

●●● Editorial: Nortel's shrinking pie

Monday, 04 February 2013 00:00 | Written by Glenn Kauth |  | 

As the legal battle over Nortel Networks Corp.'s assets continues, an employee group is seeking an investigation into the professional fees paid out during the proceedings.

It seems like a reasonable request given the concerns over the money paid to professionals such as lawyers during the Companies' Creditors Arrangement Act proceedings in relation to Nortel.

According to last week's Law Times [online poll](#) [[/Poll-results/Are-the-legal-fees-charged-so-far-in-the-Nortel-bankruptcy-proceedings-excessive](#)] , 95 per cent of respondents found the legal fees paid out so far — a recent estimate put the costs for professionals worldwide at \$755 million — to be excessive.

Of course, it's unclear what the Office of the Superintendent of Bankruptcy — the agency the workers are complaining to — can do about the fees. A spokeswoman [told Law Times](#) [[/201301289575/Headline-News/Nortel-workers-decry-fees-paid-to-lawyers](#)] in late January the office only looks into complaints that directly involve the conduct of court monitors. In this case, the court monitor is Ernst & Young.

The office might consider taking the firm to task for failing to limit the fees paid out, but it's uncertain whether it can or will do so.

In the meantime, the fees will continue to mount after mediation efforts pitting former Nortel employees against bondholders failed last month.

That means going to court for a decision on divvying up what remains of Nortel, but with assets spread around the world, asserting jurisdiction in the case could also be subject to challenges.

The employee groups blame the bondholders for holding out for the full value of their bonds. The bondholders, meanwhile, have deflected blame for the failed mediation talks, the Globe and Mail reported.

Whoever is to blame, what is clear is that the Nortel pie will shrink as the litigation drags on. As such, no party is likely to come out on top.

Unfortunately, the Nortel story is a complicated one. While Nortel pensioners have a right to decry cutbacks to their entitlements, we can't ignore the fact that the Ontario government has already stepped in with some relief through its pension benefits guarantee fund.

The former employees on long-term disability appear to be in a particularly disadvantaged situation with only 35 per cent of their benefits remaining. And if the bondholders truly are holding out for the full value — plus interest — of the bonds they bought at a discount, the employee groups would seem to have a very valid complaint.

Blaming lawyers and other professionals for the mess may be a bit much given the difficult issues involved. There are, however, legitimate concerns about the lack of control over legal fees and the purported propensity of lawyers to let them mount.

As a result, the Nortel mess should provide an opportunity for governments and regulators to consider whether there should be new rules in place — such as expanded protections for employees or increased monitoring of the fees — for dealing with these situations. The Nortel case isn't a scenario anyone should want to repeat.

— Glenn Kauth

