Gravy train at work in Nortel bankruptcy

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More from Barry Critchley

This week, the U.S. Trustee opposed a motion for Nortel's U.S. estate to be exempt from a Department of Justice rule requiring the disclosure of fees paid to professionals retained by law firms. Nathan Denette/The Canadian Press

It may be nothing more than a flesh wound on the gravy train that has kept groups of lawyers and various accounting firms profitably employed working through the Nortel Networks bankruptcy.

With professional fees of more than $800-million paid already – or more than 10% of the proceeds now in escrow awaiting disbursement – context is required for this week's small victory by the U.S. Trustee for Bankruptcy: a zero sum game is at work which is not good news for some groups including Nortel's pensioners.

This week, the U.S. Trustee opposed a motion for Nortel's U.S. estate to be exempt from a Department of Justice rule requiring the disclosure of fees paid to professionals retained by law firms. (That rule, designed to achieve greater transparency, came into effect on Feb 1.) Nortel wanted an exemption on the grounds that such information could tip off adversaries to its litigation plans. Judge Kevin Gross agreed to a limited exemption, whereby at some future date Nortel will be required to disclose how much it spent on the 29 law firms that have been retained.

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Meantime, the judges have the final say on what fees will be paid out of the estate. (A monitor, typically an accounting firm, oversees bankruptcies, with the courts giving the final approval.) And given that battles are also occurring in Canada and the U.K., the judges have been busy distributing more than $800-million.

While the disbursing process is time-honoured, there does seem to be a close relationship on bankruptcy/insolvency matters between the bench and the lawyers involved at a time when much of the focus in public policy is on transparency.

> Locally the Insolvency Institute of Canada seems to be front and centre with the mingling. It defines itself as "Canada's premiere private sector insolvency organization" that it says is "dedicated to improving the insolvency process and enhancing the professional quality of, and public respect for, the insolvency and bankruptcy practice in Canada."
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> One of its claims is that it "provides a unique forum for leading members of the insolvency community to interact and have meaningful dialogue with other members, as well as senior representatives of the federal and provincial governments and members of the judiciary."
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> In this way it's a "valuable forum for members, legislators, academics, and members of the judiciary to exchange ideas and share experiences."

Apart from making submissions, the IIC also holds an annual conference that is "for members, spouses/guests and invited guests only. Non-member substitutions are not permitted," notes the brochure for a recent conference.

This year's bash will be held in Palm Springs in November. The 2012 conference was held at Whistler. Some of the agenda items involve matters that are live or ongoing.

Calls to IIC seeking a comment weren't returned.

Based on recent conferences, the federal superintendent of bankruptcy is the first speaker. (That office supervises the administration of the Bankruptcy and Insolvency Act. Since late 2009, the superintendent has the authority to supervise the monitor.)

And before the formal part of the conference there is a judicial forum but that's for "invited judicial guests only."

The National Conference for Business Law (whose sustaining sponsor is the IIC) is another entity that holds an annual conference where practitioners and judges mix – though the judges pay a lower fee than the other attendees.

For both entities here's a challenge: at your next conference conduct a session on how to make the system more effective and not a gravy train.

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