

# Panel refuses disabled workers' case

## Top court decision puts disability plans at risk, expert says

BY ROBERT SIBLEY, WITH FILES FROM POSTMEDIA NEWS JUNE 10, 2011

OTTAWA — The Supreme Court failed to serve the "national interest" and thereby jeopardized the disability insurance plans of hundreds of thousands of Canadian workers by refusing to hear a case involving a group of disabled former Nortel employees, says a financial expert.

"It was in the national interest to hear the case so that 1.1 million Canadians could be assured their disability insurance plans were protected," said financial analyst Diane Urquhart. "The Supreme Court of Canada has de facto allowed a court precedent to stand that compromises every health and welfare trust in Canada for disabled insured policyholders."

On Thursday, a three-judge panel of the Supreme Court refused the group's request for leave to appeal a lower court's previous decision rejecting the former workers' attempt to challenge a court-approved settlement of Nortel's restructuring. As is customary, the panel did not provide a reason for why the court wouldn't hear the group's appeal.

Last June, a group of about 40 disabled Nortel employees workers lost its bid to extend benefits being terminated at the end of 2010 under a restructuring plan that involved the allocation of funds in Nortel's Health and Welfare Trust. The restructuring plan, approved by Ontario Superior Court Judge Geoffrey Morawetz, called for future pensioner life benefits to be included in distributions of the trust.

The group, a minority among the company's 360 disabled workers and 19,500 others covered by the agreement, objected, saying the plan would dilute existing claims of the disabled by \$30 million.

According to court documents, an employee who earned \$50,000 a year before becoming disabled would might see their annual income cut to \$13,700.

However, the Court of Appeal for Ontario denied the group's request for a hearing on the settlement, upholding Morawetz's plan. The group turned to the Supreme Court, hoping it would hear their appeal of Morawetz's decision.

Urquhart, a Mississaugabased financial analyst who has been working pro bono for the disabled workers, was disappointed, saying the Supreme Court should have taken the opportunity "to issue directions to Canadian employers" for maintaining the financial viability and integrity of the disability insurance plans they sponsor.

Morawetz's decision, Urquhart argued, "has made every employer-sponsored disability insurance plan in the country unsafe" because it allows pensioners the legal right to take assets from the health and welfare trusts for their future life insurance promised by the company. But this, she said, "compromises" every health and welfare trust plan in the country with respect to disability insurance. "You wipe out the insurance for disabled workers."

In this way, by refusing to hear the case, the Supreme Court has effectively opened the door to allowing companies facing bankruptcy to raid trust funds supposedly intended to maintain health and welfare benefit plans, said Urquhart, a former research director with both Scotia Capital Markets and the former investment firm of Burns Fry.

"There are 1.1 million Canadians whose private employer-sponsored disability insurance plans are now unsafe if their employer goes bankrupt. That's why we felt the Supreme Court should have allowed the case -- it's in the national interest."

The court's unwillingness to act makes it incumbent on the government amend bankruptcy legislation to protect employees, she said. "The court could have made a decision to protect these people within the current legal framework. They chose not to. That means we need legislative change because the courts failed to enforce the current protections."

In the meantime, four members of dissenting group disabled former Nortel employees have filed a complaint with the Ontario Consumer Services Bureau under the provincial Consumer Protection Act.

They charge that Nortel Networks, its suppliers, and Sun Life Financial, which administered Nortel's disability insurance plan, engaged in "unfair practices in the form of false, misleading or deceptive representations to Nortel employees about its disability insurance."

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