

# NORTEL PENSIONER AND FORMER EMPLOYEE NEWS BULLETIN

THIS NEWS UPDATE IS PREPARED BY KOSKIE MINSKY LLP (KM)  
IN THEIR CAPACITY AS REPRESENTATIVE COUNSEL

August 6, 2010

Nortel entered court proceedings under the *Companies' Creditors Arrangement Act* ("CCAA") on January 14, 2009. Nortel's pensioners, former employees, their surviving spouses and other individuals who are beneficiaries under Nortel's various pension and benefit plans have and/or will be impacted by these proceedings. Your pensions and benefits will be subject to change in the coming months, and it is therefore important that you remain up to date on these issues by reading the newsletters prepared by your Representative Counsel, and by visiting the KM and Nortel Retiree and Former Employee Protection Canada ("NRPC") websites.

On March 31, 2010, the Court approved a Settlement Agreement which ensures that retiree health & dental benefits, life insurance, disability income benefits, survivor income benefits and survivor transition benefits will continue to be paid in full until December 31, 2010. Eligible terminated employees will be entitled to a lump sum payment from a \$4.2 million Termination Fund as an advance on their distribution from the Nortel estate (see below for more details). The Settlement Agreement also requires parties to work towards the wind up and distribution of the assets of the Nortel Health and Welfare Trust (HWT) by December 31, 2010 and provides that Nortel will cease to administer its pension plans on September 30, 2010. **This means that there will be changes to your health, dental, life insurance and survivor income benefits on December 31, 2010, and to Nortel's pension plans on September 30, 2010 and thereafter.**

In preparation for these fast-approaching dates, your court-appointed Representatives and Representative Counsel, along with other parties, are focussing on the following distinct and important areas:

1. Pension Plan Issues;
2. Finalization of a Compensation Claims Procedure;
3. Future Health, Dental & Life Insurance Coverage; and
4. Allocation of the Health and Welfare Trust.

As a pensioner, a surviving spouse or a former employee, you will be impacted by at least one and possibly several of these projects, which are all underway but not finalized. Please review the sections below to determine the impact on you, and to see how discussions have progressed to date.

## 1. UPDATE ON PENSION PLAN ISSUES

In accordance with the Settlement Agreement, Nortel will continue the current service funding of its Defined Benefit pension plans until the end of September 2010. Both Nortel's Defined Benefit and Defined Contribution plans will change as of September 30, 2010.

## **A. THE DEFINED BENEFIT PENSION PLANS**

For pensioners, survivors and former employees who have an entitlement in one of Nortel's two Defined Benefit registered pension plans, the future is complicated and to date uncertain. In accordance with the Settlement Agreement, Nortel will cease to administer its pension plans as of September 30, 2010. In the normal course, a wind up administrator would be appointed by the Ontario Superintendent of Financial Services effective on or about September 30, would become responsible for the administration of the Plans, and would determine and conduct the wind-up of the Plans.

An appointed wind-up administrator will reduce pensions to the wind-up or solvency ratio, typically within a few months of the appointment. Pensioners who worked in Ontario, however, may have up to the first \$1,000 of their monthly pensions guaranteed by the province's Pension Benefit Guarantee Fund so for those members only their monthly pensions over \$1,000 would be reduced. However, you should be aware that the Representatives of the NRPC and their advisors are exploring alternatives to a conventional pension plan wind-up and are seeking support from the Government. The future of Nortel's Defined Benefit pension plans, and the timing of plan wind-ups could be affected. Based on a recent estimate, both Defined Benefit pension plans are estimated to have a wind-up funded ratio of approximately 64% (including indexing). Recent estimates provide that on a solvency basis, the Negotiated Plan is estimated to be funded at 76% while the Managerial Plan is estimated to be funded at 72%. Because of this deficiency, you should plan for the possibility of a reduction in your pension before the end of 2010. As soon as we know more we will advise you.

## **B. THE DEFINED CONTRIBUTION PLANS**

Pensioners and former employees who have an entitlement in Nortel's Defined Contribution plan will receive the funds that have accumulated in their individual account, to be transferred to a locked-in retirement vehicle. You will experience no loss as a result of Nortel's insolvency. You will have no claim against Nortel for your entitlement in Nortel's Defined Contribution plan. In fact, if you still have an account in a Nortel Defined Contribution plan you can transfer it out of the Plan to your personal locked-in retirement vehicle at any time until a notice of wind up is issued.

## **C. QUESTIONS?**

If you have questions about your individual pension and/or retirement please contact the following:

**Defined Benefit Plan Members**  
Mercer - 1.866.667.8358

**Defined Contribution Plan Members**  
Sun Life - 1.866.733.8612

## **2. COMPENSATION CLAIMS PROCEDURE**

Discussions to finalize the Compensation Claims Procedure continue and the legal, actuarial and procedural details are the current focus. Your actuaries (Segal Company) and lawyers (Koskie Minsky) are advising the court-appointed Representatives. All calculations, assumptions and notice

forms are being discussed with your actuaries and Koskie Minsky, and are subject to ultimate approval by the Court. Although it was originally hoped that we would be before the court in June 2010 to obtain approval of a Compensation Claims Procedure, there have been a number of unexpected events (including protracted proceedings about the Settlement Agreement) which have caused delays. We now anticipate being before the Court for approval of the process in September 2010.

**The anticipated process:** Before claims are finalized you will receive written notice of your individual claim amounts and will have an opportunity to review the data relevant to your claim, such as your date of employment, age and your date of retirement or termination. The package that you receive will explain the process, how your claim was calculated, and will detail each of your claims. You will not have to file your own claim - Koskie Minsky will do that for you. You will have a claim for all benefits to which you are entitled from Nortel and have lost (or will lose), including health, dental and life insurance benefits, severance pay, transitional retirement allowances and excess / supplemental pension plans benefits, as applicable to your circumstances. If something is missing from your claim, you will have an opportunity to provide information about it and KM will assist you in advancing all valid claims. The contents of the notice, the calculation assumptions and methodologies, and the process will be subject to the court's approval before you receive your claims package.

Once all claims against the Canadian Nortel entities have been received, approved and tallied, and once the total assets available to the Canadian estate have been determined, there will be a distribution of assets. There may be an interim distribution however, and we will advise of that as soon as we know. You will receive a percentage of your total entitlement on a pro rata basis with all other unsecured creditors of Nortel. All unsecured creditors will receive the same percentage recovery. The level of claims recovery from the Nortel estate is unknown at this time and no distribution is anticipated before 2011.

### **3. STATUS OF HEALTH, DENTAL & RETIREE LIFE INSURANCE COVERAGE**

#### **Health & Dental Benefits Going Forward**

As you know, Nortel will cease to pay your health and dental benefits on December 31, 2010. **You must submit your claims by February 28, 2011.** Your Court-appointed Representatives, the NRPC, Representative Counsel and their advisors have been looking into options to provide some form of ongoing medical coverage post-December 31, 2010. One option originally being considered was the possibility of establishing a Replacement Health Plan using a portion of your future cash recoveries from Nortel. After a survey of their constituency and an examination of the pros and cons of this option, the court-appointed Representatives with the assistance of the NRPC National Committee have determined that this option is not viable and will no longer be considered. Two of the major downsides that influenced this decision were (1) the requirement of cash up front to fund the benefits (which would have been difficult and/or not possible to obtain); and (2) the requirement of mandatory participation for all retirees. As a result of this decision, it is now clear that each individual who is entitled to health & dental benefits from Nortel will have a claim for

that loss made against the Nortel estate as part of their claim in the Compensation Claims Procedure.

Although a Replacement Health Plan funded through future cash recoveries is no longer being considered, the NRPC and its advisors continue to look into available options for retiree medical coverage after December 31. Options being considered include the possibility of locating an insurance provider that will agree to insure your retiree benefits without the requirement of a medical assessment and/or the possibility of conversion from the current group coverage to individual coverage with a provider. If this type of plan is established, you would be given the option as to whether to participate in this plan and also would be responsible to pay the premiums (premium costs and options for benefit coverage are not yet known). More information will be provided as it becomes available.

### **Group Life Insurance Coverage**

Retiree life insurance coverage will end on December 31, 2010. Individuals will have a claim against Nortel for the value of lost life insurance coverage and will receive a pro rata cash distribution in the Compensation Claims Procedure.

## **4. ALLOCATION AND DISTRIBUTION OF THE HEALTH AND WELFARE TRUST ASSETS**

### **Background**

Nortel established a Health and Welfare Trust ("HWT") through which its benefits programs for both active employees and retirees have been provided since approximately 1980. The treatment and funding of those benefits programs varied over the years, with funds being contributed and reserves established for some kinds of benefits, and for others, costs being covered on a "pay-as-you-go" basis. In the past, retiree life insurance premiums, survivor income benefits, and long-term disability income benefits were normally paid from trust assets, while Nortel made "pay-as-you-go" contributions each year for health & dental benefits for its employees and pensioners as well as for active employee life insurance premiums. In addition, Nortel paid survivor transition benefits as they fell due.

### **Allocation & Distribution of the HWT Assets**

As provided for in the Settlement Agreement, the parties are working towards a court approved distribution of the HWT in 2010. We expect that the Monitor will make a proposal for the allocation of these assets, and that interested beneficiaries will have an opportunity to make submissions to the Court on that proposal and on the distribution of the assets. Because there is a potential that those positions may conflict due to the uncertainty of the wording in the trust documents, each of the two groups represented by Koskie Minsky have sought independent legal

advice with respect to the allocation of the HWT assets. For more information about the independent legal advice being sought by your court-appointed Representatives on these issues, please contact the NRPC.

On December 31, 2009, the assets in the trust were estimated at roughly \$80 million, while the liabilities were considerably higher. As the liabilities in the HWT exceed the trust's assets, the distribution will replace only a portion of the lost future benefits that were historically paid from the HWT. The balance of the present value of lost future benefits will form part of your claim against the Nortel estate in the Compensation Claims Procedure.

It continues to be the goal of all parties to achieve the allocation and distribution of the HWT assets before the end of 2010.

## **STATUS UPDATES**

### **Upcoming Webcasts and Information Sessions**

There are a number of important issues to explore and resolve in the coming months. In addition to providing information through periodic newsletters and postings on the KM website, KM and the NRPC will hold webcasts similar to those that have been held in the past. There have been no new webcast dates confirmed at this time, however, Representative Counsel in conjunction with the NRPC plan to hold webcasts for both the pensioner and former employee groups in the near future. Once the Compensation Claims Procedure has been approved by the Court, we may schedule information sessions in various cities in order to provide you with more information about your claims and the related court procedures, and to allow individuals the opportunity to ask Representative Counsel and the NRPC some of the questions you may have. Please watch the KM website's "Latest Development" section for announcements concerning future scheduling of webcasts and information sessions.

### **The Termination Fund for Eligible Former Employees**

In accordance with the Settlement Agreement, eligible terminated employees will be entitled to a lump sum payment of up to \$3,000. Although it is necessary to wait until the appeal period has expired before payment from the Termination Fund can be effected, Representative Counsel and the Monitor are now working on the mechanics of this distribution, and are working with the NRPC to compile the list of individuals who are entitled to a payment from the Termination Fund. We are also looking at mechanisms that would allow for tax-effective payments to certain individuals who receive a distribution from the Termination Fund. We anticipate payments will be made in the early fall of 2010. Once determined, the payment date will be announced on the KM website - at that time, we will provide information for individuals who believe they are entitled to a payment from the Termination Fund but have not received one. We are working with the Monitor to determine what options may be available with respect to retiring allowances.

### **Health and Welfare Trust CRA Advance Ruling Submissions**

Tax counsel for all interested stakeholders has been involved in the preparation of written submissions concerning an advance ruling as to the taxability of funds to be distributed from the Health and Welfare Trust. The request for an advance tax ruling has now been submitted to the CRA. The ruling requests that lump sum payments anticipated to be made from the HWT be made without negative tax consequences to the recipients of the payments. The CRA ruling request relates specifically to certain possible future lump sum distributions from the HWT if court approved, being:

- Lump sum payments in connection with termination of rights under the long term disability plan;
- Lump sum payments in connection with the termination of rights under the pensioner group life insurance plan; and
- Lump sum payments in connection with the termination of rights under the survivor income benefit plan or survivor transition benefit plan.

We are uncertain how long it will take the CRA to make its decision on the taxability of the various amounts to be distributed, however, we will advise on the KM website and through written correspondence as developments occur. Information about the ruling, once it has been issued, will be made available on our website. Please note that this ruling will be applicable only to lump sum distributions made from the HWT and not to future distributions from the estate, which will be dealt with separately once we have obtained the first ruling.

## **Canada Revenue Tax Issues**

Your Representatives have been seeking to resolve a number of tax issues that have arisen during Nortel's CCAA proceedings, which has led to a dialogue with the Canada Revenue Agency (the "CRA"). The CRA has been provided with written submissions on the following three tax issues unrelated to the HWT:

- Foreign Service Earnings issue, which concerns Nortel's historical practice of including foreign service earnings for the purpose of pension benefit calculations;
- Pension Adjustment Reversals ("PAR") which deals with restoring RRSP contribution room lost by some terminated members who received a reduced commuted value transfer from Nortel's pension plans; and
- Tax on the cash payment portion of the commuted value of some members' defined benefit pensions.

### ***Foreign Service Earnings***

Over the past several months, the CRA has been reviewing Nortel's practice for the calculation of individuals' pensions that include a foreign service earnings component. As a result of this issue, some pension plan members who have foreign earnings and who recently became retirement eligible have experienced process delays and/or have been receiving reduced monthly pensions or transfers based on pension calculations that exclude foreign service earnings.

The CRA recently completed its review and has concluded that Nortel's historical practice of

including foreign service earnings as eligible earnings for the purposes of pension benefits is acceptable. The CRA will continue to permit the calculation of pensions in accordance with this practice. Going forward, it is clear that plan members in receipt of monthly pensions that include foreign service earnings will not experience a reduction to their monthly pension payments as a result of this. For those individuals who have experienced delays and/or reduced pensions, these issues have now been resolved. Mercer will immediately begin to recalculate affected pensions, however, it may take six to eight weeks to complete most of the recalculations and to implement the appropriate payments and transfers.

Individuals who have already received and submitted an option statement to Mercer will now have their pensions calculated with the inclusion of foreign service earnings. If you have experienced a temporary reduction in your monthly pension or transfer amount based on a calculation that excludes foreign service earnings, you will receive either a lump sum top-up payment or additional transfer amount, as applicable, to compensate you for that reduction. If you received an option statement from Mercer in the past, but have not yet completed your form, please proceed to submit your option statement to Mercer as soon as possible and no later than September 10, 2010 and your pension and/or commuted value entitlement will be calculated with the inclusion of your foreign service earnings. Please contact Mercer with questions that are specific to these issues.

#### ***Pension Adjustment Reversal and Tax on Cash Payment of Commuted Value Issues***

The CRA continues to review tax issues related to Pension Adjustment Reversals and tax on cash payments of the commuted value of registered pensions. While the CRA continues to express a willingness to consider potential solutions, we cannot provide you with further information until such time as the CRA completes its analysis and provides us with its position. We will advise once this review is complete and a conclusion has been reached by the CRA.

#### **Extension of Stay of Proceedings and Employee Hardship Process**

On July 16, 2010, the Court granted an extension of Nortel's stay of proceedings in Canada until October 29, 2010. The Court also granted an extension of the Employee Hardship Process until October 29, 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).

We have inquired about the possibility of establishing a hardship fund that would apply to pensioners and their survivors who experience severe financial hardship after changes to benefits occur on December 31, 2010. We do not yet know whether this is possible but in any event, any such fund would be subject to Court approval. We will advise of all developments.

#### **Release of Annuity Decision**

On June 25, 2010 the Court released its reasons for decision on Nortel's motion for the Court's advice and direction on the payment of certain Sun Life annuities. To view these reasons please visit

the KM website. The decision restores the payment of annuities to a group of retirees of Nortel who stopped receiving these payments as of January 14, 2009. The annuities in question were purchased from Sun Life with deferred compensation that the individuals in question had accumulated during their employment with Nortel. For tax reasons the annuities were structured so that Nortel received the payments from Sun Life, and then passed them on to the individual annuitants. After an analysis based on contract and trust law principles, the Court found that Nortel was being unjustly enriched by retaining the annuity payments, and noted that Nortel was merely a conduit through which payments flowed to the ultimate annuitant. The Court imposed a constructive trust in order to restore these annuity payments to the individual annuitants.

Individuals affected by this issue have already been contacted by Representative Counsel and we are now working with Nortel and the Monitor to have the annuity contracts assigned and to effect retroactive payments to the affected individuals.

### **Ongoing Asset Sales / Resolution of Intellectual Property Issues**

While many of the major asset sale transactions have now been completed, Nortel continues to explore the strategic alternatives to best optimize the value of its residual businesses and assets; including its remaining intellectual property. This is a lengthy process, and there has been no determination as to the form such a recovery would take. KM and financial advisors, Richter, continue to represent pensioner, former employee and disabled employee constituencies on these issues. The Monitor is aware of our interests and is negotiating, in consultation with our groups, to protect and promote the interests of all Canadian stakeholders. You will be advised of developments.

## **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>. Pensioners or former employees who have questions or wish to join the NRPC should visit the organization's website at [www.nortelpensioners.ca](http://www.nortelpensioners.ca).

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).

This update has been sent to all Nortel pensioners and former employees, including those represented by the CAW-Canada, which has reviewed this update. If you are a CAW member, you should direct any questions regarding this update to the legal representative for the CAW – Barry Wadsworth, Associate Counsel, at (416) 495-3776 or by e-mail to [michelle.bondy@caw.ca](mailto:michelle.bondy@caw.ca).