Opinion

# Fighting for Nortel's disabled

Barry Critchley, Financial Post · Monday, Nov. 1, 2010

Diane Urquhart is an independent financial analyst who has run the research group at two bank-owned brokerage firms and has acted as the advisor to a number of groups including those retail investors hurt by the asset-backed commercial paper meltdown. She is a respected researcher, determined and carries a wealth of information--and she is not easily dissuaded.

A group of disabled former Nortel Networks Corp. employees is the latest group that Ms. Urquhart is helping. The group is active, has set up a website, protectourtomorrow.com.,and has canvassed the federal government on at least seven occasions following an infusion of cash into Nortel to help her group. But she feels that help is available now that Ottawa has just paid $208-million to purchase Nortel's Ottawa Carling campus. Some of that cash -- up to $140-million -- could right the multitude of wrongs she feels the Nortel disabled employees have suffered through over the past decade. "That $208-million received by Nortel is going to be in the Canadian estate only," said Ms. Urquhart, whose group, Representatives of the Rights for Nortel Disabled Employees, asked the federal government repeatedly prior to the sale, that it apply purchase conditions for part of the purchase proceeds to be placed into a fund to pay for Nortel long-term disability benefits.

Ms. Urquhart argues that such a condition "would provide a remedy for Nortel management promising self-insured long-term disability income and medical benefits," and not living up to that promise. In her view, the cash that has been removed from the Nortel Health and Welfare Trust since 2005 "does not rightfully belong to the creditors of Nortel."

Of the $208-million received by Nortel for the sale of its Carling campus, $75-million relates to an intercompany charge provided to the Canadian estate from the U.S. estate. Ms. Urquhart argues that loan shouldn't be repaid.

"In an ideal world, we would like to see that $75-million prior charge [provided by U.S. bondholders including U.S. investment manager Pacific Investment Management Co. or PIMCO for debtor-in-possession financing to Nortel] eliminated. After that, we would like to see the residual from the Canadian estate proceeds," Ms. Urquhart said, adding that without some help, her group of disabled workers will end up with $14,000 a year. "They are going straight to poverty," she said.

Ms. Urquhart has had some discussions with PIMCO. In a letter, she wrote, "There is no rational basis for creditors at liquidating corporations to benefit from an employer's failure to fund incurred claims for self-insured long-term disability benefits in the trust accounts for disabled employees."

She added, "Nortel management historically not only failed to make the required employer contributions ... but also borrowed close to one third of the assets in the Canada Health and Welfare Trust that were supposed to be protected for the trust's disabled and survivor beneficiaries." PIMCO replied, saying that it "has a fiduciary duty to its clients and is subject to regulatory and contractual requirements to act in the best interests of its clients at all times."

The Senate, through a private members' bill introduced by Senator Art Eggleton, is working through S-216: "An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans." The hope of S-216 is to provide for the preferred status of long-term disability benefits in bankruptcy.

bcritchley@nationalpost.com