KOSKIE MINSKY LLP
BARRISTERS & SOLICITORS

MEMORANDUM

DATE: July 5, 2009

TO: CNELTD Committee

FROM: Koskie Minsky LLP

SUBJECT: Minutes from LTD Meeting and Creditors' Voting Procedure Under the CCAA

FILE: CNELTD – Nortel CCAA Restructuring
09/0479

Susan Philpott and Andrea McKinnon of Koskie Minsky LLP (KM) attended a telephone conference call with the CNELTD Committee and certain Committee members on June 23, 2009.

In attendance from the CNELTD were Sue Kennedy, Anne Walsh, Bernard Meyerink, Brian Wale, Connie Walsh, Greg McAvoy, Lawrence Clooney, Mario Gagnon and several other members of the CNELTD.

We discussed the following issues:

1. Representation Order

We discussed the LTD Employee Representation Order and the potential timeline for obtaining an Order from the Court in this regard. KM is not certain how long it will take to obtain a Representation Order for LTD Employees. We do not anticipate any objections to the Rep Order. We will be discussing issues surrounding the continuing employees' Rep Order to ensure that this Order will not include LTD employees within its scope.

On June 30, 2009, KM attended at a Court appearance to deal with Rep Order issues. The LTD Employee Rep Order could not be granted at that time, as the Order itself had not been finally agreed to between KM and counsel for Nortel and the Monitor. Since June 30, a Rep Order for LTD Employees has been tentatively agreed upon between KM and counsel for Nortel, and we anticipate that this Order will be brought to Court on a consent basis. We hope that this Order will be approved by the Court during the week of July 6-10.

2. Overview of CCAA Process

The *Companies' Creditors Arrangement Act* (the "CCAA") is a "skeletal" statute which aims to facilitate the reorganization of companies that are insolvent. The statute is drafted broadly and is meant to provide parameters for negotiations between the debtor company and its creditors while the company is under CCAA protection. While the CCAA provides a "framework" for the CCAA process, judges have a wide degree of discretion which largely dictates what will occur in any given restructuring.

During a CCAA proceeding, other laws (such as provincial pension, health and safety and workers' compensation legislation) continue to apply. Essentially, the CCAA process takes precedence over other legislation. If the federal CCAA and the applicable provincial laws

conflict, the CCAA will override provincial legislation. For example, in April 2009, KM argued on behalf of Former Employees that Nortel should continue to honour its minimum termination and severance obligations under the provincial *Employment Standards Act, 2000* ("ESA"). Justice Morawetz released a decision dated June 18, 2009, which provided that Nortel was able to suspend payments owed to Former Employees pursuant to the ESA.

Generally, CCAA restructurings are difficult to predict, both in outcome and in timeline. While an average CCAA restructuring lasts about 1.5 years, there are CCAA proceedings that have lasted as long as 8-10 years. For this reason, we cannot estimate a timeline for Nortel's CCAA proceedings.

The outcome of Nortel's CCAA restructuring is also uncertain at this point in time. At the outset, KM believed that Nortel would restructure and emerge as a going concern entity. Over the past several months, it has become apparent that Nortel may not emerge from the CCAA restructuring as a going concern entity.

3. Claims Process

We are not yet at the point where we are calculating creditors' claims as a Claims Process has not yet been established by Nortel. This Claims Process will be established closer to the end of the CCAA proceedings. KM does not yet have information from Nortel which identifies the creditors of the company (including LTD employees) and/or identifies the value of these creditors' claims. KM anticipates receiving this information in the future. After a Claims Process has been commenced, KM will provide relevant information to the actuarial firm we have retained. Our actuaries will calculate and/or review claims on behalf of former employees and LTD employees.

Nortel LTD employees have not yet been cut off from payment of their LTD benefits. It is possible that once Nortel establishes a Claims Process, LTD benefit payments will be cut off. This has happened in past cases. For example, in the Eaton's restructuring, employees who were in receipt of LTD benefit payments stopped receiving their payments once the Claims Process was established. Ultimately, LTD employees received approximately 80 cents on the dollar in respect of the commuted value of their LTD benefit payments. It is possible that a similar situation could occur in Nortel's restructuring, however, KM will do its best to avoid a potential cut-off of LTD benefit payments. As of now, there are no creditor groups who have pressured Nortel to discontinue payment of LTD benefits.

As far as KM is aware, Nortel will continue to pay LTD benefits for the time being. In the worst case scenario, Nortel LTD employees' benefit payments would be cut off when the Claims Process is established. There is no "law" which requires a company to provide notice to its employees when cutting off LTD benefit payments. However, it would be terrible from a public relations perspective if Nortel were to cut off LTD benefit employment payments without notice. This may deter Nortel from doing so. If Nortel chooses to cut off payment of your LTD benefits, KM will be in Court immediately to have payments reinstated. KM understands that LTD employees are concerned, that LTD recipients are unable to work due to illness and that LTD benefits provide crucial income to all LTD employees.

4. Alternative Funding of LTD Benefits

The question was raised whether a purchaser of Nortel's assets will assume the company's pension plan obligations and/or LTD benefit obligations. Based on our preliminary views of the situation, KM does not anticipate that Nortel's pension plan and/or disability benefit obligations

will be assumed by a purchasing company. Typically, the purchaser of a company will not want to assume the seller's pension and other benefit obligations, as these liabilities are of no value to the new company. This is particularly the case in CCAA proceedings where the company is involved in a "liquidation" type proceeding, where the company's assets are being sold to different purchasers. In these situations, pension and benefit related liabilities tend to be placed on the sidelines of the asset sales. If Nortel follows in this approach, pensioners and the recipients of LTD benefits will be left with a claim in Nortel's Claims Process.

5. Alternative Funding of LTD Benefits

We discussed whether it is possible to work with an insurance company to put in place alternate funding for Nortel's LTD benefits. KM indicated that it is unlikely that this will be a viable option. KM attempted to purchase insurance benefits for LTD employees in Eaton's restructuring, but unfortunately the insurance companies were charging exorbitant rates for these benefits. Insurance companies generally do not want to take on such liabilities without charging a high rate, as these are higher risk / more expensive liabilities.

6. The LTD Policy

KM has obtained a large volume of documents from Nortel and will review these documents for LTD Policy 25654 (Sun Life Financial), and all other documents relevant to Nortel's LTD policy. The CNELTD will review their documents and forward to KM any documents that demonstrate Nortel's promises to LTD employees. All LTD insurance policies also should be forwarded to KM.

7. The Health and Welfare Trust

KM will be attending a meeting with Nortel on July 6, 2009. At this meeting, KM will be learning more about Nortel's LTD policies and about Nortel's Health and Welfare Trust (HWT), including its funding levels and the types of payments made from the HWT. After this meeting, KM should have a much better understanding of the LTD benefits and the HWT.

Generally, Health and Welfare Trusts are used as a tax vehicle by companies to provide a tax effective method to deal with the deductibility of contributions and taxability of payments. Despite the discussion in the CRA bulletin that the CNELTD came across, Nortel has no legal obligation to ensure that promises it has made are protected. While it is unfair that Nortel is able to capitalize on the tax advantages of the LTD benefit payments without ensuring that such benefits are paid, the law currently does not force Nortel to do so.

8. LTD Employees → Pensioners

We discussed LTD employees' transition from LTD benefits to the Pension Plan, whether LTD employees will continue to participate in the Pension Plan and whether LTD employees are able to take advantage of an early retirement clause in the pension plan.

KM does not yet have enough information to make these determinations. All entitlements (including eligible retirement age) are dictated by the terms of the Pension Plans. The terms of the Plans may differ between the unionized and non-unionized Plans. KM recently received large volumes of Pension Plan documentation from Nortel, and we are in the process of conducting a detailed review of all plan documents. Once this has been completed, KM will provide the CNELTD with an update.

9. The Finance Meetings

When in attendance at the finance meetings that took place on June 18, 2009, Sue Kennedy and Lawrence Clooney discussed the funding of LTD benefits with Mike Zafirovski. During this conversation, Mr. Zafirovsky commented that Nortel's LTD employees are in a vulnerable position and indicated that there may be something that could be done in this regard.

KM will follow-up with Mr. Zafirovsky and/or other appropriate contacts at Nortel after the meeting on July 6, 2009 with Nortel. After this meeting, KM will have more knowledge of the LTD benefit funding and will be best able to pursue this avenue.

10. LTD / CPP Eligibility Test

A CNELTD member inquired about the connection between the LTD and CPP eligibility criteria. In order to address this inquiry, KM requires more detail. What KM expects is that Nortel (either now or at some point in the past) had an LTD eligibility test that was connected to the CPP qualification test. For example, in the event an individual qualified for CPP disability benefit payments, that individual would also be deemed to qualify for Nortel LTD disability payments. KM requires more information to provide any detailed analysis on this point.

11. KM's Future Actions

In the future, KM will be busy looking at all documents to support Nortel's obligations and potential creditors' claims. KM also will be attending at Court to represent Former Employees and will be seeking to have a Representation Order granted for LTD employees.

12. Political Strategies / Meeting with MPs

The CNELTD should join forces with the Political Action Committee (PAC) of the NPRC. Sue indicated that the CNELTD has already done so and KM encouraged that this continue. The LTD employees are a vulnerable group and this should be used to gain headway with politicians. Working with the PAC will ensure that the message put forward to politicians is controlled and uniform.

13. Contacting the Court and the Judge

KM made it clear that contacting the CCAA Court and the judge is inappropriate and counterproductive. Both CNELTD and NRPC members should work to have the judge on their side to encourage empathy, as opposed to having the judge angry with these groups. All former and LTD employees should channel their concerns through KM.

14. Structure of the CNELTD

KM would like to have one primary contact within the CNELTD. Until we hear otherwise, this will be Sue Kennedy. KM has no problem if this contact changes from week to week, but we would like to maintain efficiency by channelling concerns through one contact. This is how we have structured communications with the NRPC and it has worked well.

INFORMATION RE CREDITOR CLASSIFICATION AND CCAA VOTING PROCEDURES

The *Companies' Creditors Arrangement Act* (the "CCAA") is a "skeletal" statute which aims to facilitate the reorganization of companies that are insolvent. The statute is drafted broadly and is meant to provide parameters for negotiations between the debtor company and its creditors while the company is under CCAA protection. While the CCAA provides a "framework" for the creditors' voting procedure, judges have a wide degree of discretion which largely dictates the creditor classification and voting procedure.

In order to achieve creditor approval of its Plan, Nortel must obtain Plan approval from both the majority in number (50%+1) and 2/3 in value of its creditors, or the affected class of creditors. If certain creditor classes do not approve the Plan, it is still possible that the Court will sanction the Plan. In this case, the Plan will be effective, but not towards those classes who voted against the Plan.

Former Employees and/or LTD Employees (depending on creditor classification) may be able to "block" any vote put forward by Nortel. While Former Employees and/or LTD Employees do not have 2/3 in value of all claims, this group may have the requisite 50%+1 necessary to achieve a "blocking vote". In order to make this type of determination with certainty, we require further information regarding the number and quantum of claims for the group(s), and for other creditor groups. We do not yet know the scope of Pensioners / LTD Employees claims in the CCAA proceedings and/or how creditor groups will be "classified". Finally, we do not know whether Nortel will file a Plan of Arrangement under the CCAA, or whether the company ultimately will move into receivership or bankruptcy proceedings prior to the filing of any Plan.

This memo outlines the creditors' voting procedure under the CCAA, and provides some clarification as to the process, procedure and strategy involved in the approval of a Plan of Arrangement or Compromise (the "Plan").

RELEVANT CCAA PROVISIONS

Part I of the CCAA (sections 4 through 8) deals with Compromises and Arrangements. For the full text of Part I, see the attached Appendix. Sections 4, 5 and 6 are of particular importance for our purposes. They provide as follows:

> Compromise with unsecured creditors
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> 4. Where a compromise or an arrangement is proposed between a debtor company and its **unsecured creditors or any class of them**, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
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> Compromise with secured creditors
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> 5. Where a compromise or an arrangement is proposed between a debtor company and **its secured creditors or any class of them**, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.
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> Compromises to be sanctioned by court

> 6. Where a **majority in number** representing **two-thirds in value of the creditors, or class of creditors**, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding
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> (*a*) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and
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> (*b*) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

GENERAL PROCEDURE FOR VOTING

The actual Plan or Proposal itself is limited only by the creativity of those proposing the Plan. One of the trickiest tasks for the company is to persuade the creditors and stakeholders to vote for the approval of the Plan. For this reason, there is a real "strategy" to creating the Plan and dividing the creditors into classes such that the Plan will be approved.

The Plan must be approved in two stages:

(1) The creditors who are affected by the Plan must approve the Plan; and
(2) The court must approve / sanction the Plan.

It is not necessary for *all* classes of creditors to approve the Plan. If certain classes do not approve the Plan, it can still be sanctioned by the Court – those classes who do not approve the Plan simply will not be bound by the Plan.

Below is an outline of the general voting process, and some of the factors and variables that can affect the vote.

1. MEETING OF THE CREDITORS

The process of determining whether or not a Plan will be accepted commences when the CCAA Court issues an Order directing that a meeting of the creditors be held (pursuant to section 4 or 5 of the CCAA).

Prior to the vote, creditors can meet to consider the merits of the Plan. At the meeting(s), the Plan may be modified (pursuant to section 6). Alterations to the Plan can be negotiated up until the time of voting.[1] The Court has the power to appoint someone to act as the chair of the meeting and supervise the counting of the votes.[2]

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[1] Houlden & Morawetz, *The 2009 Annotated Bankruptcy and Insolvency Act* (Thomson Carswell: Toronto, 2009) at 1101 ("Houlden & Morawetz").
[2] Houlden & Morawetz, at 1101.

When the vote takes place, creditors who have been divided into classes must vote within their separate class. In order to vote, a creditor (or Representative Counsel on their behalf) must have submitted a Proof of Claim. Those classes who do not approve the Plan by the requisite majority will not be bound by the Plan, *however,* the Court may still sanction the Plan. Again, classification of creditors will be crucial to the dynamic of the vote. It is generally the Plan itself that will outline the classification of the creditors (and the Court / creditors will have the opportunity to oppose the classification).

2. PROOF OF CLAIM / CLAIMS BAR PROCESS

In order to vote on the Plan and to share in the distribution of dividends, a creditor **must** submit a Proof of Claim.

When arranging the meeting of creditors, the Court often will grant an Order for a "Claims Bar Process". The Claims Bar Process will set out the conditions for the filing and administration of all Proof of Claims. After the Claims Bar Process has been established, the Monitor is required to send out a Proof of Claim form to each creditor, and each creditor must submit a Proof of Claim (with sufficient evidence) by the specified date.[3]

As Representative Counsel to Former Employees and/or LTD Employees, KM will be responsible for submitting these group's Proofs of Claim. Based on the claims as determined by our actuaries' present value calculations, KM will submit a Proof of Claim on behalf of all Former Employees and LTD Employees. These Proofs of Claim will specify the number of individuals affected and the dollar amount of the claim. For example, the Representative Counsel's Proof of Claim may indicate that on behalf of the approximate 17,000 Former Employees and/or the 450 LTD Employees, a claim of X dollars is being submitted. Many Former Employees and LTD employees will have individual claims, and we will have to work to process these and send them to the individuals for review before filing them.

3. THE VOTE

When it comes time to vote, a double majority of creditors (or creditors of the affected class) must approve the Plan. This double majority involves: (1) the majority of votes (50%+1) in number, and (2) representing 2/3 in value of the creditors (or class of creditors). In order to vote, the creditor must be present and vote either in person or by proxy. ***If a Plan is approved by a class of creditors, all members in that class will be bound by the plan (even if they do not vote).***[4]

Even where creditors on the whole vote to accept the Plan, it may not be accepted by all classes. **The Plan of Arrangement is binding only against creditors in classes which vote to accept the Plan.** For this reason, Plans often contain an "all or nothing" clause, which provides that "classes of creditors which vote to accept the arrangement will only be bound by

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[3] Houlden & Morawetz, at 1101.

[4] Richard H. McLaren, *Canadian Commercial Reorganization* (Canada Law Book, Aurora, 2009) at 5-26.9 ["McLaren"].

the terms of the arrangement where the proposal has been accepted by all classes". This is not always the case.[5] This is another variable to be determined by Nortel in its Plan.

4. PROPER CLASSIFICATION OF CREDITORS

The dynamic of the vote is highly dependent on the debtor company's choice in classification of creditors. When strategically determining the classification of its creditors, Nortel will take into account the number and quantum of claims and will strive to achieve a classification that will make Plan approval more likely. This strategic exercise is vital for the debtor company, as it determines how many votes will be cast at the creditors' meetings.

It is clear that creditors with large claims "will control large blocks of votes" and smaller claims will control small blocks of votes.[6] The exercise of dividing creditors into classes "is ultimately to achieve a successful approval by the requisite number and dollar value of creditors of each class".[7] While the CCAA only distinguishes between "unsecured" and "secured" classes, the Plan often will divide creditors into further classes. A creditor can oppose the proposed classification if not content with the debtor's proposed classes.

When approving and/or determining the appropriate classification of creditors, the Court will consider two main factors. The Court considers the "purpose of the Act" (i.e. to facilitate a reorganization). This factor influences the Court to approve a classification that will facilitate Plan approval by the creditors.

The Court also will consider the "commonality of interest" test in determining whether the debtor has proposed an appropriate classification of creditors. The "commonality of interest" test is outlined by the Alberta Court of Appeal in *Re Canadian Airlines Corp.*[8] and the Ontario Court of Appeal in *Re Stelco.*[9] The factors to be considered by the Court are:

> 1. Commonality of interest should be viewed based on the non-fragmentation test, not on an identity of interest test;
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> 2. The interests to be considered are the legal interests that a creditor holds qua creditor in relationship to the debtor company prior to and under the plan as well as on liquidation.
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> 3. The commonality of interests are to be viewed purposively, bearing in mind the object of the CCAA., namely to facilitate reorganizations if possible.
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> 4. In placing a broad and purposive interpretation on the CCAA, the court should be careful to resist classification approaches that would potentially jeopardize viable plans.
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> 5. Absent bad faith, the motivations of creditors to approve or disapprove [of

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[5] McLaren, at 5-26.10. See *Olympia & York Developments Ltd. v. Royal Trust Co.* (1993), 17 C.B.R. (3d) 1 (Gen. Div.).
[6] McLaren, at 5-24.
[7] McLaren, at 5-26.10.
[8] (2000) 19 C.B.R. (4th) 12 at 18 (Alta C.A.).
[9] 15 C.B.R. (5th) 307 (Ont. C.A.), paras. 21 – 23

> the Plan] are irrelevant.
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> 6. The requirement of creditors being able to consult together means being able to assess their legal entitlement *as creditors* before or after the plan in a similar manner.

It should be noted that "the classification of creditors is determined by their legal rights *in relation to the debtor company*, as opposed to their rights in relation to each other."[10] The key is not to focus on whether the class members have the "same" interests, but rather, the key consideration is whether the right "are not so dissimilar as to make it impossible for [the creditors] to consult together with a view to their common interests".[11] The reason for division of creditors into classes is that creditors should only be able to bind other creditors who have similar interests.[12]

It is difficult to speculate as to how Nortel's creditors will be classified. In particular, it is not a given that all Former Employees and/or LTD Employees will be grouped into only one or two classes class (despite the fact that all are subject to a Representation Order). To give one example, in *Olympia & York Developments Ltd. v. Royal Trust Co.*[13] the Plan of Arrangement created thirty-five classes of creditors, only twenty seven of which voted in favour of the Plan. The company applied to the Court for approval of the Plan (despite the eight creditor groups who did not approve the Plan). The Court noted that *the Plan need not be accepted by all classes to receive judicial sanction.* Those classes who did not accept the plan were not bound by the Plan (but the Plan was still approved and sanctioned by the Court).

THE SOURCES OF UNCERTAINTY

In order to achieve creditor approval of any Plan or Compromise, a double majority of all creditors, or of the affected class of creditors, must approve the Plan of Arrangement proposed by Nortel. It may be that Former Employees and LTD Employees are placed in the same classification, however, they could be classified into separate groups. If Former Employees and/or LTD Employees wish to effectively "block" approval of the Plan, either 50%+1 in number or 2/3 in value, must vote to reject the Plan.

Former Employees and/or LTD Employees may not have a claim worth 2/3 in value, due to the fact that the bondholders, or other creditor groups, may have a larger monetary claim against Nortel. It is possible that Former Employees will have sufficient voting power to constitute 50%+1 of all creditors, or of their class of creditors. While nothing can be said for certain, it is likely that each individual Former Employee and LTD Employee will have one vote in respect of their discontinued health benefits, provided health benefits are discontinued by Nortel. These health benefits could constitute 11,000 votes, and up to approximately 17,000 votes, if former unionized employees are included in the same class as former non-unionized employees.

There are still unknown variables that could affect Former Employees' and LTD Employees' ability to "block" the vote. We do not yet know whether Pension Plan members and/or LTD members who have an interest in the Plan will be entitled to an individual vote in respect of a deficiency in the Plan, nor do we know whether another party (such as the Plan Administrator)

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[10] Houlden & Morawetz at 1099.
[11] Houlden & Morawetz at 1099.
[12] Houlden & Morawetz, at 1099.
[13] (1993), 17 C.B.R. (3d) 1 (Ont. Gen. Div.). See McLaren, at 5-27.

will make a claim for any deficiency in the Plan. We also do not know the value of each creditor group's claims.

Creditor classification introduces another variable. It is possible that *all* unsecured creditors will be classified as one group, or that all Former Employees will be placed into their own group, or that Former Employees and LTD Employees will be placed into the same group. It is also possible that employment-related claims may be divided into classes based on the manner in which their claims are dealt with in the Plan. Dependent on classification, it may be that the Plan ultimately is approved by the Court. In this case, only classes which approve the Plan will be affected by the Plan. The Plan will not affect those classes which vote against the Plan.

Finally, the entire discussion above is contingent upon the fact that Nortel actually files a Plan of Arrangement. It is quite possible that Nortel could move into a court or privately-appointed receivership, or that the company may enter into bankruptcy proceedings under the BIA prior to the filing of a Plan. In this case, there would be no Plan, no "vote" and no opportunity for Former Employees and/or LTD Employees to block the vote.

In short, a number of unknown variables make it difficult to predict the outcome of Nortel's CCAA proceedings and whether any creditor group will have a blocking vote against any Plan ultimately filed by Nortel. Once more information is released by Nortel and its creditors, and the restructuring strategy to be taken by Nortel is unveiled, it will be possible to determine with more certainty whether a blocking vote against the approval of any Plan of Arrangement will be possible.

APPENDIX

PART I

COMPROMISES AND ARRANGEMENTS

Compromise with unsecured creditors

4. Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

R.S., c. C-25, s. 4.

Compromise with secured creditors

5. Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

R.S., c. C-25, s. 5.

Claims against directors — compromise

5.1 (1) A compromise or arrangement made in respect of a debtor company may include in its terms provision for the compromise of claims against directors of the company that arose before the commencement of proceedings under this Act and that relate to the obligations of the company where the directors are by law liable in their capacity as directors for the payment of such obligations.

Exception

(2) A provision for the compromise of claims against directors may not include claims that

(*a*) relate to contractual rights of one or more creditors; or

(*b*) are based on allegations of misrepresentations made by directors to creditors or of wrongful or oppressive conduct by directors.

Powers of court

(3) The court may declare that a claim against directors shall not be compromised if it is satisfied that the compromise would not be fair and reasonable in the circumstances.

Resignation or removal of directors

(4) Where all of the directors have resigned or have been removed by the shareholders without replacement, any person who manages or supervises the management of the business and affairs of the debtor company shall be deemed to be a director for the purposes of this section.

1997, c. 12, s. 122.

Compromises to be sanctioned by court

6. Where a majority in number representing two-thirds in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 and 5, or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding

(*a*) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; and

(*b*) in the case of a company that has made an authorized assignment or against which a bankruptcy order has been made under the *Bankruptcy and Insolvency Act* or is in the course of being wound up under the *Winding-up and Restructuring Act*, on the trustee in bankruptcy or liquidator and contributories of the company.

R.S., 1985, c. C-36, s. 6; 1992, c. 27, s. 90; 1996, c. 6, s. 167; 1997, c. 12, s. 123; 2004, c. 25, s. 194.

Court may give directions

7. Where an alteration or a modification of any compromise or arrangement is proposed at any time after the court has directed a meeting or meetings to be summoned, the meeting or meetings may be adjourned on such term as to notice and otherwise as the court may direct, and those directions may be given after as well as before adjournment of any meeting or meetings, and the court may in its discretion direct that it is not necessary to adjourn any meeting or to convene any further meeting of any class of creditors or shareholders that in the opinion of the court is not adversely affected by the alteration or modification proposed, and any compromise or arrangement so altered or modified may be sanctioned by the court and have effect under section 6.

R.S., c. C-25, s. 7.

Scope of Act

8. This Act extends and does not limit the provisions of any instrument now or hereafter existing that governs the rights of creditors or any class of them and has full force and effect notwithstanding anything to the contrary contained in that instrument.

R.S., c. C-25, s. 8.