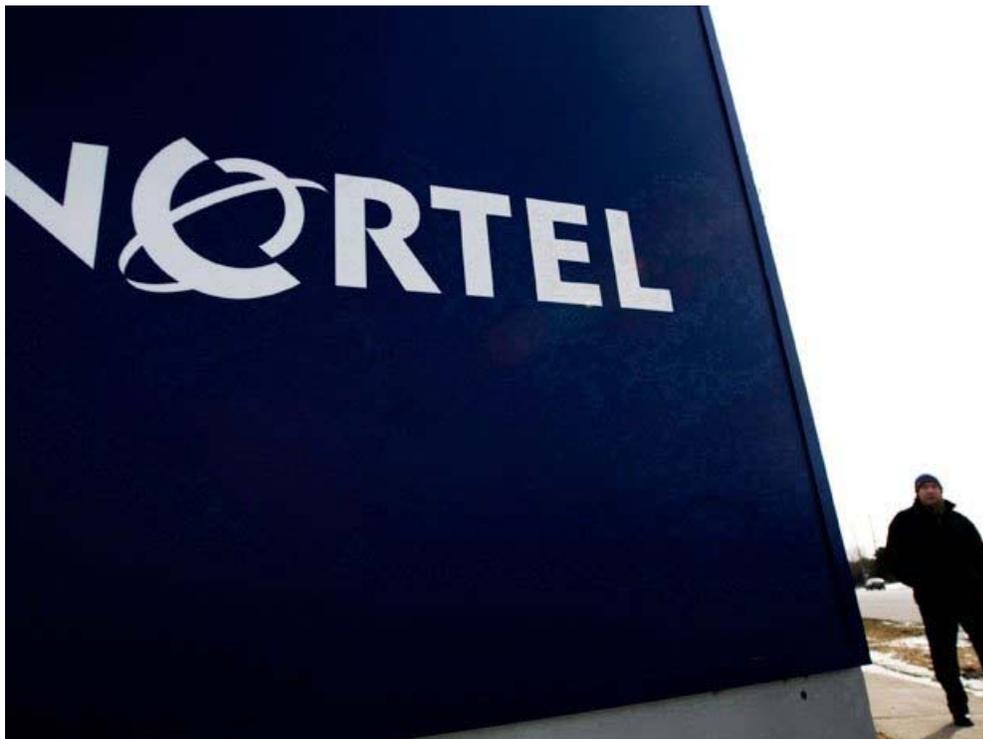


Will Nortel professional fees finally get some examination?



Barry Critchley | 27/11/13 | Last Updated: 27/11/13 4:47 PM ET

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THE CANADIAN PRESS/Nathan Denette There is an interesting timeline concerning recent events in the insolvency proceedings at Nortel Networks.

How did it get to this stage? How after more than four years of bankruptcy proceedings – and months before the trial that will decide how the so-called global estate of Nortel Networks should be divided up between the competing claims gets underway – did Justice Morawetz of the Ontario Court of Justice make an amazing comment?

Justice Morawetz, the judge who has been handling the Nortel CCAA matter, demanded last week an accounting of the costs from the lawyers involved in the Canadian action. According to a Dow Jones report, Justice Morawetz said “the court here is in the dark, and I do not want to be in the dark any longer. The time has come, please, to let me know how much this is costing.”

The proceedings that involve actions in Canada, the U.S. and Europe have already resulted in the payment of US\$1-billion in professional fees. Of the US\$1-billion, about 30% (US\$323-million) has been paid to the Canadian legal and accounting firms involved. Of that amount, US\$55-million was paid over the six month period ended mid-October 2013.

Justice Morawetz made those comments about the court being in the dark at the same time as he advised the parties that he was granting a one-month extension for the trial. Instead of April 2014, the trial will now start in May (in part because it would be “chaotic” without it.) In an unusual move, there won’t be a separate Canadian trial: instead there will be joint trial for North America. And between now and next spring, the Canadian legal firms and the other professionals involved with the action will spend even more — one estimate suggests another \$50-million will be paid out.

So what gives?

There may not be a connection but if nothing else there is an interesting timeline concerning recent events in the insolvency proceedings at Nortel Networks.

A convenient recent starting point is a letter that was sent by Calgary-based Greg McAvoy to the Canadian Judicial Council last August. McAvoy is not a disinterested party: He is a former Nortel employee who is now on long-term disability. (He has multiple sclerosis and receives \$1,147 a month from the Canada Pension Plan but nothing from Nortel.)

He has been fighting for years but those efforts have been stymied by the courts and by Nortel (which in 2010 made a lump-sum payment equal to about 35% of what he was entitled to.) He regards the fees paid to the professional advisors as “truly outrageous.” Could this complaint be what spurred the justice to get serious about the fees? Or was it unrelated? Consider this timeline:

August 2013: McAvoy writes to the Canadian Judicial Council with three complaints against Justice Morawetz:

- Justice Morawetz’s apparent failure to control the runaway Canadian legal and professional fees. Nortel’s U.S. claimants “should not be receiving 100% of their claim while Canadians receive a few cents on the dollar,” he wrote in letters, copies of which were provided to the *Financial Post*.

- The judge's close relationship with the legal and professional members of the Insolvency Institute of Canada working on the Nortel case. (Justice Morawetz appeared on the cover of the Spring/Summer 2013 issue of Rebuilding Success, the "official magazine of the Canadian Association of Insolvency and Restructuring Professionals.)

- His apparent lack of diligence with respect to maintaining the assets in the Nortel Canadian estate.

September 2013: McAvoy receives a reply to his letter, saying that his complaints "were legal issues and not judicial conduct issues. Your conclusion is unacceptable."

November 2013: McAvoy writes another letter to the Canadian Judicial Council, complaining about Justice Morawetz's conduct.

In a perfect world that plea would have generated a response. But McAvoy said Wednesday that he has not received a reply on his second letter to the Judicial Council. "They take a long time and send it by regular mail. It's a slow process." And what irks McAvoy is that he was told in court that there was "no money for us." But now more than US\$1-billion has been spent on paying the professional firms.

Is 10% of Nortel's global estate being paid to bankruptcy professionals a misuse of the corporation's money?

As independent financial analyst Diane Urquhart puts it: "Had this \$1-billion been used for restructuring, Nortel would likely still be operating effectively and creating jobs for Canadian scientists and engineers."