



ONTARIO'S WATCHDOG
CHIEN DE GARDE DE L'ONTARIO

January 30, 2013

Mr. Greg McAvoy
5012 Varsity Drive NW,
Calgary, AB
T3A 1A5

Dear Mr. McAvoy,

Re: Our File no. 255876

I am writing further to our telephone conversation on January 25, 2013 in which we discussed the outcome of our Office's review of your complaint about the Ministry of Consumer Services (the "Ministry"). As discussed, we will not be taking any further action with respect to this matter and your file will be closed for the reasons outlined in this letter.

Nature of the Ombudsman's Review

As I explained when we spoke, the Ombudsman's Office reviews and investigates complaints regarding the administrative conduct of provincial government organizations. Our Office does not have jurisdiction to review complaints about private companies such as Nortel Networks Corporation ("Nortel") and Sun Life Financial.

As part of our review of your complaint, we carefully reviewed the documentation and information you provided to our Office, as well as relevant legislation, case law, policies and guidelines. We also made inquiries with Ministry staff about your concerns.

Complaint background

In your submissions to our Office, you explained that you are among a group of disabled former employees of Nortel who submitted a complaint to the Ministry, alleging that Nortel and Sun Life Financial had engaged in unfair and misleading business practices. Specifically, your letter of complaint to the Ministry claimed that Nortel and Sun Life Financial had both misled the employees of Nortel into thinking

Bell Trinity Square
483 Bay Street, 10th Floor, South Tower, Toronto, ON M5G 2C9
483, rue Bay, 10^e étage, Tour sud, Toronto (Ontario) M5G 2C9
Tel./Tél. : 416-586-3300
Facsimile/Télécopieur : 416-586-3485 TTY/ATS : 1-866-411-4211

www.ombudsman.on.ca

Facebook : facebook.com/OntarioOmbudsman Twitter : twitter.com/Ont_Ombudsman YouTube : youtube.com/OntarioOmbudsman

that their long-term disability insurance was provided by Sun Life Financial, when in fact, (i) Nortel was actually self-insured and was paying all claims from a health and welfare trust; and (ii) Sun Life Financial was only providing administrative services such as claims processing. You also complained to the Ministry that Nortel engaged in unfair business practices by improperly removing assets from its health and welfare trust, thereby leaving inadequate financial reserves to satisfy all claims.

In your May 30, 2011 letter and subsequent meetings with Ministry staff, you requested that the Ministry investigate your complaint with a view to seek a restitution order from the courts to obtain funds from Nortel's remaining assets to provide the long-term disability beneficiaries with the funds that they originally would have been due to receive.

In its July 18, 2011 letter, the Ministry advised that it would not be commencing an investigation into your complaint because it does not fall within the scope of the *Consumer Protection Act* ("the Act"). You and your legal counsel disputed the Ministry's interpretation of the Act and made further submissions to the Ministry in support of your argument that your complaint does fall under the Act. However, the Ministry did not agree with your interpretation.

Issues

You complained to our Office that the Ministry of Consumer Services has unreasonably refused to investigate your complaint and that it is refusing to enforce the Act.

In your submissions to our Office, you also raised separate concerns about the Financial Services Commission of Ontario. You complained that the Superintendent of the Financial Services Commission of Ontario failed to adequately protect the interests of the disabled former Nortel employees when it supported the March 31, 2010 court-approved settlement agreement that Nortel entered into with pensioner groups and long-term disability beneficiaries under the *Companies' Creditors Arrangement Act*.

Inquiries with the Ministry of Consumer Services

In response to our Office's inquiries, the Ministry reiterated its position that your complaint does not fall within the *Consumer Protection Act*. As noted in its July 18,

2011 letter to you, the Ministry's position is that the Act is intended to promote a fair and balanced marketplace, not to address disputes in an employment relationship. As the complaint arose in the context of your status as a former employee of Nortel, the Ministry concluded that your complaint was not in relation to a "consumer transaction" within the meaning of the *Consumer Protection Act* and it therefore fell outside the jurisdiction of the Act.

We understand that you disagree with the Ministry's interpretation of the Act. However, based on our review, in the particular circumstances of this case, it appears the Ministry's interpretation of the legislation is not inconsistent with the objectives of the Act.

Complaint about the Financial Services Commission of Ontario

With respect to your complaint about the position taken by the Financial Services Commission during the court proceedings under the *Companies' Creditors Arrangement Act* (in which the court accepted the Commission's position), our Office is not able to review judicial proceedings.

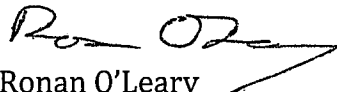
We do note, however, that a group of the long-term disability beneficiaries of Nortel attempted to appeal the approval of the settlement agreement in question, but was refused leave to appeal by the Ontario Court of Appeal in June 2010.

Conclusion

Given the above, further action will not be taken by our Office and your file is now closed. If you have any questions, please feel free to contact me at 1-800-263-1830 ext 3408.

Thank you for contacting the Office of the Ontario Ombudsman.

Sincerely,



Ronan O'Leary
Student-at-Law