

## Urquhart

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**Subject:** Nortel CCAA Court Monitor and Judge Refused to Admit the Affidavits of Financial and Actuarial Experts and the Former Nortel Treasurer

Navdeep Bains  
Minister of Innovation Science and Economic Development

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

In our October 4, 2016 email on the subject of “Benefits Canada Article Sept. 30, 2016 and the Serious Errors of Mark Zigler, Court Appointed Legal Counsel for the Nortel Disabled,” we addressed all the reasons why Mark Zigler was wrong when he said “What Nortel did wasn’t unlawful.”

Below are the affidavits of Diane Urquhart, Joann Williams, Jeremy Bell and Michael McCorkle that were submitted to the CCAA court for the September 29, 30 and Oct. 1, 2010 hearing on the distribution of assets in the Health and Welfare Trust. We are sending these to you because all of them conclude that Nortel had a legal obligation under the Health and Welfare Trust Trustee Agreement to fully fund the self-insured group long term disability replacement income. Diane Urquhart is a well-respected financial expert. Joann Williams is an actuary and a former acting Superintendent of Pensions for Nova Scotia. Jeremy Bell is an actuary and Chief Actuary of the B.C. Health Care Trust. Michael McCorkle is the former Treasurer of Nortel who said he used the HWT assets held for the long term disabled to pay for the active and pensioners’ medical and dental benefits. He said these medical and dental expenses were Nortel expenses and that Nortel had always paid these expenses on an annual pay as you go basis through the HWT account.

J. Geoffrey Morawetz found all of these affidavits to be neither necessary, nor relevant, to his decision on distribution of the HWT dated Nov. 9, 2010. J. Morawetz specifically rejected the Urquhart affidavit conclusion that there was a misappropriation of HWT assets held in the name of the long term disabled former employees.

J. Morawetz’s decisions on the interim settlement agreement at March 31, 2010 and on the HWT distribution at November 9, 2010 were consistent in his view that Nortel had done nothing wrong when it used money from the long term disability employees’ reserves in the HWT to pay for the active and pensioners’ medical and dental benefits during 2005-06. His conclusion was that Nortel had simply made inadequate contributions causing a shortfall in the HWT.

J. Paul Perell concluded that Jennifer Holley made a tenable claim of constructive fraud, but this claim was summarily dismissed because he said J. Morawetz knew about the constructive fraud and considered the legal release in the interim settlement agreement to bar constructive fraud.

The legal release did not specifically bar constructive fraud, and it specifically did permit litigation on fraud. Persons reading J. Morawetz's two decisions would not reasonably conclude that he knew about the constructive fraud at March 2010. If he did know, it was not knowledge he acquired from evidence before him, since the Court Monitor Ernst & Young had intentionally denied disclosure of the body of evidence that was needed to prove both constructive fraud and actual fraud.

The Court Monitor Ernst & Young, the court-appointed legal counsel Koskie Minsky LLP and the court representative Sue Kennedy all agreed that Nortel had no legal obligation to fund the HWT for the group long term disability benefits plan. So Nortel not making adequate contributions causing a shortfall in the HWT could not constitute knowledge of constructive fraud that these three and J. Morawetz knew about at the time of the interim settlement agreement.

**[CV of Diane Urquhart](#)**

**[Affidavit of Diane Urquhart Sworn September 26, 2010 - ALL](#)**

**[CV of Joann Williams](#)**

**[Affidavit of J. Williams, sworn September 24, 2010](#)**

**[Affidavit of J. Williams, sworn August 9, 2010](#)**

**[Affidavit of J. Williams, sworn August 9, 2010 to Exhibit E](#)**

**[CV of Jeremy Bell](#)**

**[Affidavit of J. Bell, sworn September 23, 2010](#)**

**[Affidavit of J. Bell, sworn September 3, 2010](#)**

**[Affidavit of J. Bell, sworn September 3, 2010 Exhibit A](#)**

**[Affidavit of J. Bell, sworn September 3, 2010 Exhibit B](#)**

**[Affidavit of J. Bell, sworn September 3, 2010 Exhibit C-E](#)**

**[Affidavit of J. Bell, sworn September 3, 2010 Exhibit F](#)**

**[Affidavit of Michael McCorkle, sworn September 27, 2010](#)**

**[Endorsement HWT Distribution J. Morawetz Nov. 9, 2010](#)**

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