

DATE: 20090722
DOCKET : M37770 & M37810 & M37807

COURT OF APPEAL FOR ONTARIO

MacFarland J.A. (In Chambers)

BETWEEN:

IN THE MATTER OF the *Companies' Creditors
Arrangement Act*, R.S.C. 985, c. C-36, as amended

AND IN THE MATTER OF a Plan of Compromise or Arrangement of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation

National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Locals 27, 1525, 1530, 1535, 1837, 1839, 1905, and/or 1915

George Borosh and other retirees of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International Corporation and Nortel Networks Technology Corporation

Moving Parties

Mark Zigler and Andrea McKinnon, for the Former Employees of Nortel

Barry E. Wadsworth, for CAW-Canada

Alan Mersky, for Nortel

Lyndon Barnes, for the Board of Directors of Nortel Networks Corporation and Nortel Networks Limited

Gavin Finlayson, for the Informal Note Holders Group

Alex MacFarlane for the Official Committee of Unsecured Creditors

Fred Myers and Jay Carfagnini, for the Monitor, Ernst & Young Inc.

Heard: July 21, 2009

ENDORSEMENT

[1] The moving parties seek to expedite the hearing of their leave motion and appeal from the order of Morawetz J. dated June 18, 2009.

[2] Nortel agrees to an abridged schedule for the leave motion and for the appeal but oppose the consolidation of the leave motion and the appeal into a single oral hearing which the moving parties seek.

[3] Consolidation in the nature sought is exceptional and should only be rarely granted as Laskin J.A. of this court noted in *Air Canada (Re)*, [2003] O.J. No. 2207 at para. 15:

An order of this kind – not given to other litigants – would be exceptional and should rarely be made. I think it would be in the interests of justice to make it only if Global can demonstrate that it will be substantially prejudiced if the order is not made and that Air Canada would not be unfairly prejudiced if it is made.

[4] Here there is some evidence that some former employees (both union and non-union) may be having difficulty making ends meet since the suspension of the payment of certain benefits to them. The supervising judge was aware of those difficulties and

directed the Monitor to make certain inquiries and report back to him within 30 days. As he noted in para. 88 of his reasons:

... as to whether it is feasible to establish a process by which certain creditors, upon demonstrating hardship, could qualify for an unspecified partial distribution in advance of a general distribution to creditors.

[5] I am not persuaded that either group of employees, union or non-union, are any more substantially prejudiced than are any other creditors in these proceedings.

[6] I am prepared to order that the application for leave to appeal be expedited and if granted, that the appeal be expedited. I am not prepared to order a consolidated hearing.

[7] The motion to leave to appeal will be in writing as is the usual process but be heard by a panel of this court on an expedited basis with materials being delivered in accordance with the time lines agreed to by counsel.

[8] If the leave to appeal application is successful, I order that the appeal be expedited.

[9] Service of materials shall be to all parties listed on the seventeen-page service list attached to the moving parties' Motion Record filed by Koskie Minsky, unless any of those listed parties opt not to participate in either the leave application and/or if leave is granted, the appeal.

[10] Service may be executed electronically.

A handwritten signature in blue ink that reads "MacEuland A".