

October 17, 2011

Honourable Dalton McGuinty  
Premier and Leader of Ontario Liberal Party  
Main Legislative Building, Queen's Park  
Toronto Ontario M7A 1A1  
Email: dmcguinty.co@liberal.ola.org

Dear Premier Dalton McGuinty:

### **Our Request**

We ask you, as Premier of Ontario, to give the Nortel disabled former employees the same consideration you gave the high-end Nortel pensioners in reviewing Finance Minister Dwight Duncan's first decision not to amend the Ontario Pension Benefits Act to permit continuing investment in the capital markets through the Financial Sponsorship Model. The Minister of Consumer Services should use his power to enforce the Ontario Consumer Protection Act governing unfair business practices in the form of misrepresentations made by Nortel and Sun Life on the disability insurance supplied to Nortel employees. The Consumer Protection Act does not require amendments to provide a solution to avoid the poverty and premature deaths of the Nortel disabled. A court ordered remedy of \$75 million for the Consumer Protection Act offences would be funded from the \$10 billion Nortel estate. This is a better alternative than Ontario taxpayers bailing out Nortel disabled, with about a 70% loss of Nortel disability income.

**[NRPC-SRNC - Nortel pensioners get short talk with McGuinty Sept. 24, 2010](#)**  
**[CBC Ottawa Story - Nortel Pensioners McGuinty Meeting Sept. 24, 2010](#)**

### **Minister Accepting Attorney General Lawyers' Advice Not to Investigate Our Complaint**

We filed a complaint with the Ministry of Consumer Services under the Ontario Consumer Protection Act (OCPA) on May 30, 2011 about the unfair practices of Nortel and Sun Life, who both misrepresented our long term disability insurance coverage. Our meetings with various Consumer Services and Attorney General Ministry staff have met resistance. We find this unacceptable from many different perspectives presented in this letter.

### **Complaint Application to Ontario Consumer Services Ministry May 30, 2011**

Ontario Minister of Consumer Services John Gerretsen, MPP for Kingston & The Islands, answers questions at two All Candidates Debates in the week of Sept. 19, 2011 about why he is not enforcing the OCPA to force Nortel and Sun Life to pay for our misrepresentations of disability insurance sold to Nortel employees. At the Queens University debate, Minister Gerretsen says the reason he is not enforcing the OCPA is that Nortel is bankrupt and has no money. Minister Gerretsen changes his answer at the Kingston Community Health Care Center debate to the Nortel disabled problem is not a Consumer Protection issue based on the legal advice he has received from the Attorney General lawyers. **However, he does agree "with**

respect to the disability issue that there is a fair complaint that needs to be looked into. The Ministry of the Attorney General and the Ministry of Finance are looking into it."

[Queens University Debate - Q & A on Nortel Disabled Sept. 19, 2011 \(Video\)](#)

[Kingston Community Health Center Health Care Debate Sept. 21, 2011\(Audio\)](#)

[The Whig Standard - Nortel \[disabled\] workers seek relief Sept. 24, 2011](#)

### **Attorney General Lawyers' Reasons for Not Investigating Are Without Legal Merit**

Attorney General lawyers James Stirling and Marilyn Marshall have stopped the Ministry of Consumer Services from initiating an investigation of the Nortel disabled Complaint under the Consumer Protection Act, for reasons described in the July 18, 2011 letter from Assistant Deputy Minister Frank Denton at the link below. **The Attorney General lawyers' reasons are not based on legal arguments relating to the plain meaning of the Consumer Protection Act and the documented legislative intent and broad and flexible scope of the Act, which Ontario courts have accepted. Rochon Genova LLP provided a legal opinion in their letter of Aug. 16, 2011 below that a Ministry's application for determination of offences and remedies under the Consumer Protection Act relating to Nortel's and Sun Life's misrepresentation of group disability insurance services would likely be determined by the court to be within the jurisdiction of the Consumer Protection Act.**

### **Letter from Assistant Deputy Minister Denton to Rochon July 18, 2011**

ADM Frank Denton does not honour his commitment to receive the detailed legal opinion and arguments of Rochon Genova LLP and sends a pre-emptive letter three days after the July 15 meeting indicating that the Ministry would not investigate the Complaint. Frank Denton's letter says:

"The CPA is intended to regulate transactions between individual consumers and suppliers for goods and services, with a view to promoting a fair and balanced marketplace. It is not intended to regulate terms and conditions of employment or address disputes arising in the context of the workplace relationship. The provision of benefits in the context of an employment relationship would not be within the scope and purpose of the CPA. Your clients' claim against Nortel Networks Inc. and Sun Life Financial arises in the context of their status as former employees of Nortel Networks. It is the Ministry's position that the former employees' complaint is not in relation to a consumer transaction within the meaning of the CPA and is outside the jurisdiction of the CPA. Accordingly, the Ministry will not be commencing an investigation into your clients' complaint."

[Letter to Assistant Deputy Minister Denton from Rochon Aug. 16, 2011](#)

[Appendix A - Consumer Protection Act - Ontario Legislature and Committee Debates](#)

[Appendix B - Report on Misrepresentation Evidence](#)

This is the promised detailed legal opinion and arguments provided by Rochon Genova LLP, Joel Rochon on Aug. 16, 2011. This is within one month of the July 15 meeting with Ministry staff and Marilyn Marshall, Attorney General lawyer, all of whom agreed to receive this legal opinion and continue discussion of it amongst the lawyers before Frank Denton reaches a final decision on whether his Ministry will investigate the Complaint. Joel Rochon's letter says:

"Based on a plain meaning interpretation of the CPA, as well as the documented legislative intent and broad and flexible scope of the Act, which Ontario courts have accepted, we believe that a judge hearing the Ministry's application for determination of offences and remedies under the Act relating to Nortel's and Sun Life's group disability insurance services would accept that the Complaint is within the jurisdiction of the CPA. It is not necessary for the court to engage in gap-filling powers to find that jurisdiction could be asserted and find a judicial solution for the poverty and potential premature death of Nortel disabled former employees within the CPA. We note that the judge has the power to make orders for compensation and restitution under section 117. The evidence on these unfair practices and misrepresentations in the Report on Misrepresentation Evidence found at APPENDIX B provides compelling support for the Ministry to achieve a successful prosecution of these offences under the CPA."

### **Attorney General of Ontario Not Knowledgeable About Ministry Staff Decision**

Ontario Attorney General Chris Bentley lacks knowledge about the plight of Nortel disabled employees, who are sold defective disability insurance by their employers and insurers. He demonstrated this in his answer to Hugh Urquhart's question at the Association of Iroquois and Allied Indians All Candidates Town Hall on Oct. 3, 2011 at the N'Amerind Friendship Centre in London, Ontario:

### **N'Amerind Friendship Centre - Question & Answer on Nortel Disabled and Ontario Consumer Protection Act Oct. 3, 2011**

Chris Bentley's answer on whether the Attorney General Ministry should enforce the Ontario Consumer Protection Act for bogus disability insurance was to divert from the question by saying: (a) Nortel is in bankruptcy and has no money; and (b) we are really talking about the Federal bankruptcy act under Federal Government jurisdiction.

### **Ontario Government Has Made Other Decisions Inadvertently Harming Nortel Disabled**

Ontario Government has made other decisions harming the Nortel disabled, perhaps inadvertently.

- The estimated \$380 M Ontario Pension Benefit Guarantee Fund (OPBGF) creditor claim and \$10 M Ontario Ministry of Environment creditor claim are directly competing with the

Nortel disabled creditor claim. The Ontario Government is paying for the Superintendent of FSCO's representation by Paliare Roland Rosenberg Rothstein LLP and the Ministry of Environment's Attorney General lawyers' representation in the Nortel CCAA proceedings. Yet the Attorney General lawyers refuse to assign lawyers to protect the interests of the Nortel disabled under the OCPA, which would reduce taxpayer support for social security.

- The Ontario Government has been unfair twice to the younger Nortel disabled by first, the \$380 M help to pensioners who are not the disabled; and, second, the help to pensioners causing collateral damage to the disabled. The Nortel younger disabled employees, who are deferred Ontario defined benefit pension plan members, receive only a minimal amount of this OPBGF payment because their accrued pension values are extremely low. Many of the older disabled are forced to take early retirements as soon as age 55, but their pension income is reduced by 5% for every year under age 60, on top of the pension cuts due to the pension plans' wind-up. Many of the Nortel disabled employees are not members of the Nortel defined benefit pension plans, but members of the defined contribution pension plan for which there is no OPBGF payment.
- Superintendent of FSCO, through its legal counsel Paliare Roland Rosenberg Rothstein LLP, supported the Nortel March 30, 2010 interim settlement with its legal release denying all actions by Nortel disabled for remedy of misrepresentations and breach of trust relating to Nortel's disability insurance and Health and Welfare Trust. Fortunately, the Ontario Government was not a signatory and therefore is not restricted from taking the OCPA enforcement actions. Ken Rosenberg of Paliare Roland Rosenberg Rothstein LLP expressed the Ontario Government's support at both court hearings for the settlement, notwithstanding that Joel Rochon of Rochon Genova LLP had filed court motions opposing the Nortel interim settlement on grounds that there was not informed consent from the disabled group, with no vote or other evidence of majority support, and that there was prima facie evidence of breach of trust in the Health and Welfare Trust. Material disclosures on the amount and reasons for the over \$100 M missing money in the trust were not made until August 15, 2010.
- The Ontario Government also amended the Pension Benefit Standards Act (OPBA) to enable Life Income Funds (LIF) and the Financial Sponsorship Model (FSM) as alternatives to life annuities. **The OPBGF payments are being made to the high end pensioners who sought the OPBA amendment, so that they could continue to invest in the capital markets. The OPBGF payments to these high end pensioners could have been denied since current legislation provided for only life annuities. The money saved could have been used to help the Nortel disabled, who are in much more dire straits than the high end pensioners.**

It is plainly wrong that the Ontario Government uses taxpayer money to fund lawyers to seek priority settlement from the Nortel estate for Ontario pension and environment claims, while taking no action under the Ontario Consumer Protection Act to mitigate the poverty and injustice of the Nortel disabled caused by the misrepresentations of our disability insurance and the removal of our disability insurance reserves from Nortel's Health and Welfare Trust.

## **Enforcing the OCPA Also Stops the Systemic Abuse Of Disabled Canadians**

Enforcing the OCPA will also set the precedent for stopping the systemic abuse of disabled Canadians and the 1.1 million able-bodied Canadians in employer sponsored disability insurance plans. There has been systemic failure by Nortel, Sun Life, Northern Trust, the court appointed legal counsel for the Nortel disabled, and subsequently the courts and governments, who all chose not to use any of the legal tools available to protect us.

All employer sponsored disability insurance plans are now certain to fail due to precedents set in the Nortel CCAA court decisions.

The Ontario Government has the obligation and power on its own to resolve unsafe employer sponsored disability insurance plans through the OCPA, without creating new legislation or making a legislative amendment to existing legislation.

## **Systemic Failure of Employer Sponsored Disability Insurance Updated September 2011**

### **Lawyers And Judges Losing Sight Of Commitments To Justice And The Public Good**

Governor General David Johnston's Speech to the Canadian Bar Association 2011 Canadian Legal Conference resonates with us. The National Post quote from his presentation was: "Canada's lawyers and judges are losing sight of their commitments to justice and the public good, and the profession must reform itself and rebuild the trust of ordinary citizens."

### **Governor General David Johnston Speech - The Legal Profession in a Smart and Caring Nation Vision for 2017**

### **National Post - Governor General urges lawyers to rebuild public trust Aug. 14, 2011**

Listen to Peter Burns' interview before he died on May 14, 2011, and you cannot help but conclude that justice and the public good is not being served in this case.

## **Ending Lives of Canadian Disabled June 2011**

Sincerely

Carol Sampson	<a href="mailto:sammygirl1@rogers.com">sammygirl1@rogers.com</a>	(613) 224-2791
Greg McAvoy	<a href="mailto:jgmcavoy@shaw.ca">jgmcavoy@shaw.ca</a>	(403) 288-5568
Josee Marin	<a href="mailto:marin.josee@sympatico.ca">marin.josee@sympatico.ca</a>	(613) 678-2960
Jackie Bodie	<a href="mailto:jbodie@blinc.ca">jbodie@blinc.ca</a>	(403) 247-8782

CC:

Ontario Minister of Consumer Services John Gerretsen [jgerretsen.mpp@liberal.ola.org](mailto:jgerretsen.mpp@liberal.ola.org)

Ontario Minister of Labour Charles Sousa [csousa.mpp@liberal.ola.org](mailto:csousa.mpp@liberal.ola.org)

Ontario Minister of Finance Dwight Duncan [dduncan.mpp@liberal.ola.org](mailto:dduncan.mpp@liberal.ola.org)

Ontario Attorney General Chris Bentley [cbentley.mpp@liberal.ola.ca](mailto:cbentley.mpp@liberal.ola.ca)  
Yasir Navqi, MPP Ottawa Centre [ynavqi.mpp@liberal.ola.org](mailto:ynavqi.mpp@liberal.ola.org)  
Bob Chiarelli, MPP Ottawa West - Nepean [bchiarelli.mpp.co@liberal.ola.org](mailto:bchiarelli.mpp.co@liberal.ola.org)  
Grant Crack, MPP Glengarry - Prescott - Russell [gcrack.mpp@liberal.ola.ca](mailto:gcrack.mpp@liberal.ola.ca)

Diane & Hugh Urquhart [urquhart@rogers.com](mailto:urquhart@rogers.com)  
Joel Rochon, Rochon Genova LLP [jrochon@rochongenova.com](mailto:jrochon@rochongenova.com)  
Sakie Tambakos, Rochon Genova LLP [stambakos@rochongenova.com](mailto:stambakos@rochongenova.com)

## **Appendix**

### **Timeline for Communications with Minister John Gerretsen and Ministry Staff**

Subsequent to the Kingston & The Islands debates, Elaine Fliss, Senior Policy Advisor to Minister John Gerretsen contacted Carol Sampson to offer a teleconference with her and others, which we assumed was meant to take place within a week's time. This teleconference has not occurred.