

# **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**

**APRIL 5, 2010**

## **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 was specifically excepted or chose 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**

### **JUDGE RELEASES SETTLEMENT AGREEMENT DECISION**

**March 31, 2010**

On March 31, 2010, the Ontario Superior Court of Justice approved a Settlement Agreement which secures the continuation of medical and life insurance benefits, and long-term disability and survivor income benefits, through 2010. As part of the negotiated settlement, eligible terminated employees will also get a lump sum payment in advance of the claims process.

The Former Employee and Disabled Employee groups have been working with the Monitor and Nortel to reach an agreement since early this year. The revised Settlement Agreement was reached after months of intensive negotiations, court proceedings and consultation with the NRPC and CNELTD membership bases.

On February 8, 2010, it was announced that a Settlement Agreement had been reached to deal with retiree, survivor and long-term disability employee benefits and pensions in the short-term future. The need for a Settlement Agreement to deal with these benefits arose during negotiations surrounding the Canadian

Funding Agreement ("CFA"). It became clear during CFA negotiations that continued funding of Nortel's health and medical benefits was not provided for in Nortel's budget past March 31, 2010. It was therefore necessary to negotiate for these benefits to continue in the short term.

After lengthy and intensive negotiations, parties reached a Settlement Agreement on February 8, which was subject to court approval. After a three day court hearing held on March 3-5, the Judge rejected the original Settlement Agreement in his reasons released March 26. The agreement was rejected on the basis that Clause H.2 was not fair and reasonable in the circumstances to other creditors, particularly Nortel's bondholders. Clause H.2 was a "reservation of rights" provision. This clause provided that if future amendments were made to the *Bankruptcy and Insolvency Act* that were favourable to their groups, changes which were very uncertain, the NRPC and CNELTD reserved the right to assert that such provisions should apply to their constituencies. Clause H.2 was a very important provision to both the NRPC and CNELTD, as both groups have been involved in significant lobbying efforts for favourable changes to Canada's bankruptcy laws. The full text of the March 26 decision is available at [www.kmlaw.ca](http://www.kmlaw.ca).

The release of the Judge's March 26 reasons left only days for the court-appointed Representatives and Representative Counsel to address a looming benefit cut off date of March 31. The Representatives were faced with the very difficult decision of whether to proceed with a Settlement Agreement that did not include Clause H.2. It was made clear to the Representatives that it was not possible to renegotiate the deal in any other respect. The Judge's reasons made it clear that the Court was not prepared to grant any special status to pensioner or disabled employee claims in the CCAA but was prepared to accept the agreement without Clause H.2, as a reasonable compromise for giving up claims against third parties. In the end, after much consultation and contact with their constituencies, the court-appointed Representatives decided that the only prudent and viable option, and the option that was in the best interests of their overall constituencies, was to enter into the revised Settlement Agreement without Clause H.2. Without the revised agreement, health and medical benefits would have terminated at midnight on March 31. The Judge granted court approval of the revised Settlement Agreement on March 31, 2010. A copy of the March 31 order is available at [www.kmlaw.ca](http://www.kmlaw.ca). The formal reasons of the Judge have not yet been released.

The revised Settlement Agreement provides significant benefits, in the range of \$44.2 million, to the Former Employee and Disabled Employee groups. It provides the following:

- for pensioners and their survivors, the continuation of medical, dental and life insurance benefits through 2010;
- for all defined benefit pension plan members, Nortel's continuation and current service funding of the pension plans until the end of September 2010;
- for eligible employees terminated without severance pay, a lump sum payment of up to \$3000 as an advance against their claims under CCAA;
- for employees on long term disability, the continuation of disability income benefits and the continuation of medical, dental and life insurance benefits through to the end of 2010; and
- for those receiving survivor income and survivor transition benefits, the continuation of those payments through 2010.

Full details concerning the Settlement Agreement can be located on the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel) or on Representative Counsel's website at [www.kmlaw.ca](http://www.kmlaw.ca).

## **SUPREME COURT OF CANADA RELEASES LEAVE DECISION**

**March 25, 2010**

The Supreme Court of Canada has dismissed the Former Employees' application for leave to appeal. The Former Employees sought leave to appeal the decision of the Ontario Court of Appeal dated November 26, 2009. The Court of Appeal's decision, a decision now validated by the Supreme Court, held that Nortel was not required to make payment of termination and severance pay owing in accordance with provincial minimum standards employment legislation.

## **UPCOMING WEBCASTS**

There have been no new webcasts dates confirmed at this time, however, we will be scheduling a webcast in the near future to inform you of recent developments. Please watch the KM website's "Latest Development" section for announcements concerning future webcasts.

## **CANADIAN FUNDING SCHEDULED TO CONTINUE THROUGH 2010**

**January 20, 2010**

On January 20, 2010, the Canadian and U.S. Courts approved a final Canadian Funding Agreement ("CFA") which confirmed that additional funding would flow from Nortel's U.S. entities to its Canadian entities. This additional funding is critical to the continued operations of Nortel's Canadian entities, and was necessary in order to facilitate the ongoing sales processes of Nortel's business units.

## **STAY OF PROCEEDINGS AND HARDSHIP APPLICATION PROCESS EXTENDED**

**January 2010**

The Court granted an extension of Nortel's stay of proceedings in Canada until April 23, 2010. The Court also extended the Employee Hardship Process until April 23, 2010. 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. To access the Eligibility Requirements and the Application, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel).

## **MONITOR RELEASES HEALTH AND WELFARE TRUST DISCLOSURE**

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. In its Thirty-Sixth and Thirty-Ninth Reports (and the Supplements to the Thirty-Ninth Report), the Monitor released further disclosure of documents related to Nortel's Canadian non-pension and post-employment benefits, including information related to the Health and Welfare Trust. For access to these Monitor's Reports, please visit the Monitor's website at [www.ey.com/ca/nortel](http://www.ey.com/ca/nortel). We continue to request disclosure of documents to provide you with as much information as possible.

## **STATUS UPDATE ON TAX ISSUES**

**April 1, 2010**

### *Foreign Service Earnings*

Nortel's historical practice of including foreign service earnings for the purpose of pension benefit calculations is under review. Those immediately affected will be receiving or have recently received a letter

explaining the potential impact on their pensions. Representative Counsel is working with Nortel and the Monitor to resolve this issue and avoid any reduction in benefits and are hopeful that a solution can be reached that will be acceptable to the Plan Regulators. We will advise of developments.

#### *Pension Adjustment Reversal (PAR)*

A number of Nortel's terminated employees have contacted KM to discuss the possibility of a Pension Adjustment Reversal to restore RRSP contribution room lost by terminated members who received a reduced CV transfer from Nortel's pension plans. Representative Counsel is investigating this issue and we will advise of developments.

#### **WHAT'S NEXT?**

The court's approval of the Settlement Agreement provides some long-awaited certainty in these proceedings. Health, medical, life and income benefits will continue until December 31, 2010 and pensions will continue to be paid in accordance with current practice until September 30, 2010.

Representative Counsel will now shift its focus to the following areas:

1. Finalization of a Process and Protocol for a Compensation Claims Process;
2. Allocation and Distribution of Assets in the Health and Welfare Trust; and
3. Pension Plan issues.

The NRPC and CNElTD continue to work with their legal, financial and actuarial advisors to determine viable options and alternatives for your pensions and benefits past December 31.

The NRPC and the CNElTD 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 CNElTD members by sending an email to [SteeringCommittee@cneltd.info](mailto:SteeringCommittee@cneltd.info).

#### **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>.

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

Disabled Employees who wish to join the CNElTD group should send an email to [SteeringCommittee@cneltd.info](mailto:SteeringCommittee@cneltd.info).

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).