

**KOSKIE  
MINSKY**

JUSTICE MATTERS

# Qualifying Retroactive Lump-Sum Payment ("QRLSP") Forms

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December 7, 2017

CIVIL LITIGATION | CLASS ACTIONS | LABOUR LAW | PENSION & BENEFITS  
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KOSKIE MINSKY LLP

# Agenda

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1. NRPC Introduction
2. Koskie Minsky Legal Update
3. Definition of QRLSP
4. Types of income receiving a QRLSP
5. How to use the QRLSP form
6. Other common questions

# 1. NRPC Introduction

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## 2. Legal Update

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# Legal Update

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## 1. Distributions from the Estate

- First distribution was declared in June 2017, resulting in:
  - > Compensation Creditors received cheques starting in July 2017;
  - > Pension Plan administrator received a dividend which it is now implementing with benefit increases, retroactive payments and lump sum distributions as applicable.
- Second distribution is expected in 2018:
  - > Timing and amount is not known;
  - > Subsequent distributions unknown but the second and subsequent distributions will total 2.5-4 cents.

# Legal Update

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## 2. HWT Tax Appeal

- November 10, 2017 – Tax Court of Canada released its decision in the Test Case Appeals
  - distributions from the HWT which replaced future payments under a group term life insurance policy for pensioners and disabled employees are not taxable;
  - however, both Survivor Income Benefits (SIB) and Survivor Transition Benefits (STB) are taxable as payments in lieu of death benefits under section 56(1)(a)(iii) of the *Income Tax Act*
- Deadline to appeal is December 11, 2017 – please check Koskie Minsky’s website after this date for further information.

# 3. Definition of Qualified Retroactive Lump Sum Payments ("QRLSPs")

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# What is a Qualifying Retroactive Lump-Sum Payment ("QRLSP")?

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- A QRLSP is a lump sum that represents payments owed to the taxpayer for one or more prior tax years during which the individual was resident in Canada (subject to certain qualifications);
- Generally, payments are included as part of taxable income in the year the taxpayer received them;
- However, upon request by the taxpayer and for certain qualified amounts, the CRA will perform a calculation that may allow the tax burden of the payment to be distributed over prior tax years.



# Minimum Criteria to Qualify for a QRLSP Calculation

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The CRA mandates the following minimum requirements:

- a) The amount must be taxable and must be reported on an information slip such as a T4A (or a Releve 1 for Quebec residents);
- b) The amount must be from an eligible source of income;
- c) The amount must be for an eligible taxation year, meaning:
  - i. You must have been resident in Canada and filing tax returns for the years to which you are requesting that the CRA allocate your tax burden with the QRLSP calculation; and
  - ii. You must not have declared bankruptcy in that year;

# Minimum Criteria to Qualify for a QRLSP Calculation (cont'd)

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- d) The total principal amount of you are requesting QRLSP calculations form must add up to \$3,000 or more; and
  - e) You must file a paper return in the current year and attach the QRLSP form(s).
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- **NOTE:** It is your responsibility to ensure you meet the above criteria. For example, Representative Counsel and the Monitor do not have information regarding your residence, whether you've declared bankruptcy, etc.

# What is an eligible source of income for QRLSP calculation?

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According to the CRA, the following types of payments are deemed to be "qualifying amounts" (amongst others) and can request a QRLSP calculation:

- > income from an office or employment received under:
  - an order or judgment from a court or other competent tribunal;
  - an arbitration award; or
  - a lawsuit settlement agreement (including damages for loss of office or employment);
- > benefits from unemployment insurance or employment insurance; or
- > benefits from a superannuation or pension plan (other than non-periodic benefits such as lump-sum withdrawals).

# Why File a QRLSP Form?

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- QRLSP forms are being provided for your convenience and so that you have the option to file if you wish.
- Should a taxpayer choose to submit a QRLSP form with their taxes, the effect of that request will be determined by the CRA.
  - The CRA will perform the calculations as requested but will only effect the calculation if it reduces the tax burden on the taxpayer.
  - The CRA will only consider whether this reduces the amount of tax owed in the current year, and will not take into account any supplementary benefit calculations which may be affected such as Employment Insurance entitlements.
- Please speak to your tax advisor if you have any questions about whether this form will be beneficial for you. Representative Counsel and the Monitor will **not** be providing advice.

# Why filing a QRLSP form may not be beneficial to you

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- If the amount is allocated to a prior tax year, the tax payable in that prior tax year will be subject to interest accruing from the year it was allocated to the year the tax liability is paid (presumably 2018).
- The average annual interest rate imposed by the CRA from 1999 to 2017 is approximately 3%.
- If the amount of accumulated interest negates the benefit of the QRLSP the CRA will ignore the election.

# 4. Types of income receiving a QRLSP

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# There *may* be TWO sources of Claims for Former Employees

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1. Compensation Claims
2. Registered Pension Benefits

= you *may* qualify for more than one QRLSP calculation

- This presentation focuses on the QRLSP calculation relating to Compensation Claims
- Note: whether you qualify for the QRLSP form or not does not affect any future distributions from the Nortel estate.

# There *may* be TWO sources of Claims for Former Employees

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## 1. Compensation Claims:

- Includes the payments of claims for:
  - > Termination and Severance;
  - > Medical and Dental;
  - > Life Insurance;
  - > Non-Registered Pensions: Excess Pensions, SERP, IPP, TRA and RAP;
  - > SIB/STB Benefits;
  - > LTD Income.
- These are the amounts on which a distribution was made to Compensation Creditors from Nortel starting in July 2017 by cheque.



# There *may* be TWO sources of Claims for Former Employees

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## 2. Registered Pension Benefits:

- Claim of \$1.89 billion filed by administrator of pension plans, Morneau Shepell, for underfunding of the two pension plans on behalf of all members of the Plans, including:
  - > Nortel Networks Negotiated Pension Plan; and
  - > Nortel Networks Managerial and Non-Negotiated Pension Plan
- Nortel Estates First Dividend results in approx. \$860 million being paid to the two Plans. The amount first went to the Morneau who is working on increasing benefits, retroactive payments and lump sum payments as applicable.

# Compensation Claims – QRLSP Methodology

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- The criteria and methodology for the allocation of the payments to prior years was developed by the Monitor based on CRA requirements and was reviewed and accepted by the court appointed Representatives and Representative Counsel as well as counsel for Unifor;
- NOTE: You may also qualify for a QRLSP form relating to your registered pension benefit that would have been sent to you by Morneau Shepell.
  - This is separate from the QRLSP calculation addressed in this webinar;
  - If you have any questions about the QRLSP form or calculations for your registered pension benefits please contact Morneau Shepell directly.

# Compensation Claims – QRLSP Methodology

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- **Qualifying Claims – Basic Criteria:**
  - Claims that span two or more years (except severance claims);
  - Claimant had to have more than one year left if there was a termination date for their claim;
  - Claimant must have lived more than one year after the termination of their benefit.

# Compensation Claims – Qualifying Claims

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Based on the methodology, the following Compensation Claims qualify:

- Supplementary Executive Retirement Plan (SERP) in pay,
- Transitional Retiring Allowance Plan (TRA),
- Excess Plan (EP),
- Retirement Allowance Plan (RAP),
- Survivor Income Benefit in pay (SIB),
- Survivor Transition Benefit in pay (STB), and
- LTD Employee Assistance Program.

# Compensation Claims – QRLSP Methodology

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- **Excluded Claims – Reasons:**
  - Some claims would have terminated in 2009 (i.e. STB in pay, TRA in pay, and RAP in pay);
  - Severance and termination claims at most spanned 78 weeks under the Court approved methodology;
  - Grown-in benefits as a result of a transfer or post-filing termination (including from TRA, RAP, SERP and Excess Pension claims) which are treated as lump sum entitlements payable at the time of the transfer or termination of employment;

# Compensation Claims – QRLSP Methodology

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## Excluded Claims – Reasons (cont'd):

- Some claims had the option to choose a monthly or lump sum payment method, such as Excess Pension Claims. If recipients did not select monthly payments the claimant is assumed to have opted for a lump sum payment;
- Deferred pensions or accruals because they are deemed to occur at the time of the payment; and
- Claims categorized as "other taxable" will be treated in the same manner as the underlying claim's tax classification.
  - For example, patent claims, TRA claims for Flextronics employees, etc. were all received at a single point in time and therefore would not span more than one year and would not receive a QRLSP form.

# Compensation Claims – Excluded Claims

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- Claims that are not subject to withholdings and will not be reported on a T4 slip, including:
  - Medical & Dental claims;
  - LTD income;
  - Pensioner Life and LTD Life (subject to the CRA not appealing).

# Claims Excluded from QRLSP Calculation based on Methodology

Claim Type	Description of Plan	Reason for Exclusion
IPP	Deferred IPP – paid for rest of life	Out of country and deferred benefit
TRA/RAP/Excess Grow-In	Assumed lump sum at date of severance	Point in time
Severance	Lump sum or over notice period	Only spans over a year
Loss Pension Accrual	If DC, accrual over notice period. If DB, loss from future periods	Only spans over a year or future benefit
Patent Claim	Deemed earned the year the patent award would have been received	Point in time
Pensioner Life	Life Insurance Payable upon death	Point in time or future benefit
LTD Life	Payable upon death	Point in time or future benefit
SIB/STB Accrual	Grow in based on entitlement date	future benefit
LTD Pension accruals	Difference as a result of termination	Point in time
Other Taxable (other than EAP)	Primarily TRA (Flex and Montreal Flex settlements), Severance, Pensioner Life	Only spans over a year or point in time



# Qualifying Claims based on Methodology

- ▶ Separate QRLSP forms will be provided for each type of claim along with a brief explanation of the Plan and methodology for that particular claim.

Type	Description of Plan	Methodology
SERP in pay	Annuity for the rest of life, including survivors	Monthly amount x 12 = Annual 2009 to 2017, Excess in 2017
SIB in pay	SIB is unlimited (Survivors only)	Monthly amount x 12 = Annual 2011 to 2017, Excess in 2017
STB in pay	STB is only for 5 years (Survivors only)	Total distribution over period from 2011 to end date
Excess in pay	Excess Plan – non-registered pension annuity for the rest of life, including survivors	Monthly amount x 12 = Annual 2009 to 2017, Excess in 2017
TRA in pay	Plan default is lump sum with the option to have monthly payments or a combination	Total distribution over period from 2009 to end date
RAP in pay	Plan default is lump sum with the option to have monthly payments or a combination	Total distribution over period from 2009 to end date
EAP/Other Taxable	Fixed amount until retirement	Annual = \$1,050 2011 to 2017, Excess in 2017

# QRLSP – Calculation for Compensation Claims

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- For Compensation Claims there are two different ways of calculating the claim:
  1. Lifetime Claims – Excess Pension, SERP, LTD EAP and SIB in pay
  2. Claims that span over a specified period of time (i.e. Term Certain Claims) – TRA, RAP, and STB in pay

# QRLSP Calculation – Lifetime Claims

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- **Lifetime Claims:** the QRLSP will be calculated by allocating the amount representing the maximum annual entitlement the recipient could have received to each year from 2009 (or later) to 2017, with any excess included in 2017.
- Subject to certain exceptions, these include claims for: Excess Pension, SERP, LTD EAP and SIB in pay;
- For example, if you had an EAP entitlement to \$1,050 a year and have received a distribution for \$7,808 relating to this claim, your QRLSP will be calculated as follows:

2011	2012	2013	2014	2015	2016	2017
\$1,050	\$1,050	\$1,050	\$1,050	\$1,050	\$1,050	\$1,508

# QRLSP Calculation – Term Certain Claims

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- **Term Certain Claims** (i.e. claims that span over a specified time period): the QRLSP will be calculated by taking the total amount owing and distributing it equally to each year starting in the year it was terminated and ending in the year the entitlement would have terminated for the claimant if the CCAA had not occurred.
- Subject to certain exceptions, these include claims for: TRA, RAP and STB in pay;
- For example, if you had a TRA that terminated on January 14, 2009 but which otherwise would have terminated four years later, and have received a distribution of \$10,000 for that claim, your QRLSP will be calculated as follows:

2009	2010	2011	2012
\$2,500	\$2,500	\$2,500	\$2,500

# QRLSP Calculation - Estates

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- The QRLSP calculations will apply to estates which are receiving a QRLSP form, however, rather than setting 2017 or the final year of the benefit as the last year, the year in which the claimant passed away will be used.

# When will QRLSP forms be mailed by Nortel?

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- Forms will be mailed out by Nortel in early 2018, before the deadline to file tax returns;
- If you have more than one qualifying claim, you will receive a form for each qualifying claim.

# Non-Residents

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- The CRA requires you to have been resident in Canada and filing tax returns for the years to which you are requesting that the CRA allocate your tax burden with the QRLSP calculation.
- However, since this is an optional form, you may submit a QRLSP form if some but not all years listed are eligible.
- **There is no penalty for submitting a QRLSP form that does not result in a beneficial calculation.**
- The CRA recommends including a short note requesting that they inform you of their decision if you are curious about the result of your request.
- Nortel and Representative Counsel do not have information on your tax residency.

# 5. How to use the QRLSP form

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# Calculating the QRLSP on your own

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- The CRA does not release the precise algorithm used to perform the QRLSP calculations so it may be difficult to determine in advance whether the QRLSP will be beneficial to you. Please contact your tax advisor to discuss your use of this form.
- Representative Counsel and the Monitor will not be providing advice on whether a QRLSP will be useful to you as it will depend on your personal financial circumstances.
- Representative Counsel and the Monitor also do not guarantee that a QRLSP form completed by an individual will be accepted by the CRA.
- Please remember you *may* have received a QRLSP form from Morneau Shepell relating to your registered pension benefits. This is separate from the QRLSP forms being discussed in this webinar.

# Filling out the QRLSP form on your own

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- If you would like to submit a QRLSP form to the CRA but did not receive one from the Monitor, you can fill it out yourself.
- You can download this form from the CRA at the following link:
  - <https://www.canada.ca/en/revenue-agency/services/forms-publications/forms/t1198.html>
- You should put your name and identifying information on the form

Name of recipient Your name	Social insurance number Your SIN	Year of payment 2017
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# Filling out the QRLSP form on your own

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- Each QRLSP form should be for one type of distribution, as you must describe the type and reason for payment.

Name of recipient	Social insurance number	Year of payment
Description of QRLSP and reasons for payment		

- You should indicate that the payments is as a result of Nortel's insolvency proceedings and the income type. You can find a description of the income type in your document entitled "Your Information Statement Package".

# Filling out the QRLSP form on your own

- For each type of payment, you should declare which year you should have received the principal amounts that constitute your distribution.
- So if you received a \$10,000 distribution for payments that would have been completely paid out in 2009, you would fill out the QRLSP form as follows:

Total amount (principal and interest)	6850	10,000	Total principal (current and prior years)	6851	10,000	Total interest (current and prior years)	0	Total principal (prior years only)	10,000
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## Breakdown of principal (box 6851)

In the boxes below, enter the amount of principal that relates to each applicable year. **Do not include interest amount.**

1978	6852		1988	6862		1998	6872		2008	6895	
1979	6853		1989	6863		1999	6873		2009	6896	10,000
1980	6854		1990	6864		2000	6874		2010	6897	

# Filling out the QRLSP form on your own

- Then you must fill out the summary boxes at the top of the sheet.

Total amount (principal and interest) <b>6850</b> 10,000	Total principal (current and prior years) <b>6851</b> 10,000	Total interest (current and prior years) 0	Total principal (prior years only) 10,000
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- In the first box, box 6850, you should list the total amount of the distribution related to the claim type you are completing the QRLSP form for

# Filling out the QRLSP form on your own

- Then you must fill out the summary boxes at the top of the sheet.

Total amount (principal and interest) <b>6850</b> 10,000	Total principal (current and prior years) <b>6851</b> 10,000	Total interest (current and prior years) 0	Total principal (prior years only) 10,000
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- You can add up the amounts listed in section “Breakdown of Principal” to fill in the last box on the right, which may be the same as box 6851.

Total amount (principal and interest) <b>6850</b> 10,000	Total principal (current and prior years) <b>6851</b> 10,000	Total interest (current and prior years) 0	Total principal (prior years only) 10,000
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- Note: if you are distributing some of the principal to the year 2017, exclude that amount from the last box on the right but include it in box 6851.
- To determine the interest amount, you can subtract the amount in box 6851 from the amount in box 6850.

# Filling out the QRLSP form on your own

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- You must certify that these amounts are true even though you are not the payer.

**Certification**

I, \_\_\_\_\_, certify that the information given on this form and in any attached documents is correct and complete.

\_\_\_\_\_  
Signature of payer

\_\_\_\_\_  
Position or office

\_\_\_\_\_  
Date

- Do not attach documents to your return. Keep them with your other tax documents as the CRA may require further documentation.

# How do I file the QRLSP form(s)?

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- In order to request the calculation for distributions you receive in 2017 you must attach the QRLSP to your 2017 tax return when it is filed.
- Please include the amounts in your taxes and attach the QRLSP form(s) to your tax return. Attaching the forms will indicate that you wish the CRA to perform the QRLSP calculations on those amounts.



# How do I file the QRLSP form(s)? Cont'd

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- You should keep a copy of the form(s) and any supporting documents should the CRA have questions.
- You **must file a paper return** in the current year if you are attaching the QRLSP form(s). Online filings are not available for those who wish to use the QRLSP.

# How do I file more than one QRLSP form?

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- If you have received more than one QRLSP form (for example as a result of more than one qualifying Compensation Claim or a form from Morneau Shepell with respect to your registered pension benefits) and you would like to request a QRLSP calculation, you should simply attach the extra QRLSP forms to your return.
- You may have such forms from the Monitor, from Morneau Shepell, or from other unrelated claims, and they can all be filed together.

## How do I file more than one QRLSP form? Cont'd

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- Note: If you have received multiple forms, you may choose to only submit some of them. However, if you submit a form, you cannot selectively choose individual years from that form which would receive the QRLSP calculations.

# 6. Other common questions

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# Income Splitting with a Spouse

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- You cannot submit a QRLSP for amounts you chose to split with your spouse:
  - For those types of income which qualify for both income-splitting and QRLSP calculations, you must choose whether the income is deemed to be received in a previous year for QRLSP purposes or received in the present year and eligible to split with your spouse. Because the QRLSP reduces your individual tax burden, amounts which you allocate to your spouse as income for the present year cannot also be counted as received by you in a former year.

# Will future QRLSP forms be provided from Nortel for future dividends?

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- No, future distributions for Compensation Claims are only expected to amount to 2.5-4 cents on the dollar and the timing of these is not yet known. Since distributions relating to the years 2009 through 2017 will have already been paid out, all final distributions will be made in 2018 or later. A QRLSP calculation will likely have no effect on an individual's tax burden.
- Further, if distributions are made in 2018 and 2019, it will not be economical for the Nortel estate to provide QRLSP forms for all those affected, given the large number of recipients and the low likelihood of a useful tax result.
- However, you may still complete a QRLSP form for these distributions.

# QRLSP for Quebec Residents

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- Revenu Québec has a separate but similar process to allow taxpayers to average retroactive payments by filing form TP-766.2-V.
- Use this form to request that Revenu Québec deduct the amount you report as income applicable to previous years from your taxable income, your income subject to the contribution to the health services fund, and your income used to calculate the health contribution for 2013 through 2016.
- You must complete and file this form yourself as part of your tax return to Revenu Québec and attach supporting documentation
- The option is available to payments relating to previous years which total at least \$300.

# QRLSP for Quebec Residents (cont'd)

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- Revenu Québec will allow the calculation for some types of income, including:
  - a) employment income received further to a court judgment, an arbitration award or a settlement between the parties in legal proceedings (line 101 or line 107);
  - b) a retroactive payment that you are required to include on line 110, 111, 114, 119, 122 or 147;
  - c) interest on a retroactive payment (line 130);
  - d) a retroactive payment of labour adjustment benefits and income assistance benefits (line 154);
  - e) any retroactive payment included on line 154 that would, in the opinion of the Minister of Revenue of Québec, be an undue additional tax burden if you were to include the amount in your taxable income for the year;



# Questions?

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Questions Relating to:

1. Compensation Claims QRLSP forms:

**Koskie Minsky LLP:**

Email: [nortel@kmlaw.ca](mailto:nortel@kmlaw.ca) or Toll-free: 1-866-777-6344

**Ernst & Young (the Monitor):**

Email: [nortel.monitor@ca.ey.com](mailto:nortel.monitor@ca.ey.com) or Toll-free: 1-866-942-7177

2. Registered Pension QRLSP forms:

• **Morneau Shepell:**

> Negotiated Plan: 1-877-392-2073

> Managerial/Non-Negotiated Plan: 1-877-392-2074