

●●● Nortel workers decry fees paid to lawyers

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Professionals involved in Nortel Networks Corp.'s bankruptcy proceedings have so far racked up \$755 million in fees since the talks began in 2009, according to data compiled by a Toronto financial analyst.

In Canada, the troubled company has so far paid professionals such as lawyers, accountants, court monitors, and investment bankers \$244 million in fees, says independent financial analyst Diane Urquhart. Urquhart says she compiled the numbers from court files.

The majority of the 20,000 former employees in Canada are pensioners, severed workers, and people on long-term disability. The amount paid to professionals in Canada is nearly three times the \$85 million the employees on disability are claiming through proceedings under the Companies' Creditors Arrangement Act.

Paying large amounts of money to professionals means less cash for the workers seeking their part of Nortel's \$10-billion pot of assets, says Urquhart, who calls the bills unprecedented compared to other bankruptcy cases.

Urquhart was the court-appointed financial expert for the retail owners involved in the asset-backed commercial paper case. That was the largest court-supervised restructuring case in Canadian history.

The professional fees in that case were \$200 million, says Urquhart, who's working *pro bono* for the Nortel workers.

"So \$755 million is 3.8 times the professional fees in Canada's largest restructuring, which is three times larger than this Nortel case," she says, noting the ABCP matter involved \$32 billion in assets to go around.

The employees on disability are the ones in the most difficulty, according to Urquhart. Unlike the deferred pensioners, many of whom have gone on to other jobs, the ones on disability are still suffering their losses daily, she says.

Josee Marin, 44, was one of the former Nortel employees receiving long-term disability benefits when the company entered CCAA proceedings.

She suffers from Crohn's disease, scleroderma, and debilitating allergies.

Like others with disabilities who once worked for Nortel, she's part of an interim settlement agreement providing 35 per cent of what the company owes her. The settlement money Marin receives is about \$400 a month, she says.

"It's sickening. I'm here trying not to heat my house too much so I will not run out of money quickly, which I'm about to run out of anyway. When you don't sleep wondering where can I cut more than I already do, it's sickening to see that those lawyers were paid so much."

Marin, who worked for Nortel as an engineering technologist, says she became aware of the 2010 settlement agreement when she heard about it in the news. There was little consultation, she adds.

"You've got Ernst & Young having the keys of the business and doing whatever they want. Nobody is looking, nobody is asking questions," she says.

Ernst & Young is the court monitor in the CCAA proceedings in Canada. On Jan. 22, Ontario Chief Justice Warren Winkler, who's leading the mediation in relation to Nortel, announced he was extending the talks as the parties hadn't reached an agreement. But on Thursday, he concluded "that further efforts at mediation are no longer worthwhile."

The parties were considering a proposal Winkler had made to them, says Peter Rehak, media relations officer for the mediation. Citing confidentiality, Rehak declined to say what the proposal was.

In the United States, about \$386 million has gone to professionals compared to \$126 million in Britain, according to Urquhart's calculations. Fees paid to professionals dealing with Nortel branches in other European, Middle Eastern, and African countries fall under the British amount. The calculations don't include a separate \$82 million paid to Ernst & Young, the joint administrator of the proceedings in Britain.



'So \$755 million is 3.8 times the professional fees in Canada's largest restructuring, which is three times larger than this Nortel case,' says Diane Urquhart. Photo: Robin Kuniski

Urquhart compiled the British and Canadian amounts from Ernst & Young's court monitor administrator reports and gathered the U.S. figures from bankruptcy court records.

At the time of the 2010 interim agreement with the 350 Canadian workers on long-term disability, Nortel's position was that there was no money to give out, says Urquhart. "Counsel for Ernst & Young and counsel for Nortel were basically saying, 'There's no money. . . . We can't do any better for this group because there is no money essentially.' So you can imagine how nauseated this group is now."

In Canada, Norton Rose Canada LLP, Goodmans LLP, and Koskie Minsky LLP are among the primary law firms acting in the CCAA proceedings.

Although the numbers are high, they may not tell the full story, says Richard Jones, who acts as special counsel in insolvency and restructuring cases and is an adjunct professor at Queen's University's Faculty of Law.

"The difficulty with these cases is that the reaction is a quantitative reaction only," he says.

"You must remember that Nortel itself was a large and complex organization. And some of these costs may in fact be the pay-to-stay bonuses, the payment over the last four years of a great number of Nortel executives. I don't know whether that has been finely separated from the professional fees as might be appropriate."

(According to Urquhart, the fees indicated are above and beyond the amounts paid to Nortel executives.)

But Jones admits the fees quoted are a "hell of a lot of money." He suspects the problem may lie in having too many parties involved.

Many junior lawyers, associates, and subordinates look at the documents, he says, and all of them have their meters running. "The next thing you know, hundreds of hours of professional time have been applied and everybody thinks they're entitled to be paid a very high rate," he adds, noting it's rare that everyone involved in a file really needs to be working on it.

While the employees aren't happy, the Office of the Superintendent for Bankruptcy, the federal agency that oversees bankruptcy cases, says it won't be auditing the fees paid to professionals in the Nortel matter.

"The role of the Office of the Superintendent of Bankruptcy does not include investigating the conduct of executives employed by a company prior to a Companies' Creditors Arrangement Act (CCAA) filing," wrote spokeswoman Lauren Hébert in an e-mail to *Law Times*.

The office only looks into complaints that directly involve the conduct of court monitors, she said.

If the numbers provided by Urquhart are anything to go by, "I think there is something amiss," says Jones. "You cannot do these things without a prudent sense of economy, which is always necessary when you're dealing with insolvency."

At some point in 2013, the workers on long-term disability will have run out of the settlement cash they've received, says Urquhart.

"They're only getting . . . approximately \$10,000 a year, so none of them could live on \$10,000 a year in these three years. Their income is cut off, so they would have used up their settlement money."

For her part, Marin says she's desperate to get better and go back to work but notes the stress of having to make do with so little money has been a setback.

"Not working, for me, is worse than the illness and the prospect of dying," she says.

The employees on disability have also launched a class action alleging wrongdoings with regards to money taken from their health and wellness trust. The case is ongoing.

For more, see ["Nortel employees to take fight to SCC."](#)