

General Complaint to Ombudsman Ontario

July 20, 2012

Contact info:

All complaints to the Ombudsman are strictly confidential. We require your contact information in order to respond to you, and for statistical tracking purposes:

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What government organization or agency is your question or complaint about? (Please identify by name):

- Ministry of Consumer Services
- Ministry of Attorney General

Who have you dealt with in this organization with respect to your complaint?:

[\[Denton, Frank\]](#) [Assistant Deputy Minister] [CONSUMER SERVICES]
[POLICY AND CONSUMER PROTECTION SERVICES DIVISION, Toronto] [416-326-2826] [frank.denton@ontario.ca]

[\[Girling, James\]](#) [Director] [CONSUMER SERVICES]
[LEGAL SERVICES BRANCH, Toronto] [416-212-4273] [James.Girling@ontario.ca]

[\[Marshall, Marilyn\]](#) [Senior Counsel] [CONSUMER SERVICES]
[LEGAL SERVICES BRANCH, Toronto] [416-325-8802] [marilyn.marshall@ontario.ca]

Please summarize the matter you are complaining about and include any relevant dates:

For more than one year, the senior Ontario government officials noted above have refused to enforce the Ontario Consumer Protection Act for the unfair business practices in the form of misrepresentations about the disability insurance supplied to Nortel employees by Nortel and Sun Life. They are saying the Ontario Consumer Protection Act does not have legal jurisdiction. However, the arguments supplied by the two noted Attorney General lawyers assigned to the Consumer Services Ministry are not legally defensible.

Both the current Minister of Consumer Services Margaret Best, and her predecessor, John Gerretsen, have refused to meet with representatives of the Nortel disabled former employees. Both these Ministers have refused to use the powers explicitly given to them within the Ontario Consumer Protection Act to enforce this Act for the protection of consumers.

The documents at the following links are the original complaint application, the legal opinion of Rochon Genova LLP acting for the dissenting Nortel disabled former employees and the response given to the complainants from the Associate Deputy Minister of Consumer Services Frank Denton, based on the legal advice provided to him by Ministry of Attorney General lawyers, Director, James Girling and Senior Counsel, Marilyn Marshall,. Details on the Misrepresentations Evidence and the Rochon Genova Legal Opinion are in the attached Appendix.

[Complaint Application to Ontario Consumer Services Ministry May 30, 2011](#)

[Letter to Minister of Consumer Services John Gerretsen May 30, 2011](#)

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

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

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

[Letter from Assistant Deputy Minister Denton to Rochon July 18, 2011](#)

[Ontario Consumer Protection Act](#)

The Financial Services Commission of Ontario (FSCO) supported the March 30, 2010 Nortel Settlement Agreement within the Nortel Companies' Creditors Arrangement Act court proceedings. This Nortel settlement contained a legal release that prevents the Nortel disabled from undertaking their own civil litigation of the wrongdoings under the Ontario Consumer Protection Act.

The **[Letter from Ontario Finance Minister Dwight Duncan to Nortel Disabled November 16, 2011](#)** says the Ontario Government agreed to this Settlement because a single Nortel disabled court appointed representative agreed to it, as did the court. However, the Ontario Government knows that there was not informed consent from the Nortel disabled group for this Settlement.

Reasonable people do not agree to a settlement that provides just 9 months of 2010 income and medical benefits in exchange for accepting a 65% reduction in their disability income up to age 65. This settlement forced the Nortel disabled to concede their rights to litigate Nortel, Sun Life and the trustees, Royal Trust and Northern Trust, for the damages of up to \$75 million from misrepresentation of their disability insurance and wrongdoings in their Health and Welfare Trust, except for the continuing right to make a civil fraud claim.

[Ottawa Citizen - Winkler versus the Nortel quagmire March 31, 2012](#) defines these court proceedings to be "a glaring example of everything that is wrong with the justice system."

The Ontario Government is spending \$380 million of taxpayers' money to pay about \$400 per month to each of the Nortel Ontario pensioners, including high income Nortel pensioners. It has not spent money to assist the 360 Nortel disabled former employees with their greater loss of income, and 120 dependent children affected.

There was 35% Nortel Health and Welfare Trust funding of the disability insurance compared to an estimated 60% funding for the Nortel pension plans. The Ontario Pension Benefit Guaranty Fund payments are cushioning the loss for Ontario Nortel pensioners to just 18% of their income for the non-union pensioners and 6% for the union pensioners.

The Ontario Government's support of the March 30, 2010 settlement agreement and its subsequent refusal to enforce the Consumer Protection Act in respect to the unfair business practices and misrepresentations of Nortel's disability insurance violates Section 7 of Canada's Charter of Rights and Freedoms: Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice. The Ontario Government has responsibility for depriving Nortel disabled of their life and security without any principle of fundamental justice to warrant the Government's conduct. A clearer understanding of what constitutes a principle of fundamental justice may be arrived at by considering what the courts have recognized as principles of fundamental justice, such as the societal notions of justice and the right to full and proper disclosure. The court-appointed lawyers for the Nortel disabled failed to exert the legal rights of the Nortel disabled to obtain a priority remedy for the misrepresentations of their disability insurance and the breach of trust within their Health and Welfare Trust, or to seek an equitable remedy for the Nortel disabled to live in dignity, when there is \$10.3 billion in the Nortel Global Estate. There has been no vote to validate that a majority of the Nortel disabled agreed to the 65% cut in their disability income after full and proper disclosure of the facts surrounding their disability insurance.

Clearly, the Ontario Government needs to be re-examining all of what has occurred to date and use its authority to enforce the Ontario Consumer Protection Act in order to protect the life and security of the Nortel disabled former employees going forward until they reach age 65. The Ontario Government has joint responsibility for causing the Nortel disabled former employees' poverty, so it should surely be acting now to fix the problem within the legal means it has to do so.

Summarize what steps you have taken to try and resolve your complaint including any grievance, appeals and/or requests for reconsideration you have submitted and what response you received:

FULL RECORD OF COMMUNICATIONS ON ONTARIO CONSUMER PROTECTION ACT

[Letter to Minister Gerretsen from Rochon Genova LLP June 10 2011](#)

[Letter to Minister Gerretsen, Minister Sousa, Parliamentary Assistant Brownell Request for Second Ministry Meeting June 22, 2011](#)

[Email to Rochon and Tambakos from Diane on call from Pina Bosco, Deputy Minister's Office on Second Meeting June 23, 2011](#)

[Letter to Minister Gerretsen, Minister Sousa, Parliamentary Asst Brownell, MPP Navqi, MPP Chiarelli Report on Misrepresentation Evidence and Denton Call in Afternoon July 12, 2011](#)

[Letter to DM Ross, ADM Denton, EA Simeon, Director CPB and Director Legal Submission of Report on Misrepresentation Evidence July 12, 2011](#)

[Email to Rochon and Tambakos Notes on July 12 Call with ADM Denton and EA Simeon July 12, 2011](#)

[Letter to MPP Chiarelli complaining about July 12 call from ADM Denton backtracking on legal jurisdiction July 14, 2011](#)

[Letter from Assistant Deputy Minister Denton to Rochon July 18, 2011](#)

[Letter to MPP Chiarelli providing notes on July 15 meeting with Ministry staff July 20, 2011](#)

[Letter to Ministers Duncan and Gerretsen from Complainants July 26, 2011](#)

[Letter to Minister Sousa from Urquhart Attorney General lawyers misinforming Minister on Restitution Power July 27, 2011](#)

[Letter to Ministers Duncan and Gerretsen from Complainants Aug. 3, 2011](#)

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

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

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

[Letter to Minister Gerretsen, Minister Duncan, Minister Sousa, Parliamentary Asst Brownell RG Legal Opinion Supplied Aug. 16, 2011](#)

[Letter from Assistant Deputy Minister Denton to Sampson Aug. 26, 2011](#)

[Letter to Assistant Deputy Minister Denton from Urquhart Aug. 27, 2011](#)

[Email to Attorney General Lawyers and Consumer Services Staff from Urquhart Aug. 29, 2011](#)

[Letter to Minister Gerretsen from Complainants Aug. 30, 2011](#)

[Letter from Assistant Deputy Minister Denton to Urquhart Aug. 31, 2011](#)

[Letter from Assistant Deputy Minister Denton to Sampson Sept. 8, 2011](#)

[Queens University Provincial Election All Candidates Debate - Q & A on Nortel Disabled Sept. 19, 2011](#)

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

[N'Amerind Friendship Centre - Question on Nortel Disabled and Ontario Consumer Protection Act Oct. 3, 2011](#)

[Letter to McGuinty from Nortel Disabled Complainants Oct. 17, 2011](#)

[Email to Margaret Best from Urquhart October 20, 2011](#)

[Email from Dalton McGuinty to Nortel Disabled Complainants Nov 7, 2011](#)

[Letter to McGuinty from Nortel Disabled Complainants Nov. 14, 2011](#)

[Letter from Dwight Duncan to Nortel Disabled November 16, 2011](#)

[Letter to Dwight Duncan from Nortel Disabled Dec. 2, 2011](#)

[Appendix A - Nortel LTD Timeline](#)

[Appendix B - Contributions removed from HWT disability insurance reserve - total & individual LTD employees](#)

[Email to Margaret Best from Urquhart February 14, 2012](#)

[Petition on Nortel Disabled and Enforcement of OCPA May 28, 2012](#)

[Ontario NDP Media Release on Consumer Protection Act Enforcement on Unfair Business Practices for Self-Insured Disability Insurance June 4, 2012](#)

If you have received a final decision on an appeal or request for review or reconsideration of your complaint, please indicate what the result was and why you feel this was unfair:

The absence of any response from the Ontario Consumer Services Minister Margaret Best to our many requests for review or reconsideration of our complaint to the Ministry of Consumer Services appears to suggest that she agrees with the decision taken by the Associate Deputy Minister Frank Denton not to proceed with any action on the Attorney General lawyers' advice that the Ontario Consumer Protection Act does not have legal jurisdiction.

This result is unfair because:

- a) the Attorney General lawyers' opinion is not legally defensible, and if the Ministry were to lay offence charges under the Ontario Consumer Protection Act, there are prospects for success in achieving a court order for restitution of the damages caused by these offences.
- b) the Ontario Government's FSCO is jointly responsible for the Nortel disabled losing their legal right to civil litigation that had prospects for success in achieving a court order for financial remedy of the unfair business practices and misrepresentations covered by the Ontario Consumer Protection Act.
- c) the Ontario Government used a \$380 million taxpayer grant to help the Nortel pensioners, including the high end ones, which provided minimal assistance to the Nortel disabled with

small to none accrued pension benefits and who are considerable more harmed by the Nortel bankruptcy than the pensioners have been.

- d) Nortel disabled former employees should not be suffering poverty and premature death, when there were serious wrongdoings in respect to their disability insurance and related Health and Welfare Trust and when there is over \$10 billion in the Nortel Global Estate and Nortel executives and bankruptcy lawyers have received over \$800 million of incentive bonuses and professional fees after the Nortel bankruptcy was filed on January 14, 2009.

If you consider the matter urgent, please explain why:

The Nortel disabled former employees' Health and Welfare Trust settlement of 2011 runs out within 1-1/2 to 2-1/2 years and these vulnerable people and their children cannot afford their essential living expenses up to age 65 on the meagre CPP disability income or the Ontario Disability Support Program. These people will no longer be able to live independently, without reliance on their extended family and friends for financial support.

As of March 24, 2012, there is \$10.3 billion in the Nortel Global Estate and once the Nortel CCAA Final Plan is executed at a future unknown date, this source of money to fund a restitution order for the OCPA offences is no longer available.

Many Nortel disabled former employees' have already died due to the stress of their Nortel disability income being discontinued and the injustice of their treatment by both the Ontario Ministries of Consumer Services and Attorney General in respect to their refusal to enforce the Ontario Consumer Protection Act, by the Financial Services Commission of Ontario's support of the March 30, 2010 Nortel settlement agreement and by the Ontario Court's acceptance of this grossly deficient settlement agreement, which was without their informed consent.

[Ending Lives of Canadian Disabled June 2011](#)

[CBC Interview of Nortel LTD Employees from Calgary, Alberta May 25, 2010](#)

[CBC Gillian Finley Interview - Alice Campbell, Nortel LTD Employee Nov. 26, 2009](#)

The action sought from the Ombudsman of Ontario:

The Nortel disabled representatives ask the Ombudsman of Ontario to convince the Ontario Government, and the Minister of Consumer Services Margaret Best in particular, to use her powers under the Ontario Consumer Protection Act to enforce its provisions for unfair business practices and false, misleading or deceptive representations, and to seek a court restitution order for the damages to the Nortel disabled former employees caused by these offences.

The Minister of Consumer Services Margaret Best has until October 15, 2012 to officially respond to the Petition on behalf of Nortel disabled employees filed by PC Consumer Services Critic Jim McDonnell on May 28, 2012. This response should not repeat the defective opinions

rendered to date by Associate Deputy Minister Frank Denton and Attorney General lawyers James Girling, Director and Marilyn Marshall, Senior Counsel. The Ontario NDP Consumer Services and Attorney General Critic Jagmeet Singh has also publicly expressed his support for enforcement of the Ontario Consumer Protection Act in respect to the Nortel disabled former employees' complaint.

Sent to:

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APPENDIX

Details on the Misrepresentations Evidence and the Rochon Genova Legal Opinion

We have extensive documentary evidence on the misrepresentations of Nortel's disability insurance. The most important evidence is summarized at the following link.

[**Report on Misrepresentations - Most Important Evidence**](#)

Rochon Genova LLP has provided the Consumer Services Ministry a comprehensive legal opinion that the Ontario Consumer Protection Act has jurisdiction for an investigation of the Nortel disabled complaint and to lay offence charges. Here are the highlight of the Rochon Genova LLP legal opinion:

Nortel disabled former employees meet the literal meaning of the defined term "consumer" in the Ontario Consumer Protection Act;

“consumer” means an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes

Disability insurance services supplied by Nortel and Sun Life meet the literal meaning of the defined term "consumer transaction" in the Ontario Consumer Protection Act;

“consumer transaction” means any act or instance of conducting business or other dealings with a consumer, including a consumer agreement;

“consumer agreement” means an agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for payment;

Nortel supplied disability insurance covering 50% of employees' pre-disability income and employees used their own money to buy optional disability insurance to raise their coverage from 50% to 70% of pre-disability income. Even with respect to the employer paid core disability income benefit, Justice Robert Blair, in the case **Attorney General v. Confederation Life Insurance, [1995] (ON S.C.)**, concludes it is well established that payment or consideration for a "contract of insurance" need not take the form of a cash payment and that the employee's contribution of labour, skill and knowledge is considered a payment.

Terms and conditions of employment, or disputes arising in the context of workplace relationships, are not in the long list of exceptions for which the Ontario Consumer Protection Act and Regulations do not apply;

Disability insurance services supplied by Nortel and Sun Life are within the spirit and object of the Ontario Consumer Protection Act as expressed in the Hansard Transcript of the Ontario Legislature and Ontario Standing Committee of Finance and Economic Affairs;

The Federal Companies' Creditors Arrangement Act enables the priority payment of a court restitution order prepared by a regulatory body, when a viable compromise of the debtor is unaffected and the public interest is served, for example, the recent court approval for Non Bank ABCP regulatory settlements to be paid to owners.