

## **DISABLED EMPLOYEE INFORMATION UPDATE**

**Prepared by Koskie Minsky LLP at the request of the CNELTD (Canadian Nortel Employees on Long-Term Disability) Steering Committee**

**March 8, 2011**

This information update has been prepared in order to report on various issues that are of importance to you as a former disabled employee of Nortel.

### **Extension of the Termination Fund**

On February 25, 2011 Nortel brought a motion before the Court to request approval of an extension of the Employee Hardship Application Process and the Termination Fund. The Court approved these requests.

The extension of the Termination Fund in practical terms means that Nortel's disabled employees whose employment was terminated effective December 31, 2010 will receive a \$3,000 payment in the near future. The Termination Fund payments originally were made only to individuals who were terminated on or before June 30, 2010. In January 2011, Susan Kennedy, as court-appointed representative for many of Nortel's disabled employees, advised the Monitor of the financial difficulties that were being experienced by disabled employees as a result of the loss of LTD income benefits that took effect on December 31, 2010. Ms. Kennedy requested that a Termination Fund payment also be paid to Nortel's disabled employees. The Monitor and Nortel later agreed to this request and then sought Court approval for the Orders required to allow these payments to be made. As a result, 354 Nortel disabled employees, along with other employees who were terminated after June 30, 2010, will receive a \$3,000 payment. This payment will be credited against your ultimate claim against the Nortel estate, meaning that your termination claim against the Nortel estate will be reduced by the gross amount that you receive from the Termination Fund. This payment is advantageous to you because it is being paid at a level of 100% (as opposed to the lower distribution rate at which future estate distribution claims will be paid). This payment is taxable as income and therefore tax, at a level of 16% for Quebec residents or 10% for residents of all provinces other than Quebec, will be withheld and remitted on that payment. The tax that you will ultimately be required to pay will depend on your total income when you file your 2011 tax return. Please note that certain individuals who have pre-1996 service with Nortel may be eligible for a tax free transfer through a direct deposit into your Registered Retirement Savings Plan (RRSP). You will receive correspondence from the Monitor in the near future to outline the details. If you are eligible for the tax free transfer, you will be provided with an option to make that election.

Funding for these payments will come in part from the unused balance of the Termination Fund that was part of the settlement agreement approved by the Court last March, with the rest to be paid from funds earmarked for the Hardship Fund that contains enough additional monies to allow for the payments. Please note that you do not need to qualify for the Employee Hardship Application Process criteria in order to receive the Termination Fund payment and that none of the funds used to make the Termination Fund payments will come from the HWT. For the time being, LTD members do not qualify under the Employee Hardship Application Process, although we are discussing with the Monitor the expansion of the eligibility criteria for the Hardship Fund to include disabled employees.

We hope that this one-time \$3,000 payment will provide additional interim financial assistance to disabled persons while other issues related to the HWT and future HWT distributions are resolved. As a former disabled employee of Nortel, you can expect to receive information from the Monitor in the coming weeks about the timing and method of payments. Please note that there are several process issues to be resolved before payment can be made so we cannot yet estimate the timing of the payment.

### **Interim and Final HWT Distributions**

By now, all disabled employees should have received an interim distribution from Nortel's Health and Welfare Trust (HWT). Interim HWT payments were paid in late January 2011. If you have not yet received your payment, please contact the Monitor immediately using the contact information provided at the end of this update.

There will be another HWT distribution in the future. However, the timing of the next distribution is not yet known. As many of you know, an advance ruling request was submitted to the Canada Revenue Agency (CRA) and other applicable taxing authorities seeking a ruling that no tax be payable on those distributions. The outcome of any advance ruling will impact the amount of tax, if any, to be withheld on money distributed in respect of the various benefits from the trust. The CRA Rulings Directorate in January 2011 indicated that a favourable ruling will be released in respect of not taxing payments from the HWT for lost disability income benefits. On this basis, no tax was withheld from the recent interim distribution made from the HWT in respect of lost LTD income benefits. The final CRA ruling has not yet been released. An announcement will be made and documentation provided as soon as the final CRA ruling is released. A final accounting of the HWT is also necessary before the final distribution can be made, and these matters are still underway.

In addition, a group of about 38 disabled individuals have sought leave to appeal to the Supreme Court of Canada the Court's decision concerning the allocation of assets in the HWT. The Ontario Court of Appeal dismissed the group's application for leave to appeal in early January 2011. The proposed leave to appeal application has potential to cause delays in future HWT distributions. It is hoped that any further litigation from this group will proceed on an expedited basis, but they have taken no steps to expedite the matter. As you know, SGM LLP represents the disabled employees for matters related to the allocation of assets in the HWT and will continue to do so. KM is responsible for other matters such as those related to taxation.

### **Requests to the Provincial and Federal Government**

Over the past two years, the CNELTD has made various requests for assistance to the Government, including requests for legislative change that will assist Nortel's disabled employees. Ms. Kennedy and her legal advisors recently met with representatives of both the Federal and the Ontario Government to make several specific requests for assistance to Nortel's disabled employees. In early January 2011, Ms. Kennedy met with Minister John Baird to present options that would provide financial assistance to the disabled employee group, which included the possibility of the Federal government taking an assignment of LTD income benefit claims and/or expanding assistance programs, such as the Wage Earner Protection Program (WEPP), to provide some form of protection for Nortel's disabled employees. The CNELTD also requested that the Federal government engage in a review of the laws surrounding a company's ability to self-insure its disability income benefits, in order to protect other disabled employees in the future from ending up in the difficult situation currently faced by Nortel's disabled employees.

In early February 2011, Ms. Kennedy and her legal advisors met with representatives of Minister Duncan's office to request that the Provincial government provide financial assistance and assistance through provincial health care programs to the disabled group. The CNELTD asked the Provincial government to consider taking an assignment of LTD income benefit claims and also requested a review of the laws surrounding a company's ability to self-insure disability benefits on a Provincial level. Further, the CNELTD made a number of requests related to the Ontario Trillium Drug Program (TDP), including automatic acceptance into the TDP for all Nortel disabled employees who are Ontario residents and having case workers designated to assist Nortel disabled employees in obtaining information about Trillium and gaining access to the specific drugs they require. The CNELTD will continue to make requests for an expedited and centralized process through Trillium for Nortel's disabled employees. To date, the CNELTD has focused on programs available in

Ontario, where approximately 2/3 of Nortel's disabled employees reside, but is also looking into programs available in other provinces.

The CNELTD Steering Committee and Koskie Minsky understand how important financial and health coverage assistance is to you and the CNELTD will continue to follow up on the requests for help from the Federal and Provincial Governments.

### **Health Benefit Coverage**

The CNELTD website includes a list of various provincial drug programs that may be of assistance to you and the Steering Committee will be updating the list on a regular basis. Included as an enclosure is the most current version of this document, which was prepared by the CNELTD Steering Committee. Please note that the information contained in this document is subject to change and is meant to provide a starting point for your investigation about future health coverage. We urge you to look into these programs if you have not already done so. There are a number of programs available to disabled individuals and also programs available to individuals who are experiencing financial hardship. We encourage you to call and inquire whether you qualify for any of these programs. Since each individual's situation will be different, it is very important that you look into all options and determine which one is best for you.

### **2010 Tax Reports from Nortel**

We understand that a number of former Nortel disabled employees received a T4 slip from Nortel and that there may be confusion surrounding the amounts that are reported, what they represent and the taxable status of those amounts.

We understand that the amount reported as earnings under box 14 of the T4 slip is based primarily on group life taxable benefits and the defined benefit ("DB") pension top-up payments made in 2010, as applicable. The DB top-ups were explained in a letter Nortel mailed to eligible Plan members in mid-September 2010. The letter explained to eligible employees the nature of the one-time "top-up" deposit, which was made to compensate for the value of the DB benefits that would have been accrued under Nortel's DB plan during the October 1 – December 31 period but could not, due to the fact that the accrual of pensionable service ceased for all members effective September 30, 2010. The one-time "top-up" deposit took place in late December 2010 and was made directly into your after-tax savings vehicle (ATSV) account with Sun Life.

If you have specific questions concerning the amounts reported on your T4, please contact Nortel at (919) 905-9351. We understand that these amounts are taxable income and that tax was not deducted by Nortel. Please consult a financial advisor who can properly advise you on tax matters.

### **Pension Developments**

#### **Early Retirement and Pension Eligibility**

Morneau Sobeco has changed its name to Morneau Shepell Ltd. ("Morneau"). Morneau remains the Administrator responsible for the wind-up of Nortel's pension plans and have recently posted new updates on their website about Nortel pensions. To access full information about these developments, please visit <http://www.pensionwindups.morneausobeco.com>. If you are close to age 55 you may wish to request a retirement quote from Morneau Sobeco in order to determine whether you are pension eligible now or if not, when you may become eligible. You can do this through the "Forms" section on the Morneau website or by contacting Morneau by telephone. Please note that by simply requesting a retirement quote, you are not indicating to Morneau that you want to start to receive your pension.

### Superintendent's Approval for Commencement of New Pensions

Over the past several months, members of Nortel's defined benefit pension plans who recently became eligible for retirement have been experiencing delays in the commencement of new pensions. Morneau has now received consent from Ontario's Superintendent of Financial Services to start new pension payments at a level of 50% of full entitlement. For Plan members with Ontario service, new pensions will take into account any amounts payable under Ontario's Pension Benefit Guarantee Fund (PBGF). From what we understand, this means that for most individuals who worked their careers in Ontario, new pensions that are commenced at a reduced rate of 50% will be topped up by the PBGF to ensure that the first \$1,000 per month (or the full monthly value, if less than \$1,000) is guaranteed. Therefore, a member with Ontario service who is entitled to a pension of \$1,000 per month under the Plan rules will start their pension at a level of \$1,000 per month (half of which is paid by the pension fund and half by the PBGF). A member with Ontario service who is entitled to a pension of \$2,000 per month will start their pension at a rate of \$1,500 - the first \$1,000 of which is paid in full (half by the pension fund and half by the PBGF) and the second \$1,000 to be paid at a reduced rate of 50%. Full PBGF protection will apply only to Plan members who worked their entire career in Ontario; partial PBGF coverage will apply proportionately to that portion of pension service which was accrued in Ontario; for those who were employed outside of Ontario, the PBGF is not applicable. For more information, please visit the Financial Services Commission of Ontario (FSCO) website at <http://www.fSCO.gov.on.ca/english/pensions/PBGF/default.asp>. Please note that PBGF coverage will not apply to defined contribution pension entitlement.

All amounts are subject to future adjustment, including in accordance with the final wind-up ratio for the Plans.

Quebec pension legislation does not permit people to start receiving pension payments during the wind-up of a pension plan. However, the Administrator is permitted to provide temporary advance payments to Quebec members which will be deducted, with interest, from the commuted value transfer that will ultimately be paid to them. For more information about such payments, the level of interest to be applied or to request these payments, please contact Morneau. Although Quebec members cannot start receiving monthly pensions from the Nortel Plans now or in the future, Quebec Plan members will have the opportunity at some point in the future to transfer funds into an investment vehicle that will allow for the establishment of a monthly income stream. When this stage is reached, those who are affected will be required to make an individual investment decision based on their individual circumstances.

Plan members who have already requested a retirement quote from Morneau should receive a Retirement Election Option Form in the near future. Those who have not yet requested a retirement estimate or commenced the retirement process, but who are eligible to retire and who wish to do so, should contact Morneau immediately at the contact information provided below. Those members who were employed in Quebec can contact Morneau to request the temporary advance payments described above.

### Superintendent's Approval of Partial Commutations for Nortel's Disabled Employees

Disabled employees who are eligible to retire and who wish to receive a monthly pension should contact Morneau to commence the retirement process. A second option will also be available to certain Nortel's disabled employees who accrued service in Ontario, Alberta and Nova Scotia (**regardless of pension eligibility**). Ontario's Superintendent of Financial Services has provided its approval to the Administrator to permit certain lump sum transfers to Nortel's Disabled Employees. The Superintendent has approved interim transfers of up to 50% of the estimated commuted value that you are expected to ultimately receive from the Plan (that is, 50% of your pension value calculated at the estimated funded ratio; so, if the estimated funded ratio is 50%, you could transfer up to 25% of your pension value) to a locked-in retirement account, regardless of whether or not you

are currently eligible to receive a monthly pension. The intent of this extraordinary permission is to permit former Nortel disabled employees who are suffering financial hardship to access a portion of their pension funds through an application to their provincial pension regulator to unlock their pension monies.

This option will be available only to disabled employees who have accrued benefits from employment in Ontario, Alberta and Nova Scotia. Those three provinces are the only ones where unlocking pension funds is permitted by the applicable pension legislation. Disabled employees who wish to take advantage of this option should contact Morneau. Please note that this is a two stage process. You must first contact Morneau to request the interim transfer. You must then apply separately through the Financial Services Commission of Ontario (or the applicable provincial regulator) to unlock these monies. Members with Ontario service can access the applicable form through FSCO at the contact information below.

**Note that once you have chosen to take your partial CV transfer, you will not be permitted to apply to start your pension from the Nortel plan. The remainder of your pension entitlement (the total of which will be reduced to the wind-up funded ratio) will be paid out as a commuted value transfer pursuant to the final wind-up of the Plan.**

### **Compensation Claims Procedure & Estate Distribution**

Koskie Minsky (your Representative Counsel) and Segal (your actuaries) continue to work with the Monitor and the Company to establish the Compensation Claims Procedure, which is the process through which our claims as former employees of Nortel will be submitted and determined. There are a number of outstanding legal and actuarial issues that must be resolved before a Compensation Claims Procedure is brought before the Court for its approval. Segal is currently working to resolve outstanding actuarial issues and to review preliminary calculations. In the meantime, KM is working with the Monitor and Company on the outstanding legal issues to be resolved. Although it was originally expected that parties would be in Court in February of 2011 to seek Court approval for a Compensation Claims Procedure, this process has been delayed for a number of reasons, including extended litigation concerning the allocation of the HWT assets. We do not expect that approval for a Compensation Claims Procedure will be before the Court for at least a few more months. There is no need to be concerned or to take any action on these issues now, as it is still too early. Information will be widely available once the Court approval stage is reached. We anticipate that individuals will eventually receive a form that will outline their individual claim amounts and will be provided with personal data to be reviewed for accuracy. We will ensure that there will be plenty of information available through webinars and other forms of communication.

As discussed in the past, all disabled employee claims will be dealt with through the Compensation Claims Procedure. Disabled employees who stopped receiving income benefits effective December 31, 2010 will have a claim against the Nortel estate for, among other things, the portion of your LTD income benefits claim that is not paid through the HWT distributions. **Please note that applying to start your pension now will not affect the claim you already have against Nortel in respect of lost disability income benefits. If you are retirement eligible and wish to start receiving your pension, please contact Morneau at the contact information below.**

The ultimate distribution of funds from the Nortel estate will not occur until the Compensation Claims Procedure has been approved by the Court and completed. There are other factors that will also affect the timing and level of funds available for the estate distributions. For example, the level of assets available in Canada for distribution cannot be known until other creditors' claims against the Canadian estate are finalized – these claims are being dealt with through separate claims processes. Furthermore, Nortel was a large global company and there remain unresolved issues surrounding how much of the company's assets should be allocated to each jurisdiction. Parties from the various estates (Canada, the US and the UK, to name a few) must resolve estate allocation

issues before the level of assets that will be available for distribution to Canadian creditors can be known. The estate allocation issues are complex and it is expected that resolving these issues could take quite some time. A distribution from the Nortel estate is not expected in the near future and could extend beyond 2011.

We understand that many of you are concerned about your financial situation. We will continue to investigate and to push for methods to get funds to you in the interim period.

### **Contact Information**

If you have questions, please feel free to contact our Representative Counsel, Koskie Minsky, by email at [nortel@kmlaw.ca](mailto:nortel@kmlaw.ca) or on their toll-free hotline at 1.866.777.6344.

Disabled Employees who have questions or who wish to join the CNELTD group or want to get access to the CNELTD website should send an email to [SteeringCommittee@cneltd.info](mailto:SteeringCommittee@cneltd.info). If you do not have email access and want to contact the Steering Committee by telephone, please contact Koskie Minsky's toll-free hotline as described above and they will arrange for the Steering Committee to contact you.

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) or by phone at 1-866-942-7177.

Pension-related questions should be directed to the new plan administrator, Morneau Shepell, rather than to the Steering Committee. Morneau Sobeco's website is at [www.morneausobeco.com](http://www.morneausobeco.com), and they also can be reached through the following contacts:

Managerial Plan - 1-877-392-2074  
Non-Negotiated Plan - 1-877-392-2073  
Email – [nortelwindup@morneausobeco.com](mailto:nortelwindup@morneausobeco.com)

For more information about Ontario's PBGF or about unlocking pension funds Ontario, please contact the Financial Services Commission of Ontario through their website at [www.fsco.gov.on.ca](http://www.fsco.gov.on.ca) or by telephone at 1-800-668-0128.

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