

Urquhart

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Sent: November-30-15 11:14 AM
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Subject: Re-Introduce Bill 624 or Prescribe Self-Insured Long Term Disability Benefit Plan as an Eligible Financial Contract
Attachments: Federal Disability Policy Change.pdf

Hon. Navdeep Bains
Minister of Innovation, Science and Economic Development
Liberal MP
Mississauga–Malton

We request that Bill C-624 amending the CCAA and BIA legislation from Parliamentary Session 40-3 (2010-03-03 to 2011-03-26) be reintroduced, or that a Self-Insured Long Term Disability Benefit Plan be prescribed as an “Eligible Financial Contract” (“EFT”) in the Regulations. These are solutions for the Nortel long term disabled (“LTD”) former employees having their disability income severely reduced because of a low and substantially delayed CCAA cash settlement ratio for Canadian creditors, a low Health and Welfare Trust (“HWT”) settlement because of pensioners’ life insurance and Nortel taking \$60 million from the HWT to materially improve its own cash flow during its financial distress prior to bankruptcy. The Nortel bankruptcy court and other Ontario court divisions have ignored the intentionally delayed disclosure of HWT financial statements and actuarial reports, which provided evidence of HWT wrongdoings by Nortel and third party trustees. Common law on trusts and both consumer protection and trust legislation have not protected the Nortel LTD former employees.

Unfunded Nortel LTD benefit liabilities will be deeply compromised and the compromised amounts are not being paid for years to come, while insiders have taken billions of dollars of cash from the Nortel estate.

- bankruptcy professionals have been paid Cdn\$2.0 billion of cash disclosed so far (about 15% of estate assets and 11% of creditor claims) with much litigation to come in the appeal courts of Canada and the US;
- Nortel executives and key employees have received US\$190 million in cash for retention and special incentive bonuses, on top of their regular annual incentive plan bonuses post the bankruptcy filing.

LTD former employees are amongst Canadian creditors getting a much lower cash settlement per dollar of creditor claim than US bondholders and other US creditors and UK/EMEA creditors due to US\$3,159 million inter-company claims against the Canadian estate and US\$3,825 million bond guarantees that permit claims against both the Canada and US estates, together swamping the US\$ 2,510 million Canadian estate creditor claims from Nortel’s Canadian pensioners, severed and LTD former employees. A document called “Plan Member Choices for the Nortel Negotiated Plan” released on November 26, 2015 says: “based on preliminary data provided by the estates and certain assumptions, we estimate that the recoveries in Canada would be in the

45% to 49% range if the allocation decision could be implemented today. Litigation and appeal costs will detract....Success on these appeals could put Canadian creditor recoveries at an estimated range of 10 to 15%.”

The Federal Liberal, NDP and Bloc Quebecois Parties all supported Bill C-624 in 2011, while the Conservative Party opposed it. The similar Bill S-216 was defeated by 3 votes in the Senate at 2010, with the Liberal Senators supporting it. The Conservative Senators’ reasons given for defeating Bill S-216 was that it could not be retroactive and it would cause litigation by other creditors, delaying for many years the LTD former employees getting their much needed interim settlement money (9 months of income and health benefits). Now five years later litigation is still ongoing on other matters.

The Conservative Government’s Federal Bill C-38 and Ontario Bill 14 have solved the problem of unsafe self-insured long term disability for employees, working at Federal and Ontario private sector employers, who become disabled in the future. Group long term disability benefits offered by these employers must now be provided by licensed insurers.

The Nortel LTD former employees who fought for this mandatory insurance and other disabled Canadians currently covered by self-insured long term disability benefit plans are not helped by Federal Bill C-38 and Ontario Bill 14. The transitional provisions in these bills specify mandatory insurance coverage for only employees that are not currently LTD. Shortfalls in reserves for the current LTD employees in self-insured plans are not being required to be made up with special contributions so that their liabilities may be transferred to insurance companies for payment of promised income until age 65, recovery, or death. Therefore, this group needs Bill C-624 implemented, or self-insured long term disability benefit plans prescribed as an EFC on a retroactive basis.

The LTD former employees face a long term future of having to survive on just CPP disability income of an average of \$11,148 to the maximum of \$15,175 for 2015. The average medical and dental expenses for the Nortel LTD former employees are \$7,754 annually.

There are more details in the attached file called “Federal Disability Policy Change.” I can provide additional information to facilitate your assessment of this request.

Sincerely

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