

Webinar on Pension Plan Cutbacks

**KOSKIE
MINSKY_{LLP}**
BARRISTERS & SOLICITORS





Agenda

1. Housekeeping Don
2. Introductions and Opening Remarks Don/Susan
3. Updates since NRPC January town hall meetings:
 - HWT Don
 - Non RPP Claims Susan/Don
 - Asset Sales, Mediation and Estate Payout Susan
4. Registered Pension Plans and Cutbacks Hamish Dunlop



Housekeeping

- Duration: 1:00 - 3:00 pm
- PDF copy of slides (English / French) available on KM website
- Archived version of the webinar, with audio, will be available soon after the webcast, on NRPC/KM websites (within days)
- Questions will be answered in language of the question
- Q&A will be held at the end, based on questions received in advance and questions e-mailed during the course of the webcast
- Target audience for this webinar: pensioners-in-pay



Introductions + Opening Remarks

- Susan Philpott KM
- Don Sproule NRPC
- Mike Campbell NRPC
- François Meunier NRPC
- Hamish Dunlop Morneau Shepell
- Serge Charbonneau Morneau Shepell



Update: Health and Welfare Trust

▪ Summary and milestones

- \$80 Million (approx.) in HWT not subject to CCAA creditors
- **November 2010** - CCAA court approved division of the assets among the following beneficial entitlements:
 - pensioner LIFE (not pensioner HEALTH)
 - STB/SIB/LTD claim (income and life)
- Sufficient assets to pay out roughly 34% of entitlements in the HWT
- **January 2011** Dissenting LTDs Leave to Appeal (CA) denied
- **June 2011** Dissenting LTDs Leave to Appeal (SCC) denied
- **July 2011** Partial payments (25%) made to LTD/SIB/STB (for income benefits)
- **Q4 2011?** Working on interim or full payment to pensioners for LIFE entitlements from HWT (residual LIFE Claims to be made against Nortel estate and paid with estate resolution)

Update: Claims Process for non-RPP

Non-RPP Claims

- Health, Life, TRA/RAP, EP/SERP, STB/SIB, IPP, Termination Pay

Timelines (current estimate)

- | | |
|---|----------------|
| • Segal review of Mercer calculations | completed |
| • NRPC macro review of claims calculations | completed |
| • NRPC test cases | July 2011 |
| • Claims process in front of court | September 2011 |
| • Individual claims packages | October 2011 |
| • Town halls with our advisors | November 2011 |
| • Individual data changes sent in | December 2011 |
| • revisions to claims following data changes | Q1 2012 |
| • Canadian estate pays out claims (partial? final?) | ?? |

Payout when CDN estate is settled




Update: Asset Sales, Mediation, Estate Payout

Sales Status

- ~ \$7.5 B US from sold assets in global lockboxes (including \$4.5B from IP)

Unlocking the Global Lockboxes

- requires agreement of CDN/US courts
- two prior attempts at mediation failed to produce a settlement
- litigation of allocation dispute will be long and costly - decision on appropriate forum is pending before the CDN/US courts
 - in the interim, the judges have appointed a new mediator, CJO Warren Winkler
 - mediation expected to commence at the end of the summer
- if mediation successful, payments can be made once claims process completed
- CDN estate payout will be made at 75¢ on the \$ for:
 - Pensioner LIFE claims (residual of claim after HWT payment)
 - Pensioner Health, TRA/RAP, EP, SERP claims
 - Registered Pension Plans deficiency claims (into the plans)
 - Termination Claims (etc.)



Registered Pension Plans + Cutbacks (Morneau)

1. Introduction
2. Overview of the Wind Up Process
3. Pension Reductions
4. Next Steps



Introduction

Morneau Shepell Ltd was appointed Wind Up Administrator for Nortel's pension plans effective October 1, 2010.

- o Morneau's Regulatory Consulting Group has been appointed by regulators across Canada to administer and wind up over 100 pension plans, mostly of bankrupt or insolvent companies.
- o Morneau has administered the two largest pension plan wind ups in Canadian history, Confederation Life and the Algoma Steel Retiree Plans - the two largest until Nortel.



Introduction

Nortel Pension Plans

- o Separate Plans for Managerial and Negotiated Staff
- o Just over 20,000 individuals entitled to benefits from the plans
- o Total liabilities of approximately \$4 billion
- o Total assets of approximately \$2.5 billion (not including PBGF and recovery from the Nortel Estate)
- o Both defined benefit (DB) and defined contribution components in each plan
- o Members with employment in every province in Canada
- o Extensive indexation and very complex plan provisions



Introduction

Our Appointment

- o Pension Plans in Canada are registered and regulated in the province where a plurality of the members are employed
- o In the case of Nortel that province was Ontario, the Nortel plans were registered with and regulated by the Financial Services Commission of Ontario (FSCO)
- o Nortel obtained CCAA protection in January 2009
- o On March 30, 2010, a Settlement Agreement was entered into between Nortel and its creditors which provided that Nortel would cease to administer and make contributions to the pension plans effective September 30, 2010.



Introduction

Our Appointment

- o On October 1, 2010, the Superintendent of Financial Services appointed Morneau with a mandate to administer and wind up the Nortel pension plans.
- o On March 8, 2011, the Superintendent ordered that the Nortel plans be wound up effective October 1, 2010.
- o On May 2, 2011, the Superintendent made an order that the Pension Benefits Guarantee Fund (PBGF) applies to the Nortel pension plans (for those members with Ontario service).



The Wind Up Process

Our mandate is to administer and wind up the pension plans. The rules relating to the wind up include:

- o The Ontario Pension Benefits Act
- o Pension legislation in other provincial jurisdictions
- o The Income Tax Act
- o The terms of the Nortel pension plans
- o The Companies' Creditors Arrangement Act (CCAA)
- o Any applicable Court orders



The Wind Up Process

The following are some of the major steps that we take in the wind up process for each plan:

- o Take custody of pension plan records from the employer/sponsor
- o Assume control of pension plan assets, amend the portfolio mix to protect the plan against losses arising from changes in equity markets
- o Apply for regulatory orders regarding the wind up and apply for funds from the PBGF
- o Pursue a claim against the estate of the employer/sponsor for any deficiencies in the pension plan



The Wind Up Process

The following are some of the major steps that we take in the wind up process for each plan (continued):

- o Prepare an initial valuation to determine the level of benefits the Plans can afford to pay pending the approval of the wind up Report
- o Cut back benefits to the level the plan can afford
- o Confirm all data needed to calculating pension benefits with plan beneficiaries
- o Prepare a wind up report for submission to FSCO for approval
- o Once the wind up report is approved, settle benefits through either the transfer of cash values of pensions to locked-in accounts (or to the Régie in Quebec) or by the purchase of annuities from insurance companies



The Wind Up Process

The following are some of the major steps that we take in the wind up process for each plan (continued):

- o Following approval of the wind up report, options forms will be sent to members. Members will have 90 days to return these forms with their election. If no election is made, annuities will be purchased on their behalf.
- o Options include:
 - For all provinces except Ontario, Quebec
 - Retirees will have annuities purchased on their behalf
 - For Ontario
 - Purchase of annuities
 - Purchase of a LIF (once Nortel specific regulations are written)
 - For Quebec
 - Purchase of annuities
 - Purchase of a LIF
 - RRQ management (including applicable indexation)



Pension Reductions

Both pension plans are underfunded and cannot sustain the continued payment of benefits to pensioners at full entitlement - as a result, it is necessary to reduce benefits to a level that can be sustained by the plans.

- o The reductions we are implementing are interim and based upon conservative assumptions. We believe it is likely that the final funded ratios will be higher.
- o The magnitude of the reductions will vary depending upon which plan you belong to, and where you were employed.
 - o Indexation has a significant impact.



Pension Reductions

Depending on your province of employment, pension reductions are calculated in two or three steps

1. Pensions are reduced to the initial estimated funded ratio
2. For eligible members with Ontario service, PBGF top-ups are added
3. Pensions are further reduced to reflect recovery of overpayments made since October 2010



Pension Reductions

The basic funded ratios for the interim reductions are as follows

| | Ontario Service | Non-Ontario Service |
|-----------------|--------------------|------------------------|
| Managerial Plan | 70% (unindexed) | 59% (indexed) |
| Negotiated Plan | 75% (unindexed) | 57% (indexed) |

Note that Ontario rules eliminate indexation unless other benefits are fully funded. Because non-indexed annuities cost less than indexed annuities, the funded ratio for Ontario members is higher. The spread is higher in the Negotiated Plan than in the Managerial Plan because it had more comprehensive indexation provisions.



Pension Reductions

The initial funded ratios are conservative and assume no recovery on the CCAA claim against Nortel

- o Once the Nortel estate is settled and the Plans receive their share, we will increase pensions to reflect this recovery
- o The amount and timing of this recovery is still unknown, but we anticipate the recovery may be substantial
- o If recovery is well in advance of the final windup report, further interim adjustments (increases) to pensions may be made. If after the windup, a supplemental adjustment to pensions and/or payouts will be made.



Pension Reductions

Pensioners with Ontario service

- o Pensioners who were employed in Ontario are protected by the Pension Benefits Guarantee Fund (PBGF). The PBGF guarantees that the first \$1,000 per month of pension is fully paid.

Example

A pensioner in the Negotiated Plan employed by Nortel in Ontario currently receives a pension of \$2,000 per month. Since the funded ratio for Ontario members of the Negotiated Plan is 75%, he will receive \$1,500 per month from the Plan. The PBGF guarantees that the unpaid 25% of the first \$1,000 in monthly pension is paid, or an additional \$250 per month. The total pension payable after the reductions will therefore be \$1,750 per month (before taking any reduction to recover overpayments).



Pension Reductions

Pensioners with Ontario service (cont'd)

- o Ontario rules provide that, where the PBGF applies to a Plan, all indexation increases that occurred subsequent to the wind up date of October 1, 2010 are eliminated unless non-indexed benefits are fully paid first.
- o Ontario members are therefore entitled to unindexed benefits whereas non-Ontario members are entitled to indexed benefits.
- o Note that for practical reasons, we did not eliminate indexation increases until the end of 2010. This means that about 25% of pensioners (indexation increases were payable in the month of the members' birthdays) received small indexation increases in the last 3 months of 2010 are now being rolled back.



Pension Reductions

Pensioners with Ontario service (cont'd)

- o PBGF entitlement has been taken into account for the reduction.
- o Most Ontario members whose pension is \$1,000 per month or less will see no net pension reduction (the exception will be those members who received an indexation increase in the last three months of 2010 - these members will see their pensions reduced by a small amount).
- o For members who have service in both Ontario and other provinces, they will receive PBGF coverage on the portion of the benefits they earned while employed in Ontario.



Pension Reductions

Pensioners outside Ontario

- o Pensioners outside Ontario are entitled to indexed benefits if they retired on or after January 1, 1988 (which is the main reason the funded ratio is lower).
- o Pensioners who were employed entirely outside Ontario are not entitled to PBGF coverage.
- o Assumptions are somewhat more conservative for non-Ontario members, because in Ontario, the PBGF guarantees the funded ratio as of the wind up date for Ontario members.
- o Again, these numbers are interim and will change (most likely upward) when the wind up report is finalized.



Pension Reductions

Overpayments

- o Pension reductions are effective as of October 1, 2010 (i.e. the wind up date).
- o Pensioners have received 100% of their benefits for the period October 2010 to July 2011.
- o We are required to recover any overpayments made between October 1, 2010 and August, 2011.



Pension Reductions

Overpayments

- o We are recovering the overpayments by reducing the pensions payable to members.
- o The reductions are designed to recover the overpayments over the lifetime of the member.



Pension Reductions

Overpayments

- o The size of the reduction will vary depending upon a number of factors
 - o The age of the pensioner: The younger the pensioner, the longer the period over which the overpayments are recovered, and hence the smaller the reduction. For older pensioners, the maximum reduction has been “capped” at 7%.
 - o The extent of the overpayment: For example, an Ontario pensioner whose pension is less than \$1,000 per month and is fully guaranteed by the PBGF has not been overpaid, there will therefore generally be no reduction for overpayments.



Pension Reductions

Pension Reduction Letters

- o If you are a Nortel pensioner or survivor pensioner as of October 1, 2010, you should recently have received a letter indicating the amount by which your pension is being reduced
- o If you were a pensioner or survivor pensioner as of October 1, 2010 and you did not receive a letter please contact Morneau Shepell
- o The type of letter you receive depends on what plan you belong to and the province in which you were employed



Pension Reductions

Pension Reduction Letters - Non-Ontario members

- o The letters for members whose employment was wholly outside Ontario indicate:
 - o Your current (i.e. unreduced) pension
 - o Your reduced pension (at 57% for the Negotiated Plan and 59% for the Managerial Plan)
 - o The reduction required to recover overpayments
 - o The pension payable commencing August 2011



Pension Reductions

Pension Reduction Letters - Ontario members

- o The letters for members whose employment was wholly in Ontario indicate:
 - o Your current (i.e. unreduced) pension as of September 30, 2010
 - o Your reduced pension (at 75% for the Negotiated Plan and 70% for the Managerial Plan)
 - o The PBGF top-up that is payable in respect of your pension
 - o The reduction required to recover overpayments
 - o The pension payable commencing August 2011



Pension Reductions

Pension Reduction Letters - Service in both Ontario and other provinces

- o Letters for those members who were employed in both Ontario and other provinces will show pension amounts separately for Ontario and non-Ontario service and so will indicate:
 - o Your current (i.e. unreduced) pension for service in Ontario as of September 30, 2010
 - o Your reduced pension for service in Ontario (at 75% for the Negotiated Plan and 70% for the Managerial Plan)
 - o The PBGF top-up that is payable in respect of your pension
 - o Your current (i.e. unreduced) pension for service outside Ontario as of September 30, 2010
 - o Your reduced pension for service outside Ontario (at 57% for the Negotiated Plan and 59% for the Managerial Plan)
 - o The amount of the reduction required to recover overpayments
 - o The total pension payable commencing August 2011



Pension Reductions

Pension Reduction Letters - Province of Employment

- o Your letter will indicate which province or provinces our records indicate you were employed
- o Please carefully review this information. If it is incorrect please either provide us with supporting documents indicating your correct province of employment or, if you have no documents, complete and sign the attached statutory declaration in front of a Commissioner of Oaths and return it to us. All lawyers and most law clerks are Commissioners and can help you with your statutory declaration.



Next Steps

Pensions started after October 1, 2010

- o New pensions started since the wind up date have been paid at 50% of entitlement (plus any PBGF top-up for Ontario members)
- o Most new pensioners have therefore been underpaid
- o We will shortly be increasing these pensions to the appropriate funded levels. We will also provide these members with retroactive payments to reflect underpayments made since their pensions were put into pay.
- o Survivors of pensioners put into pay since the wind up may also see some small reductions due to overpayments.



Next Steps

- o The next major step, once cutbacks have been finalized, will be to review and confirm and reconcile data regarding all plan members
- o Once this is completed, profiles will be sent to all plan members outlining the information we will use to finalize their pension entitlement. These will likely be mailed in 2012.
- o We anticipate filing the wind up reports no earlier than the end of 2012. We cannot complete the wind up reports until the data review and reconciliation is complete.



Thank you