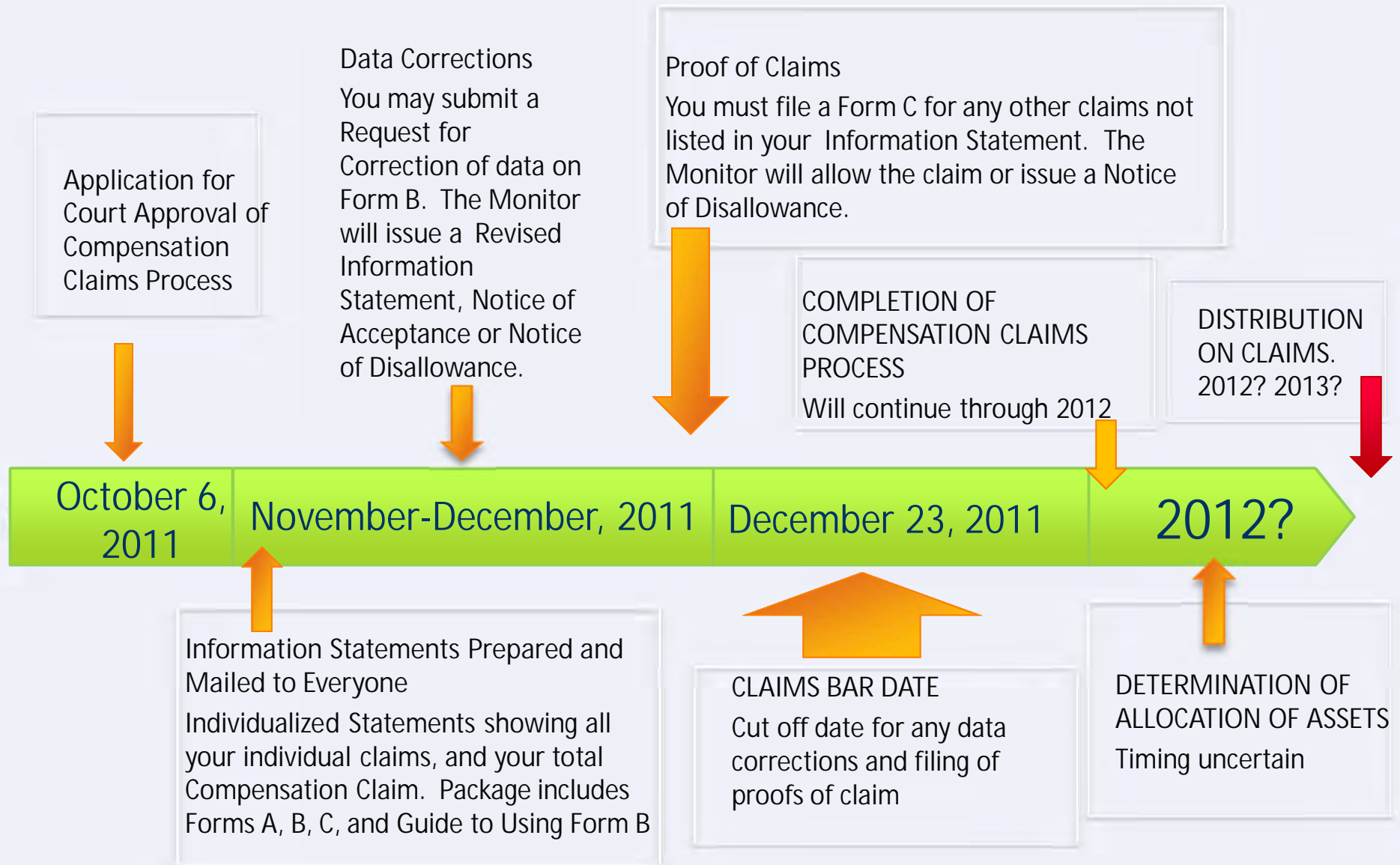
	Millions
Non-Registered Pension and TRA/RAP Benefits	\$268.5
Life, Health, LTD/SIB	\$629*
Termination and Severance	\$163.6
<b>TOTAL</b>	<b>\$1061.1</b>

\*Subject to reduction after HWT payout (est. \$72 million)

# What is the Compensation Claims Process?

- First Step in implementing the compensation claims process: Motion for Court Approval of the Procedure and Methodology on **October 6, 2011** at 361 University Ave. in Toronto, 10:00 a.m.;
- This webinar is to provide an overview of the procedure and methodology in advance of the court approval motion.

# What is the Compensation Claims Process?



# 3. Developing the Compensation Claims Process

- Involved the active engagement of key stakeholders:
  - Former Employees' representatives;
  - LTD Beneficiaries' representative;
  - Continuing Employees' representatives;
  - CAW;
  - the Monitor; and
  - Nortel.
- Plus participation of legal, actuarial and financial advisors for all parties.

# Developing the Compensation Claims Process

- The Monitor and Nortel worked with their counsel and advisors to:
  - review Nortel records to identify employees with contracts, including former employees with contracts related to termination of employment;
  - review obligations under Nortel employment policies, and compensation and retirement programs;
  - identify potential compensation claims and consult with Mercer;
  - for all claims, consider Nortel's policies and practices, the nature and quantum of claims, and the legal bases of all claims.
- **All in consultation with the Representatives and their counsel and advisors.**
- The Representatives asserted claims, and participated in extensive discussions and negotiations concerning the basic principles of the Compensation Claims Methodology. The actuarial assumptions have all been discussed and agreed as between Mercer and Segal.

# Developing the Compensation Claims Process

- The Representatives were provided with draft materials for comment at a number of in-person and telephone meetings, including:
  - consulting on the design and content of individualized Information Statements;
  - reviewing and revising “mock ups” of the materials prepared for a sample group of consenting individuals;
  - analyzing, reviewing and refining documents through the evaluation of “test runs” for a sample group of consenting individuals; and
  - ensuring that all underlying actuarial assumptions were accurately reflected in the determination of employee claims.

## 4. Compensation Claims Procedure

- Information Statements for each individual will be prepared by the Applicants with the assistance of Mercer and the Monitor, using court-approved methodology.
- Statements will be tailored for each person and will tell you:
  - The amount of your claim, including the amount of each claim e.g. loss of benefits, severance etc.
  - Your personal data on which the claim is based;
  - How you can make corrections to your data; and
  - How to make claims for any missed items.



# Compensation Claims Procedure

Information Statement Will Have 3 Main Parts:

- **Form A** - Compensation Claim Amount, broken down into parts and personalized to you, for example:
  - Termination and Severance Claim amount;
  - Benefit Claim amount
  - Patent Claim amount
- **Form B** - Personal information Change Form:
  - Sets out personal information as at December 31, 2010 used to determine compensation claims amounts
  - Contains column for employee to correct data
- **Guide to Using Form B:**
  - Detailed explanation of the data points, and description of documents that may verify the data points.

# Compensation Claims Procedure

## Requests for Corrections To Data

- If your data is wrong, you will have a chance to correct it.
- Any corrections to data must be made in Form B, signed, and submitted to the Monitor with supporting documents before December 23, 2011;
- Monitor will review and consider all Requests for Correction, and may accept or reject them, in whole or part;
- If the Request for Correction is accepted:
  - and it changes your Compensation Claims amount, a Revised Information Statement will be prepared by the Monitor and sent to you;
  - and it does not change your Compensation Claims amount, the Monitor will send a Notice of Acceptance advising that the information has been changed, and your Compensation Claim amount has not changed.

# Compensation Claims Procedure

- Where a Request For Correction is rejected, the Monitor will send a Notice of Disallowance.
- A Notice of Disallowance may be appealed.
- No appeal of the methodology – calculations in accordance with the methodology cannot be challenged.

# Compensation Claims Procedure

## Proof of Claim Process (**FORM C**):

- An individual Proof of Claim must be filed if an employee believes she or he has any *other* claim against Nortel or the Directors for amounts owing in his or her capacity as an employee or beneficiary under a benefit plan that is *not included* in his or her Form A.
- A union must file a Proof of Claim if an employee believes he or she has a grievance against Nortel under any collective agreement for monetary compensation that is not covered in Form A.

**Proofs of Claim (other than for active employees) must be filed by December 23, 2011.**

# Compensation Claims Procedure

- The Monitor will review all Proofs of Claim, and may:
  - request additional information; and
  - either accept or disallow the claim, by sending a Notice of Disallowance

# Compensation Claims Procedure

- Within 28 days of receiving a Notice of Disallowance, the individual or union must file a Notice of Dispute if they intend to dispute it. After filing a Notice of Dispute, the Monitor:
  - may attempt to consensually resolve the amount of the claim with the individual or union; or
  - may refer the dispute to a Claims Officer for determination; or
  - may bring the dispute before the Court for determination

## 5. Methodology: Valuing Your Claims - “Actuarial Present Values”

- Claims for the value of lost benefits (e.g. those on slide 9) are difficult to quantify. Replacement benefits cannot be readily “purchased” in the open market.
- The most common method involves determining the actuarial present value of what you have lost.
- There are two basic concepts – probability and present value. We will discuss each of them in turn, and show you how they affect your claim.

# What are Actuaries?

- Actuaries are experts in the mathematics of risk and insurance.
- Mercer is the actuarial firm used by Nortel. They will calculate the amount of your claim.
- The Segal Company is the actuarial firm selected by your representatives to assure you that Mercer does the calculations fairly and correctly.



# Five Important Points

- You will *not* receive a cheque for the amount of your claim – only for the part of it that can be paid from the Canadian Nortel estate.
- Your claim amount will also be reduced by any amounts you have received or will receive from the HWT and the Termination Fund.
- Your *distribution* will be reduced by any amounts you have received from the Hardship Fund.
- You cannot do the math yourself. The calculations are complex and involve specialized actuarial computer models and many underlying assumptions.
- Your responsibility is to make sure that your personal data is correct so that the correct claim is calculated for you.

# Probability

- “Probability” is the chance of a specific event happening.
- The probability of a coin flip coming up heads is 50% (1 out of 2). The probability of 24 heads in a row is about one out of 17 million.
- Projecting the probability of things like mortality (how long you live) or future interest rates are key factors in calculating your claim.

# Present Value

- Present value is the amount needed today that, with interest, will equal an amount in the future.
- Using 3% interest, \$1,000 ten years from now has a present value of \$744. That is, if you put \$744 in an account that gave you 3% compound interest, you would have \$1,000 in that account ten years from now.
- Using 5% interest, the present value would be \$614. At 10%, the present value would be \$386.

# Actuarial Present Value

- The actuarial present value of an amount (i.e., the claim amount) takes every age from present age onward, determines what would be paid at that age, multiplies that by the probability that the amount will be paid at that age, and then multiplies that result by a present value factor for the number of years from your present age to each calculation age.

# Life Insurance Example

- Assume a 3% interest rate and a life insurance policy that pays \$50,000 for death this year, \$40,000 next year, and 30,000 for the following three years, after which the life insurance stops altogether. Of course, Nortel retiree life insurance continues until death, but this example is simpler and illustrates the principle.
- Assume the probability of dying is 1 in 500 in the first year, 1 in 450 in the second year, 1 in 400 the third year, 1 in 350 the fourth year, and 1 in 300 the fifth year. After that doesn't matter, because there is no benefit payable.

# How the Math Works

- Year 1: \$50,000 face amount times 1/500 probability of dying times 1.0000 present value factor = **\$100**.
- Year 2: \$40,000 x (499/500 x 1/450) x .9709 = **\$86**
- Year 3: \$30,000 x (499/500 x 449/450 x 1/400) x .9426 = **\$70**
- Year 4: \$30,000 x (499/500 x 449/450 x 399/400 x 1/350) x .9151 = **\$78**
- Year 5: \$30,000 x (499/500 x 449/450 x 399/400 x 349/350 x 1/300) x .8885 = **\$88**
- **Total claim = \$100 + \$86 + \$70 + \$78 + \$88 = \$422**
- Note that most life insurance claims will be quite small compared to your amount of insurance.

# Medical Benefit Claims

- Claims calculations for medical benefits are highly complex because actuaries have to estimate what each type of claim (e.g., prescription drugs) will cost on average for each calendar year at each age before and after payments by provincial plans.
- Average costs are used for everyone who is a particular age in a particular year. Whether you've had high or low claims in the past makes no difference.
- Family or single coverage matters somewhat, as do province of residence and age.
- Medical benefit claims tend to be higher than life insurance claims because the probability applied is that you are alive (which is usually much higher than the probability that you will die).

## **Other Claims (such as supplemental pensions, TRA, LTD income)**

- The process is the same. The claim is an actuarial present value.
- Indexing is included in the calculation if required by the plan.
- Probabilities of death are included in the calculation, except for a benefit that is payable whether you live or die.
- Survivor benefits are included in the calculations where the plan provides for them.



# Actuarial Assumptions

- The various factors for probabilities and interest rates were settled in discussions between Mercer and Segal based on actuarial practice. Mortality and interest rate assumptions were derived from the assumptions used to compute transfer values under provincial pension laws. Other assumptions were agreed to by the actuaries, consistent with acceptable professional practices.
- Certain claims also include a “gross-up” factor of 10% for potential income tax effects for getting a lump sum today compared to monthly payments over a period of time.
- Tax gross-up does not apply to medical benefits or LTD income benefits, as distributions on them from Nortel are non-taxable, but there is a 10% gross-up adjustment on medical and dental claims to reflect the cost of replacing them.

# Five Important Points(Again)

- You will *not* receive a cheque for the amount of your claim – only for the part of it that can be paid from the Canadian Nortel estate.
- Your claim amount will also be reduced by any amounts you have received or will receive from the HWT and the Termination Fund.
- Your *distribution* will be reduced by any amounts you have received from the Hardship Fund.
- You cannot do the math yourself. The calculations are complex and involve specialized actuarial computer models and many underlying assumptions.
- Your responsibility is to make sure that your personal data is correct so that the correct claim is calculated for you.

# Termination and Severance Claims

- Two Groups:
  - Employees who were terminated before CCAA filing and received a termination package:
    - Claims will be the amount outstanding in the severance agreement, and in accordance with agreed upon methodology.
  - Employees who were terminated after CCAA filing.
    - Claims will be in accordance with agreed-upon methodology

# Termination and Severance Claims (Post Filing Terminations)

- Terminated employees are entitled to a claim for severance benefits as compensation for not being provided with adequate notice prior to their termination;
- In prior insolvency proceedings, these claims have generally been based on the greater of company policy and what is provided for under provincial employment standards legislation. Nortel was somewhat more complicated as it did not have a documented severance policy;
- Representatives reviewed:
  - a sample of termination letters provided to former employees prior to the commencement of insolvency proceedings;
  - Nortel's employment benefits over the past five years; and
  - provincial employment standards;

# Termination and Severance Claims (Post Filing Terminations)

- Based on this review and after extensive negotiations with the Monitor and Nortel we agreed that the Severance claim would be calculated as follows:
  - 3.3 weeks of severance for every year of service with a minimum severance of 8 weeks and a maximum of 78 weeks;
  - An addition of 5.14% to account for fringe benefits that would be earned during the entire severance period; and
  - a vacation pay accrual for the ESA minimum notice period;

**The total claim amount will be reduced by any payments you may have received from the Termination Fund.**

**Payments from the Hardship Fund will be deducted from distributions.**

## 6. What Happens Next

- Application for Court approval on October 6, 2011;
- Preparation and mailing of Individual Information Statements
- Post-approval webinars and roadshows (copy of schedule sent in Information Package, details of times and locations to be confirmed on [www.kmlaw.ca](http://www.kmlaw.ca) website)

# What Happens Next

WEBINAR			
Date	Time	Notes	
Nov. 10	10 am	Open to everyone	
	3 pm	Special session for LTD beneficiaries	
Nov. 11	2 pm	French Session	
ROADSHOW MEETINGS			
Date	Time	Location	Notes
Nov. 14	2 pm	Calgary	Open to everyone
	7 pm	Calgary	Special session for terminateds
Nov. 15	4 pm	Toronto	Open to everyone
Nov. 16	2 pm	London	Open to everyone
Nov. 17	1 pm	Belleville	Open to everyone
	7 pm	Kingston	Open to everyone
Nov. 21	2 pm	Ottawa	Open to everyone
	2 pm	Ottawa	Special session for LTD beneficiaries only, with simultaneous French translation
	7 pm	Ottawa	Special session for terminateds
	7 pm	Ottawa	Open to everyone, with simultaneous French translation
Nov. 22	2 pm	Montreal	Open to everyone, simultaneous French translation, focus on pensioners.
	7 pm	Montreal	Special session for LTD beneficiaries and terminateds, simultaneous French translation.
Nov. 24	2 pm	Toronto	Open to everyone
	7 pm	Toronto	Open to everyone