Nortel Retirees and former employees Protection Canada (NRPC)

# Plan Member Choices for the the Nortel Negotiated Plan (Reg 0587766)

Focus: ON and Pooled Provinces

# Part of a Communications Rollout

	ON and Pooled Focus	QC Focus (English)	QC Focus (French)
Webinar	Nov 26 @ 10:00	Nov 26 @ 1:00	Nov 27 @ 10:00
Town hall	Nov 30 @ 1:00 London	Dec 03 @ 9:00 Montreal	Dec 02 @ 9:00 Gatineau
u	Dec 09 @ 9:00 Belleville		Dec 03 @ 1:30 Montreal
u	Dec 10 @ 9:00 Toronto		Dec 04 @ 9:00 Montreal
u	Dec 10 @ 1:30 Toronto		Dec 07 @ 9:00 Quebec City
u	Dec 14 @ 9:00 Moncton		
u	Dec 16 @ 10:00 Calgary		
u	Dec 17 @ 9:00 Vancouver		

- The webinars / town halls are at the request of the NRPC
- Details are on the insert in your Options Letter and on the Koskie Minsky website

# Introductions

- Morneau Shepell
- Koskie Minsky
- Actuaries and Financial Advisors
- Unifor
- NRPC

# The Agenda

- Windup Choices: Morneau Shepell
- CCAA Status: Koskie Minsky
- Q&A
- Close and Thank-you's

# Housekeeping

- Q&A period at the end of each segment
- For town halls: Morneau Shepell, Koskie Minsky, and the actuaries and financial advisors are available at the end
- On the Koskie Minsky and NRPC websites
  - Presentations
  - Webinars
  - "Things to Consider"
    - One Page summary (also handed out at town halls)
    - More detailed chart deck
- The Morneau Shepell 1-800 line for Negotiated Plan Queries
  - **1**-877-392-2073



### **Nortel Negotiated Plan Windup**

Hamish Dunlop



# Purpose of the meeting

- To provide information to members of the Nortel Negotiated Pension Plan regarding their options on the settlement of the Nortel Plans.
- To update Nortel Negotiated Plan members on the wind up process.

### The Process so Far

- January, 2009 Nortel obtained creditor protection under the Companies' Creditors Arrangement Act (CCAA).
- October 1, 2010 The Superintendent of Financial Services appoints
   Morneau as replacement Administrator with a mandate to administer and wind up the Plan
- March, 2011 Superintendent orders the Plan wound up with an effective date of October 1, 2010.

### The Process so Far

- May 2011 Superintendent declares that the Pension Benefits Guarantee Fund (PBGF) applies to the Plan. An interim allocation of \$97 million is allocated from the PBGF into the Plan.
- August 2011 Pensions are cut back to an estimated funded ratio of 75% for Ontario service, and 57% for other provinces (later adjusted to 69% for Nova Scotia service).
- February 2012 Wind up report for the defined contribution portion of the Plan is approved.

### The Process so Far

- August 2012 Indexation increase of 3.65% implemented for non-Ontario, non-Nova Scotia service.
- January 2014 Wind Up Report filed with the Financial Services Commission of Canada (FSCO).
- September 2015 Wind Up report approved.
- November 2015 Option forms mailed out to members.

### The Plan

- As of the wind up date, the Plan had 7,915 members, almost 6,000 of whom were receiving a pension.
- The plan had members in every Canadian province, and was registered in Ontario with the provincial regulator.
- Unusually for a private sector plan, it had extensive indexing features.

### The Plan

- As of the wind up date (i.e. before any PBGF allocation) the Plan had assets of about \$760 million but liabilities of about \$1,280 million.
- The total deficit in the Plan was about \$520 million. A claim has been filed against the estate of Nortel for the deficit, but unclear when this will be settled.
- \$97 million received from PBGF in respect of guaranteed benefits.

# What Law applies to you?

- The Plan in registered in Ontario, so Ontario pension legislation applies to the administrative requirements for the wind up.
- However, benefits earned are governed by the legislation in the province where the member was employed – if you were employed in more than one province, this means different legislation applies to different portions of your benefit.
- The law of the province in which you terminated employment determined the options you have on wind up.

# What Law applies to you?

- Different provinces have very different pension rules on wind up, for example
- Ontario has a guarantee fund
- Ontario and Nova Scotia eliminate indexation.
- Most provinces require retirees to take an annuity, and permit deferred members to choose between a lump-sum payment or an annuity.
- Ontario & Quebec permit retirees to take a lump-sum.
- Quebec requires deferred members to take a lump-sum, and permits pensioners to transfer their entitlement to the Regie (retirement eligible deferred members as of the w/u date can transfer their lump-sum to the Regie).

# What Law applies to you?

- Unfortunately, like many companies, Nortel did not keep adequate records of members' province of employment. Recreating this data has been a major task for us.
- Finally, the Income Tax Act (ITA) also has rules related to the settlement of pension entitlements.

# **Asset Split**

- Assets were split pro-rata to liabilities into three pools
- Ontario
- Quebec
- All remaining provinces
- If you accrued benefits in more than one province, your pension may be paid for out of these different asset pools.

### **Cutbacks**

- Pensioners are entitled to receive their interim pensions calculated at the appropriate reduced rate as of the wind up date of October 1, 2010.
- We were only able to implement cutbacks effective in August, 2011, in the meantime pensioners had received 100% of their pensions.
- Most pensioners were therefore overpaid between Oct/10 and Aug/11.
- These overpayments were recovered by actuarially reducing remaining pensions.

### **Option Forms**

- Nortel members will have received either option forms (if they have an option) or a letter from Morneau indicating what will be purchased for them (if you have not received anything you should contact us).
- The options differ depending on your status and the province in which you terminated employment in Nortel.

# Pensioner Options (Includes pension-eligible in Quebec)

Option	Ontario	Quebec	Nova Scotia	Other Provinces
Indexed Annuity		X		X
Non-Indexed Annuity	X	X	Χ	X
LIF/LIRA Transfer	X	X		
Regie Transfer – Indexed		X		
Regie Transfer– non- Indexed		X		

# **Non - Pensioner Options**

Option	Ontario	Quebec	Nova Scotia	Other Provinces
Indexed Annuity				X
Non-Indexed Annuity	X		Χ	X
LIF/LIRA Transfer	X	X	X	X
Regie Transfer - Indexed				
Regie Transfer– non- Indexed				

### **Ontario**

- Ontario eliminates indexation on wind up, which results in an increase in the Plan funded ratio. This largely explains why the Ontario funded ratio (79.59%) is higher than in other jurisdictions.
- Ontario also has the PBGF, which guarantees basic pension benefits.
- Ontario also 'fixes' the funded ratio as of the wind up date, so the 79.59% funded ratio listed in the wind up report is the amount that will be paid out.

### Ontario – the PBGF

- The Pension Benefits Guarantee Fund (PBGF) applies to all pensioners as of the wind up date and all deferred members who combined age plus years of service equal 60 or more.
- The PBGF partially applies for all deferred pensions where the members age plus years of services is 50 or more but less than 60.
- In general, the PBGF guarantees that the first \$1,000 per month in pension is paid in full any pension in excess of \$1,000 is paid at the plan funded ratio, or 79.59%.

### **Ontario – Retiree Options**

- Ontario retirees have received option forms indicating that they can elect to either have a pension purchased for them (an annuity) or elect a lump-sum transfer from the Plan.
- For Ontario service only, the amounts listed on your option form are not estimates, they are the actual amounts that you will receive (however, timing of retiree lump-sums can affect amount).

### **Annuities**

- An annuity is a contract with an insurance company to provide you with a pension in the same form you were receiving from the Plan (e.g. Life-only, J&S 60).
- Annuities are guaranteed under the Assuris program the first \$2,000 per month of pension is guaranteed.
- If your pension exceeds \$2,000 per month, we will purchase 2 or more annuities to ensure that you have full Assuris coverage.

### **Annuities**

- Ontario annuities will be purchased last.
- The deferred annuity purchase does not affect you, as the purchase will not change your pension amount, just who deposits the pension into your account.

### **Retiree Life Income Funds**

- Ontario amended its pension legislation to permit Nortel pensioners who terminated employment in Ontario to transfer a lump sum to a Life Income Fund.
- The lump sum value is the commuted value of your pension on the wind up date, less any pension payments made to you since that date, plus interest.

### **Retiree Life Income Funds**

- A LIF is a registered account with a financial institution that must be used to provide retirement income.
- You are responsible for the investment of funds in your LIF.
- There are annual maximum and minimum payments that must be made out of a LIF.
- This pensioner lump-sum option is not available to Ontario survivor/spouses of pensioners who died after October 1, 2010.

### **Retiree Life Income Funds**

- If you elect a LIF, you must have a locking-in agreement filled out by your financial institution and returned to us.
- Once we receive the required documents, we will transfer the funds to your financial institution, and you can start drawing income from the LIF.

### **ITA Limits**

- The ITA limits the amount of money that can be transferred in a lump-sum from a pension plan on a tax-free basis.
- If the lump-sum exceeds the ITA limits, it will be paid to you in cash (i.e. not to the LIF) and is taxable, unless you have sufficient RSP room to enable us to transfer it to your RSP.
- The Option form will specify if the lump-sum amount exceeds the ITA limit.
- If the transfer is taxable, withholding tax will be deducted.

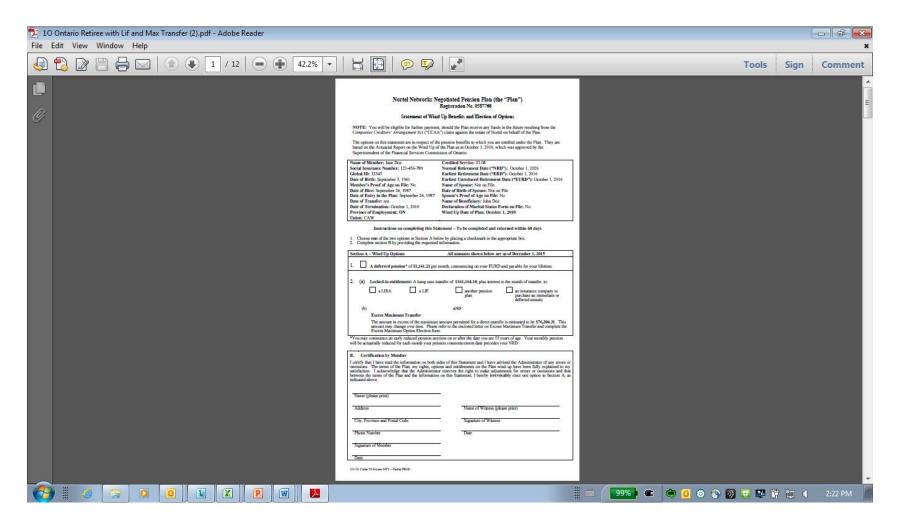
### **Ontario non-pensioners**

- Deferred members have a choice of either a non-indexed annuity, a lump-sum transfer or a transfer of the lump-sum amount to another pension plan if the terms of that plan permit it.
- If an annuity is purchased, it is a deferred annuity unless the member is eligible to commence a pension immediately.
- The lump-sum transfer amount is prescribed by the legislation, but is essentially the present value of your future pension.

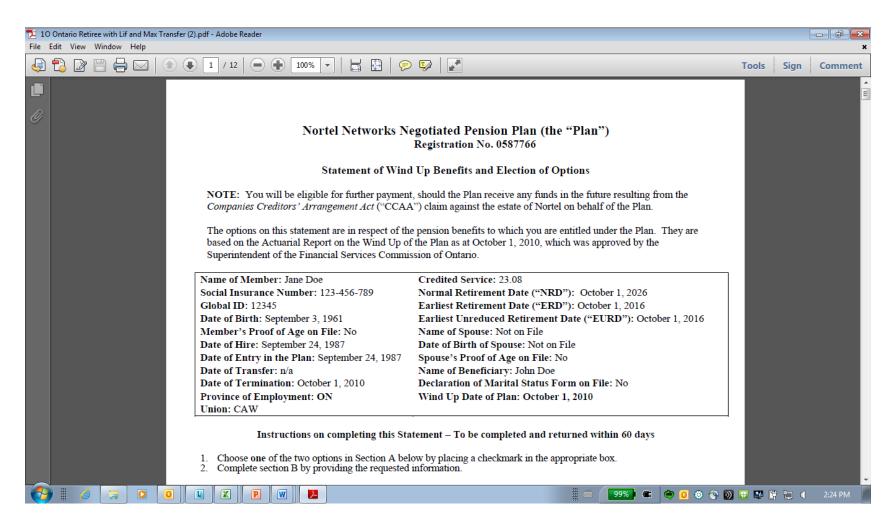
# **Ontario non-pensioners**

- The transfer will be made to either a Locked-In Retirement Account (LIRA), which is essentially a locked-in RSP, or to a LIF (a locked-in RIF).
- Again there may be excess-ITA amounts that are payable in cash and taxable unless you have sufficient RSP room.

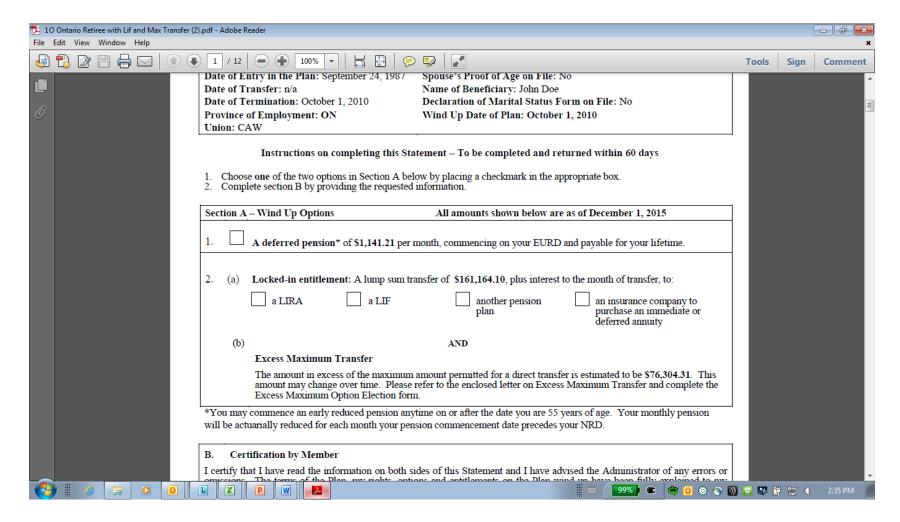
# **Option Forms**



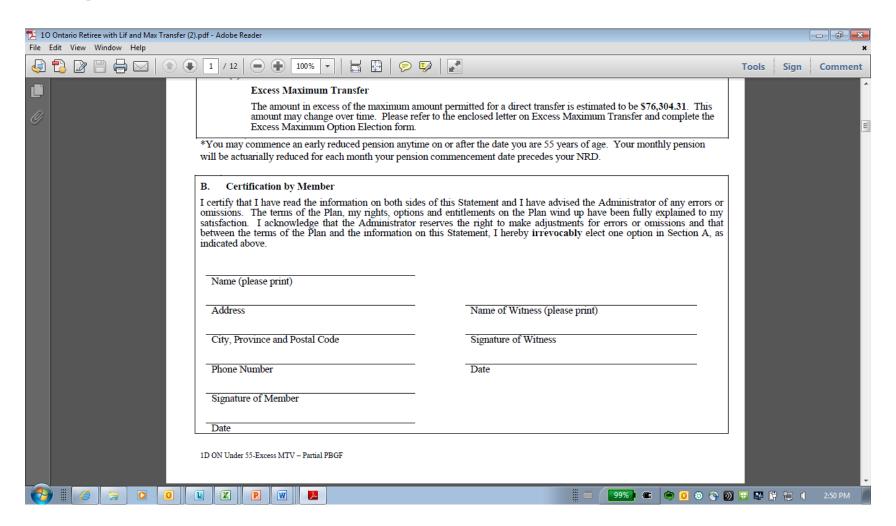
# **Option Forms – Ontario Deferred Member**



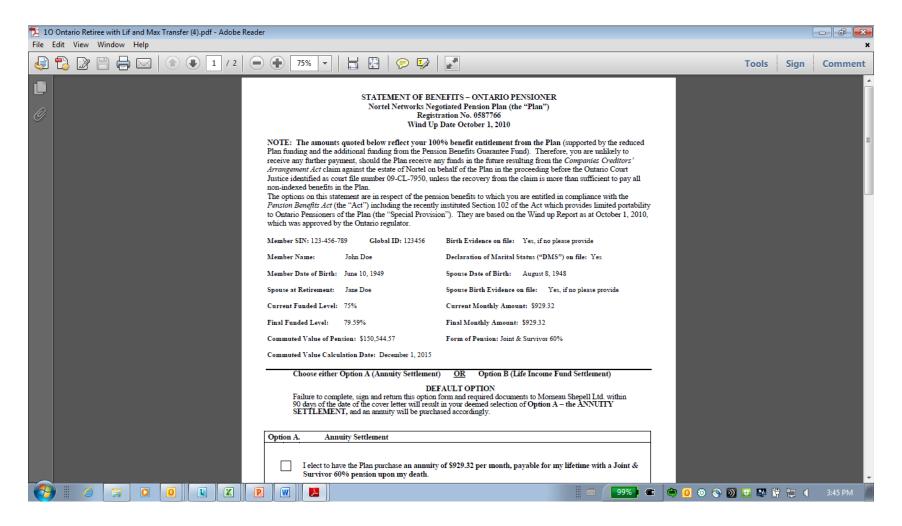
# **Option Forms – Ontario Deferred Member**



# **Option Forms – Ontario Deferred Member**



# **Option Forms – Ontario Pensioner**



# **Option Forms – Ontario Pensioner**

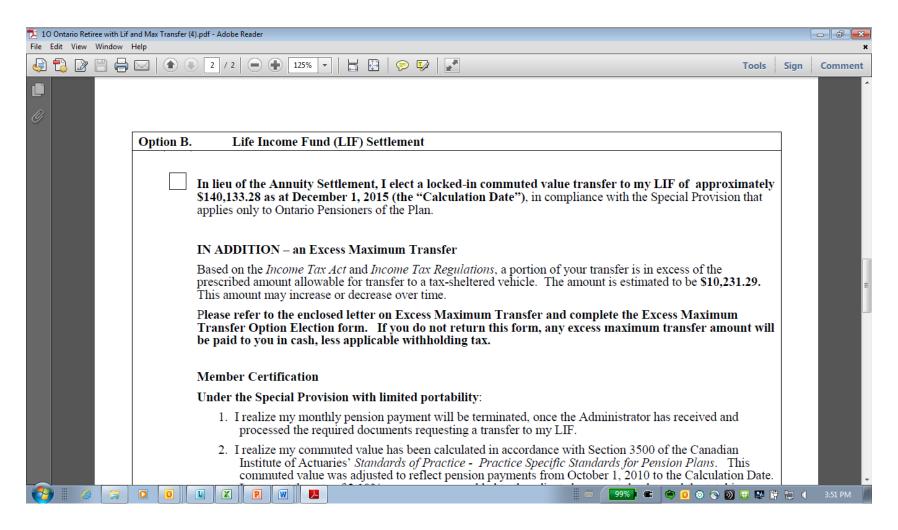
Choose either Option A (Annuity Settlement) OR Option B (Life Income Fund Settlement)

#### DEFAULT OPTION

Failure to complete, sign and return this option form and required documents to Momeau Shepell Ltd. within 90 days of the date of the cover letter will result in your deemed selection of Option A – the ANNUTTY SETTLEMENT, and an annuity will be purchased accordingly.

Option A.	Annuity Settlement
	I elect to have the Plan purchase an annuity of \$929.32 per month, payable for my lifetime with a Joint & Survivor 60% pension upon my death.
	I realize that I will continue to receive my monthly pension from the Plan until the Administrator advises me of the details of my personal annuity purchase. This process may take a considerable amount of time, due to the volume of annuities that the Plan must purchase.
	Member Certification
	I certify that I have read and understood all the information provided in the cover letter, in this form and in the enclosed Form 5.3 in their entirety and I have advised the Administrator of any errors or omissions. Form 5.3 is considered to be incorporated into this Statement of Benefits form by reference, for purposes of satisfying Section 102 of the Act. The terms of the Plan and my rights, options and entitlements on the Plan wind up have been fully explained to my satisfaction. I acknowledge that the Administrator reserves the right to make adjustments for errors or omissions and that the terms of the Plan will govern (subject to the applicable legislation and the Plan assets) if there is an inconsistency between the terms of the Plan and the information on the statement.  I hereby irrevocably elect the Annuity Settlement option, as indicated above.
	Dated at this day of 2015.
	Member Signature
	Witness Name (Please Print)
	Witness Signature
	If you elect the Annuity Settlement, you do not need to complete the enclosed Form 5.3 - Nortel Ontario Pensioner Direction and Waiver form, issued by the Financial Services Commission of Ontario.  Simply complete the above Member Certification and mail the completed Statement of Benefits form (along with a copy of birth evidence and DMS, if not on file) to our office, in the envelope provided.

# **Option Forms – Ontario Pensioner**



### **Non-Ontario Wind up**

- Unlike Ontario, where the PBGF absorbs any gains or losses after the wind up date, the funded ratio for non-Ontario benefits depends on a number of factors, including post wind up mortality and the cost of annuities.
- The amounts listed on your option forms or letters are therefore estimates, and the actual pension or lump-sum may be different.

#### **Indexation**

- If you elect an annuity and you are entitled to indexed benefits you have the option of electing either an indexed or a non-indexed pension.
- If you elect to convert your indexed pension to a non-indexed pension, you will receive a pension of the same value, but with a higher initial monthly payment.

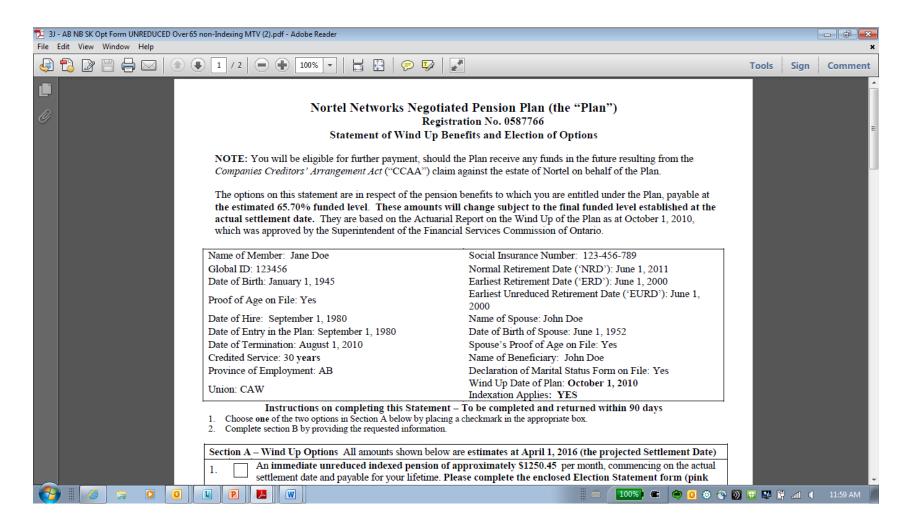
### **Nova Scotia**

- Pensioners are entitled to a non-indexed annuity only.
- Non-pensioners may elect either a non-indexed annuity, or a lumpsum transfer.

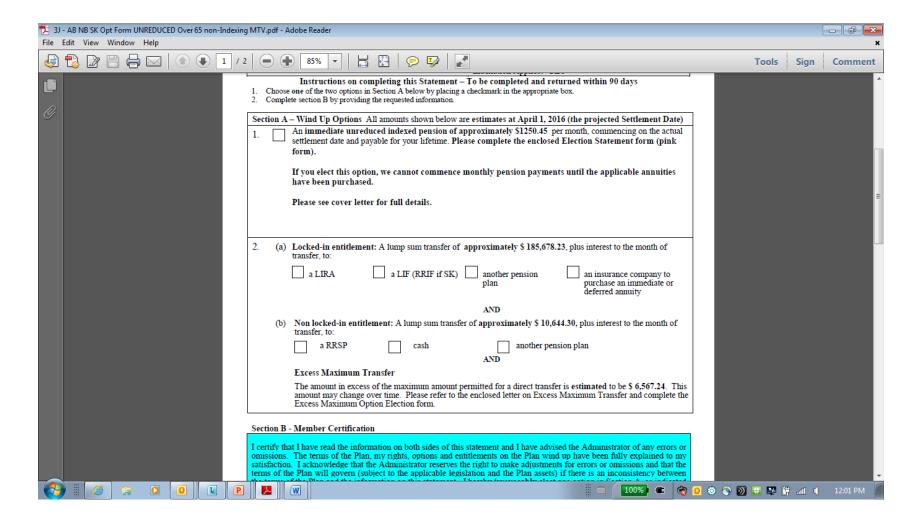
### **All Other Provinces**

- Pensioners only have the option for either an indexed or a nonindexed annuity.
- Non-pensioners may elect either an indexed or a non-indexed annuity, or a lump-sum transfer.

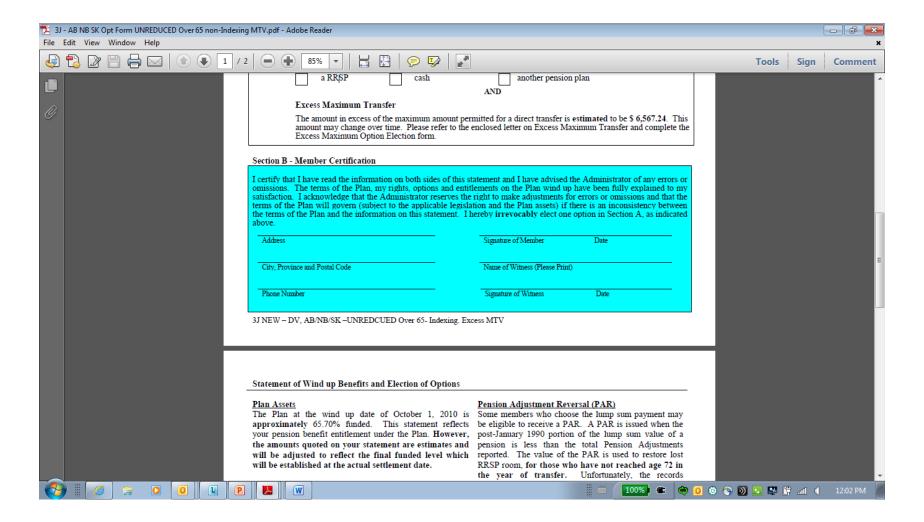
### **Alberta Deferred Member**



### **Alberta Deferred Member**



### **Alberta Deferred Member**



### **Alberta Retiree**

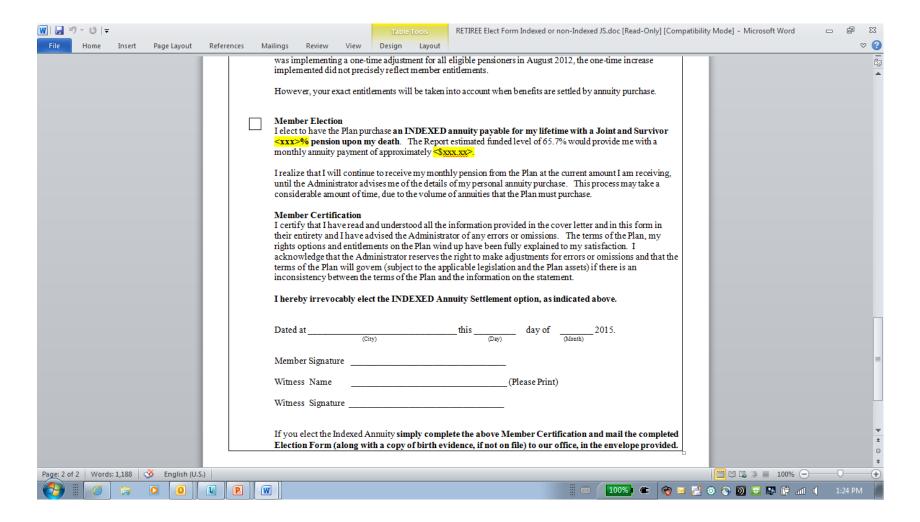
Choose either Option A (Non-Indexed Annuity) OR Option B (Indexed Annuity)

DEFAULT OPTION
Failure to complete, sign and return this option form to Morneau Shepell Ltd. within 90 days of the date of the cover letter will result in your deemed selection of Option B – the Indexed Annuity Settlement and an indexed annuity will be purchased accordingly.

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	Option A. NON-INDEXED Annuity Settlement
	I elect to have the Plan purchase a NON-INDEXED annuity payable for my lifetime with a Joint and Survivor xxx %> pension upon my death. The Report estimated funded level of 65.70% would provide me with a monthly annuity payment of approximately <\sum xx>.
	I realize that by electing this Option A, I give up all future indexation as described in Option B below, and the monthly amount of my pension will be fixed after an annuity is purchased for me.
	I realize that I will continue to receive my monthly pension from the Plan at the current amount I am receiving until the Administrator advises me of the details of my personal annuity purchase. This process may take a considerable amount of time, due to the volume of annuities that the Plan must purchase.
	Member Certification
	I certify that I have read and understood all the information provided in the cover letter and in this form in their entirety and I have advised the Administrator of any errors or omissions. The terms of the Plan and my rights, options and entitlements on the Plan wind up have been fully explained to my satisfaction. I acknowledge that the Administrator reserves the right to make adjustments for errors or omissions and that the terms of the Plan will govern (subject to the applicable legislation and the Plan assets) if there is an inconsistency between the terms of the Plan and the information on the statement.
	I hereby irrevocably elect the NON-INDEXED Annuity Settlement option, as indicated above.
	Dated at this day of Oten day
	Member Signature
	Witness Name(Please Print)
	Witness Signature
	If you elect the non-indexed annuity simply complete the above Member Certification and mail the completed Election Form (along with a copy of birth evidence, if not on file) to our office, in the envelope provided.

<sup>&</sup>quot;Non-ONNS/QCRetires\_J&S Indexing Choice Form

#### **Alberta Retiree**



# **Partially Paid Members**

- There were a number of members who elected, after Nortel entered CCAA protection but prior to our appointment, to cash out their pension entitlement by a lump-sum transfer.
- Since the Plan was underfunded, these transfers were only partially paid (at 85% early on, and at 69% up to our appointment)

# **Partially Paid Members**

- Partially Paid members will only receive a supplemental payment under the Wind Up if the lump-sum they are entitled to under the wind up is greater than the amount they have already received.
- For members outside Ontario, since the estimated wind up funded ratio is less than 69%, no further payments will be made to members at this time.
- PBGF coverage for Ontario members means that some partially paid members will receive an additional payment.

# **Partially Paid Members**

• We don't yet know how much money the Plan will receive from the CCAA claim. Once the CCAA money is paid we will recalculate the funded ratio and some partially paid people (particularly those paid at 69%) will become entitled to a supplementary payment).

#### The CCAA Claim

- As Administrator of the Plan, we have a claim under CCAA against the estate for the deficit in the pension fund.
- The claim has not been settled, but if any recovery is made on the claim, most Nortel members will be entitled to an additional payment.

#### The CCAA Claim

- It is very important that you and/or your survivors remain in touch with Morneau so this supplementary settlement can be made.
- The details have yet to be worked out, but the CCAA settlement will likely be in the same form as your election (i.e. additional lump-sum payment or increase to annuity).

### **Adjustments for Pensioners**

- If the final funded ratio is higher than the estimated ratio that we have been paying, then you have been underpaid since the wind up date and will receive a cash payment to reflect this.
- If the final funded ratio is lower than the estimated ratio that we have been paying, then you have been overpaid since the wind up date and your pension will be adjusted to recover this payment.
- Additional adjustments will be made for indexation, etc.

# **Timing**

- Your option forms were mailed out November 16, 2014.
- Options forms must be returned to us within 90 days, or by February 16, 2016.
- If you fail to return the option form, we will settle you by the default option noted in your letter.
- We intend to settle benefits by mid- April, 2016.

#### The Future

- Most of you will be entitled to additional monies when the CCAA claim is settled.
- Still unclear when and how much this recovery will be.
- CCAA monies likely settled in the same way as you elect.
- Very important that you or your estate keep in touch with us so we can pay you what you are owed.

### Questions

• If you have questions regarding your option forms, or if you have not received one, please contact our call centre at 1-877-392-2073



### Thank You.





# **Nortel Legal Summary**

Koskie Minsky LLP

# Allocation Litigation - Timeline

- May 12, 2015 the Ontario Superior Court of Justice and the US Bankruptcy Court released consistent decisions requiring the allocation of the \$7.3B lockbox (assets from the sale of Nortel's businesses and intellectual property) be based on a modified *pro rata* approach.
- June 25, 2015 joint hearing to determine some points of clarification of the May 12<sup>th</sup> decisions.
- July 6, 2015 both Courts release decisions denying reconsideration of issues raised by the US Interests while providing clarifications to the May 12th allocation decisions.
- July 2015 Appeals commenced in Canada and the US

# Allocation Litigation - Highlights

- Allocation to be determined pro rata (modified) to claims against each estate
  - materially different from the pro rata approach we advocated during the trial as it permits certain intercompany and inter-estate claims, and allows each estate to keep its own assets (cash on hand)
- No double-counting. Any claim that can be made against more than one estate may be made only once for purposes of determining allocation.
- Bondholder claims must be made against the debtor estate of the issuer

# Allocation Litigation - Impact

- Claims processes to determine claim amounts as yet incomplete in all estates.
- Final distributions cannot occur until the finalization of claims globally.
  - HOWEVER based on preliminary data provided by the estates and certain assumptions, we estimate that recoveries in Canada would be in the 45% to 49% range if the allocation decisions could be implemented today
    - Litigation and appeal costs will detract

# Allocation Litigation — appeals pending

- Canada leave to appeal has been sought by various US Interests (US Debtor, Bondholders, UCC); we await a decision from the Ontario Court of Appeal on whether leave is to be granted
  - US parties are still seeking post-filing interest and use of the 'revenue theory' as the allocation key.
  - success on these appeals could put Canadian creditor recoveries at an estimated range of 10 to 15%.
- US (Delaware) appeal briefing process underway
  - Briefing starts December 3, 2015; scheduled to be heard by the US District Court on April 5, 2016
- If appeals proceed, there could be further appeals, putting final distribution years away

# **Settlement Discussions**

- The parties have engaged in confidential discussions as part of the US appeal process.
- Contrary to reports in the media, no offer has been made to Canada which would generate a 55% (or a 71%) payment (dividend) to creditors.
- The Court-appointed representatives are certainly amenable to a <u>fair settlement</u> but will not be bullied.

# Other Litigation

- Bondholder Post-Filing Interest on October 13, 2015, the Ontario Court of Appeal unanimously dismissed the Bondholders' appeal from Judge Newbould's decision denying post-filing interest, with costs.
- Tax Appeal the August 20, 2015 hearing date was adjourned on consent of both parties and a case management judge was appointed on October 28, 2015.
- UK Pension Guarantee Litigation the appeal is scheduled to be heard by the Ontario Court of Appeal on February 17-18, 2016.

# Questions

- For more information, please contact KM at <u>nortel@kmlaw.ca</u> or by calling our toll free hotline at 1.866.777.6344.
- For further information concerning Nortel's CCAA proceedings, please visit our website at:
  - http://kmlaw.ca/cases/nortel-networks-corporation/
- For access to all public Court documents, please visit the Monitor's website at:
  - http://documentcentre.eycan.com/Pages/Main.aspx?SID=89
     &Redirect=1