

# **PENSIONERS, FORMER EMPLOYEES AND DISABLED EMPLOYEES NEWS BULLETIN**

**THIS BULLETIN PROVIDES PERIODIC SUMMARIES  
OF NORTEL'S CCAA PROCEEDINGS**

**THIS NEWS UPDATE IS PREPARED BY KOSKIE MINSKY LLP (KM)  
IN THEIR CAPACITY AS REPRESENTATIVE COUNSEL  
TO ALL PENSIONERS, FORMER EMPLOYEES AND DISABLED  
EMPLOYEES OF NORTEL**

**DECEMBER 7, 2009**

## **OVERVIEW**

On January 14, 2009, Nortel Networks Corporation and several of its affiliated companies ("Nortel") were granted protection from creditors under the *Companies' Creditors Arrangement Act* (the "CCAA") pursuant to an Order of the Honourable Justice Morawetz. Ernst & Young Inc. was appointed as Monitor of Nortel's CCAA proceedings.

On May 27, 2009, the Ontario Superior Court of Justice appointed KM as Representative Counsel to all Pensioners and Former Employees of Nortel, unless an individual is specifically excepted or chooses to opt out of representation by KM. The Court also appointed three representatives, Donald Sproule, David Archibald and Michael Campbell (the "Representatives"), to act as representatives for all Pensioners and Former Employees of Nortel.

On July 30, 2009, the Ontario Superior Court of Justice appointed Susan Kennedy (the "Representative") to act as Representative for all Disabled Employees of Nortel. KM was appointed as Representative Counsel to all Disabled Employees of Nortel, excluding Disabled Employees who are members of the CAW-Canada, or those who have chosen to opt out of representation by KM.

## **RECENT UPDATES**

**December 2, 2009**

### **Hardship Application Process Extended**

On December 2, 2009 the Court approved an extension of the Hardship Application Process until January 31, 2010.

The Monitor's Thirty-Second Report provides an update on the Hardship Application Process. As at November 30, 2009, the Monitor had received 28 applications for hardship payments. Eleven claims have been approved, totalling \$80,818. Sixteen hardship claim applications have been disallowed due to non-Canadian residency, existence of family income or medical costs and/or other day-to-day expenses that did not meet the hardship criteria. There remains \$669,182 of the \$750,000 provided for under the Employee Hardship Order. The Monitor continues to receive applications from Former Employees who assert financial hardship as a result of illness, health care costs or ineligibility for pension or employment insurance benefits. For more information on the status of the Hardship Application Process and the extension of the deadline, please view the Thirty-Second Report of the Monitor.

To access the Eligibility Requirements, the Application for Hardship Payments and the Monitor's Thirty-Second Report, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

## **November 26, 2009 Court of Appeal for Ontario Releases Decision**

On October 1, 2009 the Court of Appeal for Ontario heard the Former Employees' appeal from the decision of Justice Morawetz, dated June 18, 2009. The appeal related to Nortel's requirement to make payment of amounts owing for termination and severance pay, in accordance with the minimum standards mandated by the Ontario *Employment Standards Act, 2000* and other provincial employment standards. The appeal was heard by a three judge panel that included Goudge J.A., Feldman J.A. and Blair J.A.

In its decision released November 26, 2009, the Court of Appeal held that Nortel was not required to make immediate payment of amounts owing under provincial minimum standards employment legislation. The Court of Appeal dismissed the Former Employees' appeal and concluded:

[47] The former employee appellants have raised the constitutional question whether the doctrine of paramountcy applies to give a CCAA judge the authority, under s. 11 of the Act, to order a stay of proceedings that has the effect of overriding s. 11(5) of the *ESA*, which requires almost immediate payment of termination and severance obligations. The answer to this question is yes.

The Former Employees' Legal Committee and Koskie Minsky are now looking at the grounds for taking the case to the Supreme Court of Canada.

## **December 2009 Compensation Claims Process**

On September 29, 2009, the Monitor delivered a report to the Court on various employment related matters. The Monitor reported that Nortel and the Monitor, along with their respective counsel and actuaries, have been working to establish a protocol for adjudicating claims, to assess how required information can be obtained efficiently, to identify methodologies for computing claims and to consider the alternative procedures. Koskie Minsky, on behalf of all Pensioners, Former Employees and Disabled Employees, has been active in these discussions.

Discussions with respect to the compensation claims procedure continue. Once the process and protocol have been finalized, court approval of the procedure will be obtained. KM and the Monitor will keep Former Employees, Disabled Employees and Pensioners informed of all significant developments. We do not anticipate any court dates related to this issue until 2010.

The U.S. claims process extension does not apply to Former Employees in Canada, unless they have a valid claim against one of Nortel's U.S. entities.

## **November 30, 2009 Annuity Matters Motion**

A motion was heard by Mr. Justice Morawetz on November 30, 2009, which dealt with the annuity policies of 9 former employees of Nortel. The motion did not concern Nortel's Health and Welfare Trust or registered Pension Plans. Rather, the issue concerned 9 annuity policies that were purchased from Sun Life Assurance Company of Canada, a number of years ago, for the benefit of the 9 affected individuals.

Nortel filed court materials seeking the advice and direction of the Court in respect of the appropriate treatment of the above-noted annuities. Nortel has retained the payments of the annuities since January 14, 2009. The issue at hand was whether the annuities are the property of Nortel, or whether there is a trust arrangement, such that the 9 individuals listed as annuitants on the policies are entitled to a continuation of the annuity payments. KM filed motion materials and appeared on behalf of Former Employees, to put forth the position that payments made from Sun Life to Nortel in respect of the annuity contracts are subject to a trust. KM asserted that the annuitants, as beneficiaries of the trust, are entitled to payment in accordance

with their individual annuity certificates. The Informal Noteholder Group filed written materials and urged the court to find in favour of Nortel's view, on the basis that the annuity payments are merely unsecured obligations that are not subject to a trust. The Monitor took no position on this motion.

Justice Morawetz reserved judgment, and indicated that a decision would be released before the end of the year. If you wish to view the public court documents, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

## **November 30, 2009 Health and Welfare Trust Disclosure by the Monitor**

On November 30, 2009 the Monitor released its Thirty-Second Report in response to a number of requests from Pensioners, Former Employees and Disabled Employees concerning Nortel's Health and Welfare Trust ("HWT"). The Monitor's Thirty-Second Report outlines the background and nature of the HWT. The Report also indicates that the market value of the assets in the trust as at September 30, 2009 was approximately \$84 million. However, the total liabilities of the trust for retiree and LTD health benefits and life insurance, and LTD and SIB income benefits, exceed the trust assets. Our actuaries currently are reviewing data pertaining to these benefits and will advise as to the state of liabilities once December 2009 data is available. KM and counsel the Monitor and company are discussing issues pertaining to the trust.

Attached as appendices to the Report are copies of the original Trust Agreement between Northern Telecom Limited and Montreal Trust Company, executed in 1980, several subsequent amendments to the Trust Agreement and a copy of the appointment of Northern Trust as successor Trustee, dated December 1, 2005.

The Thirty-Second Report can be accessed from the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

## **December 2, 2009 Joint Hearing Runs Into the Night**

The Canadian CCAA Court and the U.S. Bankruptcy Court held a Joint Hearing on December 2, 2009. Four separate motions were heard during the course of the Joint Hearing:

1. Motion to seek approval of the sale of Nortel's Metro Ethernet Networks Business to Ciena Corporation.
2. Motion to seek approval of the sale of Nortel's GSM/GSM-R Business to Ericsson.
3. Motion to seek approval of the Asia Restructuring Agreement.
4. Motion to seek approval of a settlement with Flextronics.

A last minute offer by Nokia on Nortel's MEN assets created a stir at the Joint Hearing. Nokia's bid would have increased the global recovery by \$20 million U.S., but delays in closing and additional equivalent costs to be borne largely by the Canadian estate of Nortel made the increased offer detrimental to the interests of Nortel's former employees in Canada. While the last minute bid triggered additional submissions, examinations and a hearing that proceeded well into the evening, it was Ciena's original offer to purchase the MEN assets that ultimately was approved by the courts. All transactions and settlements that were the subject of the Joint Hearing were approved, resulting in the following Orders:

- Approval and Vesting Order for Nortel's MEN Business;
- Approval and Vesting Order for Nortel's GSM/GSM-R Business;
- Amended Approval and Vesting Order for Nortel's Next Generation Packet Core Business;
- Order re Approval of Next Generation Packet Core Business Escrow Agreement;
- Order re APAC Agreement; and
- Amended Order re Approval of Flextronics Settlements.

KM at the instruction of the Pensioner and Former Employees' Legal Committee took the position that the funds from the proceeds of the MEN sales should be placed into an escrow account in a Canadian bank. The Court rejected the position taken by the Pensioners and Former Employees.

To view all public court documents, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel). In particular, the Monitor's Twenty-Eighth, Twenty-Ninth, Thirtieth and Thirty-First Reports outline all transactions and settlements approved at the Joint Hearing.

## **December 18, 2009**

### **Stay Expiration and Interim Funding Agreement**

Nortel's CCAA stay of proceedings expires on December 18, 2009. It is anticipated that on or prior to this date, Nortel will seek an extension of the stay into 2010 in order to allow for the successful completion of the sales transactions currently being contemplated and continued asset sales which will allow for larger distributions in the future, among other things. Court approval for the extension of the stay is dependent on an agreement between Canada and the United States, and other interested jurisdictions, for the continued interim funding of Canadian operations through 2010. Parties are working diligently to come to an agreement in respect of interim funding.

## **December 18, 2009**

### **Executive Bonus News Reports**

There have been recent discussions and news reports surrounding Nortel's employee incentive and retention bonus plans.

We are working to understand the proposed incentive programs, and to consider their overall effect. We do not have confirmation on the accuracy of the figures cited in recent news reports. We also do not know how these figures were obtained, or how they relate to Nortel's CCAA proceedings. From what we understand, the figures cited in these reports have not yet been brought before the Court for approval.

It is the responsibility of the Court to monitor employee compensation, and to approve compensation that is appropriate. KM and the court-appointed representatives want to ensure that these incentive programs are necessary and appropriate, and that they do not come at the expense of payments owed to the retiree, severed and disabled employees. If necessary, we will object to the payments when Court-approval is sought.

We continue to address the situation and will report accordingly.

## **January 2010**

### **Upcoming Webcasts**

The CNELTD and KM held a webcast for Disabled Employees on October 27, 2009. The NRPC and KM held a webcast for Pensioners and Former Employees on August 25, 2009.

KM anticipates holding additional webcasts for both the Disabled Employee and Former Employee groups early in the New Year. The Pensioner and Former Employees' webinar has been set for January 7, 2009 at 3:00 p.m.

## **ADDITIONAL INFORMATION**

### **The Future Process for KM, Pensioners, Former Employees and Disabled Employees**

While it is an uncertain and frustrating time, right now there is no positive action that is required to be taken by individual Pensioners, Former Employees and Disabled Employees. You need not provide KM with any personal documentation, as this will be obtained directly from Nortel and the Monitor. If you have a specific concern to be addressed, please do not hesitate to contact KM.

KM is working hard to advance the interests of the Pensioners, Former Employees and Disabled Employees. RSM Richter provides KM and the Representatives with an analysis of each proposed transaction announced by Nortel, and KM attends at all scheduled motions to object and/or support the motions accordingly. We are working with the Monitor and other Canadian creditors to ensure a fair allocation of

assets from these sales to the Canadian estate. KM and the Representatives are working with Segal Company to generate the best possible outcome for Pensioners', Former Employees' and Disabled Employees' pension, disability income and health benefit funding issues.

### **The Political Process for Pensioners, Former Employees and Disabled Employees**

The NRPC and the CNETLD are very active in various political arenas. If you would like to join the NRPC's efforts to get action from both the federal and provincial Governments to improve outcomes for the Former Employees, Pensioners and Disabled Employees, please contact the NRPC members via their website at [www.nortelpensioners.ca](http://www.nortelpensioners.ca) or the CNETLD members through their Yahoo! Group.

### **CONTACT INFORMATION**

If you have an inquiry, or wish to speak to your Representative Counsel, please contact KM by email at [nortel@kmlaw.ca](mailto:nortel@kmlaw.ca) or by calling our toll free hotline at 1.866.777.6344. For more information, please visit our website at <http://www.koskieminsky.com/Case-Central>, and click on Nortel Networks Corporation.

Former Employees and Pensioners can contact the NRPC by visiting its website at [www.nortelpensioners.ca](http://www.nortelpensioners.ca).

Disabled Employees can contact the CNETLD by joining the CNETLD Yahoo! Group. You can obtain instructions on how to access to the CNETLD Yahoo! Group by sending an email to [\*\*CNETLD-owner@yahogroups.com\*\*](mailto:CNETLD-owner@yahogroups.com).

For access to a variety of information pertaining to Nortel's CCAA proceedings, including public Court documents and all Monitor's Reports, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).