

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. c-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT  
OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,  
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS  
INTERNATIONAL CORPORATION AND NORTEL NETWORKS  
TECHNOLOGY CORPORATION**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AFFIDAVIT OF ARLENE S. BORENSTEIN  
(Sworn March 2, 2010)**

I, Arlene S. Borenstein (Plante), of the City of Ottawa, in the province of Ontario,  
**MAKE OATH AND SAY AS FOLLOWS:**

**Introduction**

1. I am an employee of Nortel Networks Limited ("Nortel") on Long-Term Disability ("LTD"). I began to receive benefits under this plan when medical professionals determined I was no longer able to work due to illness in August 1999, when I started on Nortel's Short-Term Disability Plan then progressed to the LTD plan in February 2000.

2. When I learned of Nortel's CCAA on January 14th, 2009, I began to seek out other Nortel Employees on LTD in the hopes that together we could pool our resources and share what little information we were able to find. This is how I eventually came to be member of the group named Canadian Nortel Employees on Long-Term Disability ("CNELTD") and represented by my Koskie Minsky LLP ("KM") in these legal proceedings.

3. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

4. I swear this Affidavit in support of a motion for, among other things, the appointment of Rochon Genova LLP as counsel for the LTD Employees of Nortel Networks who oppose the Settlement Agreement of February 8, 2010 and to seek an adjournment of the Settlement Approval Hearing, and otherwise to oppose the February 8, 2010 Settlement Agreement. I am not in agreement with this settlement for the reasons I will outline in this affidavit.

#### **Personal Background**

5. I began my employment at Bell-Northern Research on March 26th 1990 in the Information Technology Division as a Software Support Consultant. It was less than one year after moving to the brand new Carling Facility at Lab 5 in 1992, that I began to notice my first symptoms.

6. This was in the early days of Northern Telecom/BNR, and much expansion and construction was going on all around us. Eventually, I was diagnosed with fibromyalgia, later with chronic fatigue, arthritis, and possible multiple sclerosis. These illnesses leave me exhausted for the most part.

7. I was on short-term disability 3 times for various lengths of time during the 1990's, and long-term disability for almost one year in 1996. I made many attempts to return to work, only to find that after a 2 or 3 months I could no longer maintain the schedule of a worker. However, I managed to work as a telecommuter (from my home) from 1997 until September 1999, when my pain became unmanageable and I had to concede that I could no longer sit at a desk for any period of time.

#### **Current Medical and Financial Circumstances**

8. I have not been attending to my health care regime as I normally would do due to the stress of both Nortel's bankruptcy and the general difficulties of not receiving any information with respect to my outcome and the negotiations that have been undertaken ostensibly on my behalf, but without my input, consideration, or even being allowed to participate in the decision-making process that affects my future. This has caused me severe stress, duress, and has aggravated all of my symptoms and has led to a decline in my health

9. My current income from Nortel is approximately a gross monthly income of \$2,200. I also receive approximately \$1,000/month from CPP Disability. My prescription costs per month amount to approximately \$500-600.

### **My Frustrating Search for Answers**

10. I learned that Nortel was filing under the Companies' Creditors Arrangement Act ("CCAA") on January 14, 2009 by way of an email from a friend. At the time, I was not certain in what way that would affect my LTD benefits because my understanding of Nortel's involvement with respect to its payment, and the payment of my health care benefits and life insurance, and my defined benefit pension plan, was unclear.

11. I made several calls to Nortel's Shared Services Centre in the United States to inquire and was told: "my benefits would continue for now", "benefits would continue, that's all they told us", "no one knows anything", and that no further information could be given to me. I made several calls to Sun Life in the hopes that they could provide me with some answers and was told that they had no information that would help me.

12. I knew that an organization called "Assuris" existed to protect Canadian policyholders in the event that their insurance company should become insolvent. I hoped that Nortel had provided its benefits through some sort of a Nortel insurance company and called Assuris only to find out that this was not the case. I called the Financial Services Commission of Ontario only to be told that they did not regulate Nortel's employee benefit plans in any way either.

13. In early April 2009, through a Google search on the Internet I arrived at the web site of Nelligan O'Brien Payne LLP ("Nelligan") and found that the law firm was attempting to represent the "Nortel Canadian Continuing Employees" ("NCCE"). As I was an NCCE, I requested instructions on how I might retain this firm to represent my

interests in Nortel's CCAA proceedings. Thereafter, I sent in my retainer to the e-mail address provided and contacted them for more information.

14. At the time that I sent my email I did not have a clear understanding as to who was actually the owner and only later learned that my e-mail was directed to Dany Sylvain, the Court-Appointed Representative of the NCCE.

15. When Mr. Sylvain responded to my e-mail, he copied several members of an Internet group then known as "Nortel Networks LTD Survivors" ("NNLTDS"), including Lawrence Clooney, Connie Walsh, who was the original leader and spokesperson of the NNLTDS, Valier Laforge and Mario Gagnon, who are all Nortel LTD Employees, as well as and Anne Clark-Stewart, a Nortel pensioner. I do not know or understand why Anne Clark-Stewart was copied on an email that was sent to the NNLTDS group.

16. On April 26th, 2009, I sent my first email to the NNLTDS group after I had been accepted for membership onto its Yahoo! Group, an Internet on-line group that allows for the members to post messages on a message board, as well as an area for sharing files. There were approximately 15-20 members. By that time, Connie Walsh had stepped down as the group's spokesperson and Sue Kennedy had offered to take her place for a while.

17. I received an email on April 28, 2009, providing details and an agenda for the group's first meeting to be held on April 30, 2009. The agenda was set to include such items as:

- Sun Life's role (insurer or Administrative Services Only provider);

- the difficulties in getting the “policies” from either Nortel or Sun Life for our benefit plans;
- Nortel’s role as a self-insurer of its employee benefits;
- the Nortel Health and Welfare Trust;
- Sun Life’s requirement to register Nortel’s plan with any regulatory body; and
- possible investigations related to violations of insurance regulations or legislation (RCMP, OPP, Ministry of Labour), etc.

18. A further focus of the agenda was related to our options for legal representation in the CCAA process. Among the issues to be discussed were the following:

- whether LTD employees fit in with Continuing Employees group that Nelligan was seeking to represent;
- whether we should be joining that group, or wait to see if Nelligan got appointed; and
- where LTD employees fit in with other groups in CCAA proceeding.

19. The last question raised a number of issues that make us, as LTD employees, differently situated from many of the other employee stakeholders. For example, when we qualified for LTD, it was guaranteed until age 65, or death, while other employees could have been terminated at any time. Our options are extremely limited, while other employees can look for new jobs.

20. We also canvassed the possibility of approaching organizations that practice public interest law and focus specifically on issues facing people with disabilities, including ARCH - legal aid for precedent-setting cases involving people with disabilities and REACH - legal assistance for people with disabilities.

21. Connie Walsh circulated an e-mail on May 1, 2009 which included information about several options for our legal representation. Although Connie had been making contacts with these sources of legal representation, Sue Kennedy sent an e-mail on May 12, 2009 advising that the group should be represented by KM, indicating that this was the recommendation of the Monitor and that Nortel would be paying KM's legal fees. Ultimately, KM was appointed to represent all Nortel employee groups (non-unionized), and Sue Kennedy was appointed to represent the group, which eventually came to be called the Canadian Nortel Employees on Long Term Disability ("CNELTD").

22. I felt uncomfortable from the outset about KM representing these different employee groups because I was concerned that conflicts between the different groups' interests might arise. I was also not comfortable with Sue Kennedy being appointed as the group's representative.

23. After learning about Nortel's CCAA proceedings and in order to better understand how Nortel's insolvency would affect my future, I felt it necessary to start my own research using the internet. I had little knowledge of Bankruptcy or CCAA legislation, and no knowledge at all about Nortel's Health and Welfare Trust ("HWT") or the consequences of self-insurance with respect to employee benefits.

24. Based on the research I did, it is my understanding that our LTD benefits were considered "peace of mind" contracts. I found many case precedents in my research regarding "peace of mind" and about trusts in general, and I provided all of the information that I could find on these matters to my court-appointed representative, Sue

Kennedy, so that she would follow-up on behalf of all of us in the CNELTD with Mr. Zigler and Ms. Philpott, our lawyers at KM.

25. Finding information on the role of the Court Monitor proved more difficult and I realized that this role was less than 20 years old in Canadian Bankruptcies, however, I came to the conclusion that this role has evolved to one that can involve many aspects of a company's restructuring and that in a restructuring as complicated and as large Nortel's, the Court Monitor's Reports would be of supreme importance to and heavily relied upon by the Court.

26. A review of the Court Monitor's Reports in Nortel's Bankruptcy left me with the conclusion that it would be almost impossible for the court to know our situation. The following are my reasons for this conclusion.

27. Our disability income benefits are paid to us each month from the HWT. This trust contains assets which I have been told are invested for the long-term. The first time the HWT was mentioned to this Court is in the pre-filing report of the Monitor, dated January 14, 2009. Attached hereto at Exhibit "A" is a true copy of the Monitor's pre-filing report dated January 14, 2009.

28. It stated that on January 14, 2009, the assets in the HWT were greater than its liabilities, that it was forecast that the HWT had "sufficient surplus assets to sustain itself during the Forecast Period" and that therefore, there would be no need for Nortel to make funding contributions post-filing.

29. Again, as of February 5, 2009, the First Report of the Monitor stated as follows:



“The Nortel Networks Health and Welfare Trust (“H&WT”), as more fully described in the Doolittle Affidavit, is not subject to the CCAA proceedings and continues to operate in the ordinary course. The Sun Life Assurance Company of Canada administers various non-pension benefits through the H&WT. The H&WT provides funding for various non-pension benefits on behalf of current and former Canadian employees of the Applicants. The Applicants continue to fund this trust in accordance with past practice.

However, “in accordance with past practice” is not defined in any of the Monitor Reports or the Doolittle Affidavit. Attached hereto at Exhibit “B” is a true copy of this Report.

30. From what was made available to us by Sue Kennedy and KM, we were never in a position to meaningfully understand the financial status of the HWT, including its true value and how much was or would be available to fund our LTD benefits.

31. As a result, we have, throughout this process, continued to feel uneasy about the lack of transparency and the difficulties we continued to encounter in getting answers to our questions from both the Court-appointed representative, Sue Kennedy and KM. We kept trying, however, because we believed we were entitled to be heard and answered.

32. By January of this year, in spite of the report indicating that the HWT was in a surplus state, we were being advised that our LTD benefits would likely be compromised in the CCAA proceedings. In an e-mail to Sue Kennedy and to her Legal Steering Committee Members, as well as Mr. Zigler and Ms. Philpott, sent January 14, 2010, I attempted to explain this situation. I set out many of the group’s concerns again, along with specific questions to be answered. Attached hereto at Exhibit “C” is a true copy of the text of that e-mail.

33. Furthermore, some members of the CNELTD and I asked Sue Kennedy to instruct Mr. Zigler and Ms. Philpott to bring this to the attention of the Honourable Judge Morawetz. Our requests were ignored by KM and the Steering Committee did not feel the request had any urgency.

34. In e-mails between Mr. Zigler and Josee Marin, another member of the CNELTD, in late January, 2010, I requested that she ask him why the Monitor had reported that there was a surplus in the HWT and when Judge Morawetz had been apprised that in fact there was a severe deficit with respect to our LTD income. Mr. Zigler responded that the Monitor was incorrect in his assertion that there was a surplus and that, in the 32nd report of the Monitor, it "indeed indicates that there are ongoing discussions regarding the funding of the HWT and the insolvency of Nortel. It references the assets in the trust but not the liabilities, which exceed the assets". Mr. Zigler further advised that Nortel had not made contributions to the HWT for several years.

35. At the end of January, 2010, therefore, we were being told that the liabilities in the HWT exceeded the assets, and there were ongoing discussions regarding the funding of the HWT, however we, as a group, did not feel that we were properly informed as to the nature of the financial state of the HWT nor the nature and content of the "ongoing discussions".

36. On February 8, 2010, approximately two weeks after receiving this troubling news from Mr. Zigler, we were advised by way of a press release that a Settlement Agreement had been concluded which, as I understand it, severely compromises the rights of LTD Employees and puts all of our futures at risk.

37. As noted, in reading through all these court documents I could see no manner in which we, or the Court, would understand that those of us who were on long-term disability were about to have their futures forever changed.

38. Relying on the Monitor Reports and the Doolittle Affidavit would leave one with the impression that there were sufficient assets in the HWT to continue paying the monthly disability income that Nortel contracted to pay the over 400 LTD Employees, until we all reach age 65, our health improves, or we pass away.

39. According to Diane Urquhart, however, who has filed an affidavit in support of the within motion and which more fully articulates these issues, the HWT in fact has a short-fall, potentially in excess of \$100 million and there are serious questions about the past management of the HWT and its treatment in the context of these CCAA proceedings.

#### **The Process Has Been Unfair**

40. As I have attempted to describe above, the manner in which the interests of LTD Employees have been represented in these proceedings has been entirely unsatisfactory. We are dependent upon our benefits – because of our disabilities, we have essentially no financial alternatives and any reduction or loss of benefits will be devastating.

41. For these reasons we desperately needed to be kept informed and to have our interests heard and actively advanced. We do not feel that this has happened in these proceedings and feel that the process has been mainly characterized by a lack of transparency, accountability and meaningful representation.

42. While we were continuing to seek answers to our questions about the financial status of the HWT and the nature of the "ongoing discussions" as late as the end of January 2010, little did we know that a formal settlement agreement was being finalized. In fact, the Settlement Agreement was ultimately executed, supposedly on our behalf but completely unbeknownst to us, by Sue Kennedy on February 8, 2010.

43. Because we do not feel that our interests have been adequately represented in this process we would like the right to retain counsel of our own choosing in order to fully canvass our legal options arising from the Settlement Agreement and related issues.

44. Because we have been given such a short period of time within which to obtain and begin to review the voluminous and complicated material, we also request that we be given an adjournment of the Settlement Approval hearing.

45. We also request that unless and until our ongoing disputes over our benefits are resolved, our LTD benefits need to be continued and the *status quo* preserved, otherwise many of us will very quickly end up in dire financial straits.

46. If our request for the appointment of Rochon Genova LLP is not granted and/or if we are not granted the requested adjournment of the Settlement Approval Hearing, I would like to request that this affidavit be accepted as my formal objection to the Settlement Agreement.

47. I swear this affidavit in support of a motion for, *inter alia*, a representation Order permitting Rochon Genova LLP to act on behalf of all Nortel LTD employees who

oppose the Settlement Agreement, an adjournment of the Settlement Approval Hearing  
and/or, in the alternative, to oppose the Settlement Agreement, and for no other purpose.

SWORN BEFORE ME at the City of )  
Ottawa, in the Province of Ontario, )  
this 2<sup>nd</sup> day of March, 2010. )



*A Commissioner for Taking Affidavits*

  
ARLENE BORENSTEIN (PLANTE)