

Toronto Star

Nortel mediation talks fail to produce a settlement

Published on Thursday January 24, 2013



Nortel's 12,000 pensioners had fought bitterly to keep their pensions that have been hurt by the bankruptcy filing. In some cases, pensions were slashed as much as 43 per cent, depending on province of residence. REUTERS

Vanessa Lu

Business Reporter

[8 Comments](#)

The latest high-level attempt to carve up \$9 billion (U.S.) in remaining assets from the now-defunct Nortel Networks Corp. has failed, leaving creditors in limbo amid fears the funds will be tied up in international litigation for years.

"The mediation has ended without any agreement having been reached," said an emailed statement Thursday on behalf of Ontario Chief Justice Warren Winkler, who had been appointed by bankruptcy judges in Canada and United States to help broker a settlement.

"The chief justice has concluded that further efforts at mediation are no longer worthwhile."

The mediation involved Nortel's Canadian and U.S. entities and their creditors, as well as the company's European units and their creditors. Bondholders were pitted against pensioners.

“For four years, our retirees and former employees have been fighting for a fair share of the pie. We have been treated as pawns in this game by vulture bond funds,” said Don Sproule, president of the Nortel Retirees and former employees Protection Canada (NRPC), in a news release.

“We will continue the battle,” he said, noting Canadian pensioners and disabled employees have already taken a financial hit, while their counterparts in the United States and United Kingdom have not.

Retiree Frank Mills, 77, criticized the bondholders for seeking accrued interest since the 2009 bankruptcy filing, estimated by some at \$1 billion.

“I’d rather end up on welfare than give our hard-earned assets to these vultures,” Mills said in the news release. “That money would have to come straight out of our pockets.”

A spokesperson for the U.S. bond holders had no immediate comment.

Nortel Networks was once a Canadian high-tech success story, a stock market darling and the highest-valued company trading on Toronto exchange. At its peak, it traded at \$124.50 in 2000, before eventually falling to penny-stock status.

In 2001, the telecom equipment maker saw a dramatic drop in demand amid network overcapacity after the dot-com crash hit. It eventually sought bankruptcy protection in 2009, and agreed to wind up the business in July 2009 by selling its assets.

Proceeds including 2011’s patent sales totaled about \$9 billion (U.S.). That pales in comparison to the claims from creditors, exceeding more than \$20 billion (U.S.), and by some estimates reached as much as \$36 billion (U.S.), according to Bloomberg.

Hopes of a deal grew after mediation talks were extended twice, following a week-long session that brought 120 lawyers and financial advisers, to meetings at a downtown Toronto hotel last week.

Talks among the creditors – which include bondholders, pensioners, disabled former employees, and even governments -- continued this week via emails, phone conversations and conference calls.

When Winkler took over as mediator last April, he warned the parties that it was the only and best option for a resolution, given that the Nortel insolvency involves companies in 20 countries.

U.S. Judge Layne Phillips led two earlier mediation attempts in 2010 and 2011, which also failed.

Even though court proceedings are under way in the United Kingdom, the United States and Canada, Winkler said: "No single court has ultimate authority over the subject matter of this mediation."

He warned there is no realistic "litigation option," and even if a judgment were rendered, it would be entirely possible that it would have no legal effect beyond that jurisdiction.

If the parties chose to go down the road of litigation, Winkler said any Nortel assets now available would be depleted, and the case would be tied up for years.

"This would be a catastrophic outcome for some, and unsatisfactory for most, of those affected by this case," he said in his opening remarks last April.

Yet, it looks like Winkler, who has a reputation for being able to bring parties together including on restructuring Air Canada and the Walkerton tainted water scandal, could not bridge the divide.

Nortel's 12,000 Canadian pensioners have fought bitterly to keep their pensions that have been hurt by the bankruptcy filing. In some cases, pensions were slashed as much as 43 per cent, depending on province of residence.

The mediation talks began just as an [Ontario judge dismissed fraud charges against three former Nortel Networks executives](#), saying the prosecutors had not met Canada's "high standard of proof" in criminal cases.

"The accused are presumed innocent . . . (and) the burden is on the prosecution (to prove guilt). The burden of proof has not been met," Ontario Superior Court Justice Frank Marrocco said in his 124-page acquittal over allegations executives tinkered with Nortel's financial records to trigger bonuses.

"I am not satisfied beyond a reasonable doubt that Frank A. Dunn, Douglas C. Beatty and Michael J. Gologly deliberately misrepresented the financial results of Nortel Networks Corporation," Justice Marrocco said in his ruling.

The verdict came following a six-month trial last year that included testimony from 17 Crown witnesses and 2,500 documents tendered as part of almost 600 exhibits.

Former Nortel CEO Dunn, former chief financial officer Beatty and former controller Gollogly, faced a minimum two years in jail if they were found to have engineered a fraud valued at more than \$1 million (Canadian.)

With files from Star wire services