

Urquhart

Subject: Compromise of Long Term Disabled Claims in Bankruptcy Violate the Charter of Rights and Freedoms

Attachments: Compromise of Long Term Disabled Claims In Bankruptcy Violate The Charter.pdf

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Subject: Compromise of Long Term Disabled Claims in Bankruptcy Violate the Charter of Rights and Freedoms

Minister Navdeep Bains

Mark Schaan and Paul Morrison, Ministry of Innovation, Science and Economic Development

[Prime Minister Pierre Trudeau's Speech at the Charter Signing Ceremony on Parliament Hill on April 17, 1982](#)

In our October 28, 2016 teleconference call with Mark Schaan and Paul Morrison, we were informed that the Minister was concerned about the spillover effects of Minister Navdeep Bains prescribing self-insured group long term disability benefit plans as Eligible Financial Contracts on a retroactive basis to benefit the Nortel disabled.

We communicated in the teleconference our position that Minister Navdeep Bains has a legal obligation to amend the CCAA or its regulations so that this statute is not violating the Charter of Rights and Freedoms in respect to disabled persons. We committed to prepare a report on why the compromise of long term disabled claims in bankruptcy violate the Charter rights of disabled persons. We attach a comprehensive report on this subject today.

There were no spillover effects, at the time the Liberal Party supported Bills S-216, C-610 and C-624 during 2010-2011, all of which provided for the full payment of the Nortel disabled on a retroactive basis. There is no change in circumstances to warrant a new concern about spillover effects since then.

In addition to breaking a political promise to the Nortel disabled, Minister Navdeep Bains is exposing the Federal Government to a Charter claim for damages from long term disabled employees who had their Charter S. 15(1) right to substantive equality and S. 7 rights not to be deprived of life, liberty and security. These vulnerable Canadian have been forced into poverty by an unconstitutional law and bankruptcy court processes.

The Nortel disabled group is experiencing the severe deleterious effects of their Charter S. 15(1) and S. 7 violations and the Federal Government has an obligation to correct this non-compliance with the Charter without regard to spillover effects. Secondly, in respect to other creditor groups seeking Federal Government intervention on future bankruptcy court approved settlements, the Federal Government's response is clearly no

to the creditor groups whose Charter rights have not been violated. It is yes to future creditor groups whose Charter rights are violated. Minister Navdeep Bains upholding Charter rights for the disabled will ensure that future CCAA judges cannot use discretion to compromise a disabled person's creditor claim in breach of the Charter.

Based on the criteria that numerous Supreme Court cases have set and the facts applicable to self-insured group long term disability benefit plans in general and in the Nortel plan in particular, the Supreme Court will lead to the decision that the CCAA's flexibility is unnecessarily broad in respect to disabled persons. It is so because judges use discretion to force the compromise of disabled persons' claims, in violation of their Charter S. 15(1) right to substantive equality and S. 7 rights not to be deprived of life, liberty and security. The facts applicable to these self-insured group long term disability benefit plans do not support the Charter's limitation of rights, be it S. 1 limitation reasonably and demonstrably justified in a free and democratic society, or an exception in S. 7 in accordance with the principles of fundamental justice.

Minister Navdeep Bains prescribing self-insured group long term disability benefit plans as an Eligible Financial Contract on a retroactive basis in the CCAA regulations fulfils the Federal Government's obligation for the CCAA to be compliant with the Charter in respect to disabled persons. He, as a Minister, and the Cabinet have an obligation to act now so that the Nortel Canada estate rightfully pays for the damages of the Charter breach, rather than the Federal Government paying for it later after successful Charter litigation. Canadian disabled should be spared the need for Charter litigation given the poverty imposed upon them by an unconstitutional law and bankruptcy court practices.

Sincerely

Diane Urquhart
Independent Financial Analyst
Pro Bono Advisor to the Nortel Disabled

November 8, 2016