

Urquhart

Subject: FW: Ministry of Finance (02308)

From: Carol Sampson [<mailto:sammygirl1@rogers.com>]
Sent: November-16-11 1:01 PM
To: Urquhart
Subject: Fw: Ministry of Finance (02308)

----- Forwarded Message -----

From: "Ministers, Mail (FIN)" <Minister.fin@ontario.ca>
To: sammygirl1@rogers.com
Sent: Wednesday, November 16, 2011 12:46:22 PM
Subject: Ministry of Finance (02308)

Dear Carol Sampson, Greg McAvoy, Josee Marin and Jackie Bodie:

Thank you for your e-mail regarding Nortel Networks Limited (Nortel). I apologize for delay in responding.

In your letter, you are requesting that additional action be taken by the Ontario government to protect the Nortel Disabled's claims against the Nortel Estate. Specifically, you urge the Ontario government, through the Minister of Consumer Services, to enforce the *Consumer Protection Act, 2002* and lay charges of engaging in unfair practices against both Nortel and Sun Life under that act. As this matter properly falls within the purview of the Ministry of Consumer Services, Minister Best is in a better position to address your request.

I do, however, want to address your comments relating to the Superintendent of Financial Services' position in the Nortel under the *Companies Creditors Arrangement Act (CCAA)* proceedings. In this letter, I would like to take the opportunity to explain the role of the Superintendent as administrator of the *Pension Benefits Guarantee Fund (PBGF)* in the Nortel CCAA proceedings.

Let me begin by stating that the government understands the dilemma facing the Nortel Disabled in these unfortunate circumstances.

The PBGF is created and governed by law, the *Pension Benefits Act (PBA)*. The PBA governs the legal requirements that apply to the Superintendent. The PBA states that the Superintendent has the responsibility for administration and investment of the PBGF. In discharging these responsibilities, the Superintendent must comply with the relevant provisions of the PBA and its regulations.

When money is paid out of the PBGF to pay claims, the Superintendent stands in the shoes of the plan administrator in respect of the PBGF claims paid out and has the legal right and obligation to recover monies paid out of the fund. In the context of the Nortel pension plans, given the size of the PBGF payments to pay claims, the Superintendent cannot refuse to pursue the PBGF claims paid

out. The Superintendent must recover these monies so that there is enough money in the PBGF to protect other employees participating in defined benefit plans in future employer insolvencies.

In respect of Nortel's March 30, 2011 motion to the Ontario Superior Court of Justice to approve the Amended and Restated Settlement Agreement (the agreement), the Superintendent was not alone in supporting the agreement. The agreement was also supported by a large majority Nortel Disabled (90 per cent) through their court-appointed representative. Further, the agreement was also supported by the Former Employees, the Canadian Auto Workers (CAW) and the Nortel Canada Continuing Employees, as well as the Nortel Board of Directors, the Noteholders, the Unsecured Creditors' Committee and the Monitor.

The cessation of current service contributions and special payments to the Nortel plans was inevitable as a result of Nortel's insolvency and the agreement, among other things, provided a smooth transition for termination of pension payments.

Justice Marowetz of the Superior Court of Justice approved the agreement because, in his view, while the agreement was not perfect, under the circumstances, it balanced the competing interests of all stakeholders and represented a fair and reasonable compromise.

Again, I want to emphasize that the government understands that the Nortel Disabled have been greatly impacted by the Nortel insolvency. At the same time, the actions taken by the Superintendent in the Nortel proceedings must reflect the requirements of law, which include the Superintendent's duty to pursue the PBGF claims paid out for the purpose of discharging his obligations to the PBGF.

Thank you again for writing.

Sincerely,

Dwight Duncan
Deputy Premier
Minister of Finance

c: The Honourable Margaret Best, Minister of Consumer Services
The Honourable Linda Jeffrey, Minister of Labour
Amrit Mangat, Parliamentary Assistant to the Minister of Consumer Services
Yasir Navqi, MPP, Ottawa Centre
Bob Chiarelli, MPP, Ottawa West – Nepean