

**Report on Evidence of Unfair Practices Relating
to Disability Insurance Supplied by Nortel and Sun Life, or its Predecessor Insurance Companies**

False, Misleading and Deceptive Disclosure on Disability Insurance Supplied to Nortel Employee Consumers

Evidence Collected, Stored on Off-Site Computer and Described By:

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Sources of Evidence:

**Ontario Superior Court of Justice Nortel CCAA Proceeding Filed Documents &
Various Dissenting Nortel Disabled Former Employees**

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Prior to 2005 there was omission of disclosure that Nortel's disability insurance was sponsored by Nortel and that Nortel did not buy disability insurance from a third party insurer. In fact, Nortel's employee benefit handbooks make multiple mentions of approvals required from Sun Life, or its predecessor insurance companies, Mutual Life and Clarica Life, in order to first get and then to continue to get disability income. From the reading of these earlier employee benefit handbooks, employees could reasonably expect that Sun Life, or its predecessor insurance companies, Mutual Life and Clarica Life, was the insurer of their long term disability income.

The terms and conditions of Nortel's long term disability benefits meet the requirements to be a "contract of insurance." The terms and conditions were similar in all of the employee benefit handbooks over the years. For example, the 2004 FLEX benefits handbook describes the benefit in the following way:

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Evidence of Insurability (EOI)

In 2004, you will have to provide evidence of insurability (EOI) if you are currently enrolled in core LTD coverage only, and want to increase your LTD coverage during the annual enrollment period. If you are currently enrolled in the optional LTD Plan, you will not have to submit EOI if you elect to continue your optional LTD coverage. To submit EOI, you must complete a short medical questionnaire. The form you use is called the Statement of Health form.

Remember: Providing EOI isn't a guarantee that your request for increased coverage will be accepted. Sun Life Financial will send you Hint notification of acceptance or rejection of your application. Your optional LTD coverage will not become effective until the date Sun Life Financial approves the application.

Benefit payments cannot begin and will stop if any one of the following occurs:

- You cease to be totally disabled.
- You fail to sign appropriate forms and submit medical proof to Sun Life Financial of continued disability when requested.
- You fail to undergo an independent medical exam and/or functional abilities evaluation if requested by Sun Life Financial.
- You fail to participate in a rehabilitation program approved by Sun Life Financial.
- You engage in any occupation that normally involves remuneration or profit, either accruing to you, to your family, to acquaintances, or to any educational program other than in a rehabilitation program approved by your attending physician and Sun Life Financial.
- You are absent from Canada longer than four months for any reason, unless Sun Life Financial agrees in writing in advance to pay benefits during this period.
- You retire or go on a special leave of absence prior to retiring, whichever occurs first.
- It is the end of the month in which you attain age 65.
- You die.

There is a time limit for appealing the Sun Life Financial decision to decline or terminate a claim. An appeal must be made within three months of such a decision, and must be accompanied by new objective medical evidence.

EMPLOYEE BENEFIT BROCHURES BEFORE 2005

[http://ismymoneysafe.org/Nortel2/1993 Benefits in Brief.pdf](http://ismymoneysafe.org/Nortel2/1993%20Benefits%20in%20Brief.pdf)

[http://ismymoneysafe.org/Nortel2/1994 Canadian Auto Workers Nortel Benefits.pdf](http://ismymoneysafe.org/Nortel2/1994%20Canadian%20Auto%20Workers%20Nortel%20Benefits.pdf)

[http://ismymoneysafe.org/Nortel2/1994 FLEX Benefits in Brief.pdf](http://ismymoneysafe.org/Nortel2/1994%20FLEX%20Benefits%20in%20Brief.pdf)

[http://ismymoneysafe.org/Nortel2/2000 FLEX Benefits Enrolment Guide.pdf](http://ismymoneysafe.org/Nortel2/2000%20FLEX%20Benefits%20Enrolment%20Guide.pdf)

[http://ismymoneysafe.org/Nortel2/2000 Special Insert For 1999 Participants.pdf](http://ismymoneysafe.org/Nortel2/2000%20Special%20Insert%20For%201999%20Participants.pdf)

[http://ismymoneysafe.org/Nortel2/2001 Brochure d'avantages sociaux a la carte.pdf](http://ismymoneysafe.org/Nortel2/2001%20Brochure%20d'avantages%20sociaux%20a%20la%20carte.pdf)

[http://ismymoneysafe.org/Nortel2/2001 FLEX Benefits Annual Enrolment Form.pdf](http://ismymoneysafe.org/Nortel2/2001%20FLEX%20Benefits%20Annual%20Enrolment%20Form.pdf)

[http://ismymoneysafe.org/Nortel2/2002 Brochure d'avantages sociaux a la carte.pdf](http://ismymoneysafe.org/Nortel2/2002%20Brochure%20d'avantages%20sociaux%20a%20la%20carte.pdf)

[http://ismymoneysafe.org/Nortel2/2002 FLEX Benefits Handbook.pdf](http://ismymoneysafe.org/Nortel2/2002%20FLEX%20Benefits%20Handbook.pdf)

[http://ismymoneysafe.org/Nortel2/2004 FLEX Benefits Handbook.pdf](http://ismymoneysafe.org/Nortel2/2004%20FLEX%20Benefits%20Handbook.pdf)

[http://ismymoneysafe.org/Nortel2/2004 Brochure d'avantages sociaux a la carte.pdf](http://ismymoneysafe.org/Nortel2/2004%20Brochure%20d'avantages%20sociaux%20a%20la%20carte.pdf)

Starting in 1995 and until 2006, the Core Long Term Disability Benefit paid by Nortel covered 50% of FLEX Earnings and the employees could purchase Optional Long Term Disability Benefit to "Raise 50% benefit to 70%." 2007 and later, the Core Long Term Disability Benefit paid by Nortel covered 50% of FLEX Earnings and the employees could purchase Optional Long Term Disability Benefit to "Raise 50% benefit to 66-2/3%." The cost of the Optional Long Term Disability coverage was unchanged at 0.45% of FLEX Earnings during 1995 up to 2007, rising to 0.50% in 2008. Prior to 1995, the Core Long Term Disability Benefit paid by Nortel covered 70% of FLEX Earnings.

Nortel employees paid for their optional disability insurance coverage using a combination of FLEX credits paid for by the employer and payroll deductions from their salaries. A Nortel employee who later became disabled was paying \$9.61 per pay period or \$250 per year as shown in the following Nortel FLEX benefits confirmation statement for 1997. The same Nortel employee was paying \$11.33 per pay period or \$295 per year for the optional coverage in 1999.

[http://ismymoneysafe.org/Nortel1/Nortel FLEX benefits confirmation statement 1997.pdf](http://ismymoneysafe.org/Nortel1/Nortel%20FLEX%20benefits%20confirmation%20statement%201997.pdf)

[http://ismymoneysafe.org/Nortel1/Nortel Your Default Benefit Statement 1999.pdf](http://ismymoneysafe.org/Nortel1/Nortel%20Your%20Default%20Benefit%20Statement%201999.pdf)

The format of the Nortel FLEX benefits confirmation statement was more informative in 2000, where we see that Nortel paid \$467 per year for the core 50% coverage and the employee paid \$339 per year for the optional increase in coverage from 50% to 70% of pre-disability income. Interesting to note is that the employee paid more than his fair share of the disability insurance coverage considering his cost was 42% of the combined employer and employee cost, whereas the incremental coverage bought was just 29% of the total coverage amount. The combined employer and employee cost of \$806 per year was just 1.07% of pre-disability income. The employer's saving of nominal costs by self-insuring its disability benefits has had catastrophic impact on the lives of the Nortel disabled, without creating material competitive advantage in its business.

[http://ismymoneysafe.org/Nortel1/Nortel FLEX benefits confirmation statement 2000.pdf](http://ismymoneysafe.org/Nortel1/Nortel%20FLEX%20benefits%20confirmation%20statement%202000.pdf)

Nortel wrote letters to its employees such as the ones on November 24, 2000 and November 6, 2001 at the following links, that say "FLEX is a key component of your Total Rewards Package at Nortel Networks ..." There was a special personalized letter written in 1998 by John Roth, then President & CEO, which promoted the total financial rewards package at Nortel comprising of both the salary and Nortel's contribution towards the cost of benefits. One Nortel employee with a salary of \$65,000 and total pay with overtime of \$91,573, was shown to have \$108,775 of total financial rewards. The significance of this evidence is that 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. Common law cases say consideration includes the employee's contribution of labour, skill and knowledge within the employee's compensation package as a whole.

[http://ismymoneysafe.org/Nortel1/Letter from Nortel John Roth Personalized Rewards Statement May 1998.pdf](http://ismymoneysafe.org/Nortel1/Letter%20from%20Nortel%20John%20Roth%20Personalized%20Rewards%20Statement%20May%201998.pdf)

[http://ismymoneysafe.org/Nortel1/Letter from Nortel on what's new for FLEX in 2001 Nov. 24, 2000.pdf](http://ismymoneysafe.org/Nortel1/Letter%20from%20Nortel%20on%20what's%20new%20for%20FLEX%20in%202001%20Nov.%2024,%202000.pdf)

[http://ismymoneysafe.org/Nortel1/Letter from Nortel re - FLEX benefit changes for 2002 dated November 6, 2001.pdf](http://ismymoneysafe.org/Nortel1/Letter%20from%20Nortel%20re%20-%20FLEX%20benefit%20changes%20for%202002%20dated%20November%206,%202001.pdf)

Nortel employees did not have access to the underlying legal document at the following link defining the terms and conditions of Nortel's disability insurance until the Nortel CCAA Court Monitor's 51st Report dated August 30, 2010. One employee had seen it earlier from discovery undertaken in the appeal of her disability claim. This legal document titled, "Nortel Networks Corporation Plan Number 90002, Appendix for Long Term Disability benefit in effect July 1, 1994," validates the terms and conditions of Nortel's disability insurance disclosed to the employees in their employee benefit brochures. The legal document does not have a statement within it describing Nortel having responsibility for the funding of the Long Term Disability Benefit. There is a definition in this legal document of "Administrator means Clarica Life Insurance Company," but the employees did not see this legal document and, in any case, as discussed later, employees did not attach significance to the administrative related words used in the context of insurers.

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"Benefits payments stop on the earliest date that

1. the member ceases to be totally disabled,
2. the member fails to submit proof of the continuance of total disability as required by us and/or the Administrator
3. the member fails to submit, upon request by us and/or the Administrator, to a medical examination by a medical examiner appointed by us and/or the Administrator
4. the member refuses to participate in a rehabilitation program approved by the attending physician, us and/or the Administrator,
5. the member engages in any occupation which normally involves remuneration or profit, either accruing to the member to a member's family or acquaintances, or any educational program other than in a rehabilitation program approved by the attending physician, us and/or the Administrator,
6. the member retires or commencement of a special leave of absence prior to retiring, whichever occurs first,
7. the end of the month in which the member reaches age 65, or
8. the member dies"

[Nortel Network Corporation Plan Number 90002 Appendix for LTD Benefit July 1, 1994](#)

The letters giving notification of approval of the long term disability claim, to specific Nortel employees who became disabled from Nortel and Sun Life, or its predecessor insurance companies, describe similar terms and conditions as the employee benefits brochures and the legal document. There is no mention in these letters about Nortel self-insuring the long term disability income and that there is a risk that their group disability income will stop if Nortel were to become insolvent. The following is an example of conditions for Termination of Benefits from the letter to a Nortel disabled employee from Clarica Insurance Company on July 25, 2001:

Termination of Benefits

The benefit will be terminated in any of the following circumstances:

- when you are declared fit to resume work, or
- if you fail to submit proof of the continuance of total disability as required by Clarica, or
- if you fail to submit, upon request, to a medical examination by a medical examiner appointed by Clarica, or
- if you refuse to participate in a rehabilitation program which has been approved by the attending physician, Nortel's medical staff and Clarica, or
- if you engage in any occupation for remuneration or profit or any education program other than in a rehabilitation program approved by the attending physician, Nortel's medical staff and Clarica, or
- when you reach age 65, or accepts retirement benefits

<http://ismymoneysafe.org/Nortel1/Letter from Nortel notification application has been approved by Mutual Life Nov. 26, 1998.pdf>

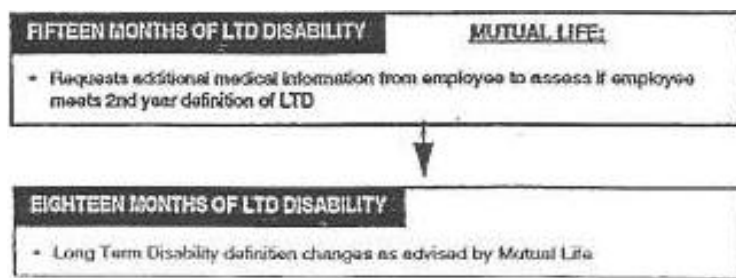
<http://ismymoneysafe.org/Nortel1/Letter from Mutual Life confirmation of LTD benefits approved Nov. 26, 1998.pdf>

<http://ismymoneysafe.org/Nortel1/Letter from Clarica confirmation of LTD benefits approved July 25, 2001.pdf>

[http://ismymoneysafe.org/Nortel1/Letter from Clarica confirmation of LTD benefits approved Aug. 22, 2001 \(2\).pdf](http://ismymoneysafe.org/Nortel1/Letter from Clarica confirmation of LTD benefits approved Aug. 22, 2001 (2).pdf)

<http://ismymoneysafe.org/Nortel1/Letter from Clarica confirmation of LTD benefits approved Aug. 22, 2001.pdf>

The June 21, 1995 Nortel LTD Preparation FLEX Chart clearly shows the name Mutual Life beside the Fifteen Months' and Eighteen Months' stages for determining whether an employee meets the definition long term disability.



<http://ismymoneysafe.org/Nortel1/Nortel LTD Preparation FLEX Chart June 21, 1995.pdf>

Nortel also provided personalized benefits statements such as those at the following links that describe similar terms and conditions for the payment of their disability insurance. These Nortel personalized statements did not disclose that the disability income is funded by Nortel, that since 2005 Nortel has been misdirecting HWT assets from the disability reserve and that the disability income could stop if Nortel became insolvent.

<http://ismymoneysafe.org/Nortel1/Nortel Personal Benefits Statement Pg 4 & 5 Aug 1993.pdf>

<http://ismymoneysafe.org/Nortel1/Nortel Your Total Compensation Report page 5 1995.pdf>

<http://ismymoneysafe.org/Nortel1/LTD's Vos prestations d'invalidite p. 5.pdf>

Sun Life wrote letters to specific Nortel disabled employees notifying them of their receipt of the ongoing total disability form and consequent continuation of the disability income. In addition to the sender of these letters being a well-recognized insurance company, these letters give information that can reasonably be construed to be insurance policy holder information, such as plan member #, control #, billing group #, contract #, and certificate #. The letters do not mention the disability income is funded by Nortel, that since 2005 Nortel has been misdirecting HWT assets from the disability reserve it had estimated to be necessary and that the disability income could stop if Nortel became insolvent.

<http://ismymoneysafe.org/Nortel1/Letter from Sun Life receipt of confirmation of ongoing total disability form Aug. 6, 2004.pdf>

<http://ismymoneysafe.org/Nortel1/Letter from Sun Life receipt of confirmation of ongoing total disability form Aug. 1, 2006.pdf>

An August 11, 2005 letter from Nortel to a Nortel disabled employee made the following statement from which a reasonable conclusion would be that Sun Life is the insurer of the employee's disability income:

"LTD payments are administered by Sun Life. Nortel doesn't have a record of his actual monthly payments; therefore you should contact Sunlife at 800-246-4153 for any LTD payment information."

<http://ismymoneysafe.org/Nortel1/Letter from Nortel doesn't have record of actual monthly LTD payments Aug. 11, 2005.pdf>

The following are just a small fraction of the direct communications between Sun Life, or its predecessor insurance companies, with specific Nortel disabled employees. All of these communications are clearly from an insurer without disclosure that Nortel is in fact the party responsible for funding the disability income. These insurer communications contain policyholder information, like Policy Plan #, Certificate No./ID No., that would reasonably suggest that the disabled employee is communicating with the insurer with whom he had an insurance policy.

The insurer communications pertaining to CPP disability income approvals require reimbursement payments to be made to the insurer and not as one would expect to Nortel or the Nortel Health and Welfare trust, as the entity responsible for funding the Nortel disability income. Here are two statements made in this regard:

"Refund to us any overpayment of LTD benefits that results from an award by the CPP office," and "I agree that within 10 days from the date I receive payment from CPP, I will reimburse Sun Life in a lump sum for all payments it has advanced to me related to CPP, which have not been reimbursed directly to Sun Life by CPP."

<http://ismymoneysafe.org/Nortel1/Clarica attending physician's statement of continuing disability Aug. 8, 2000.pdf>

<http://ismymoneysafe.org/Nortel1/Letter from Clarica COLA Dec 11, 2001.pdf>

<http://ismymoneysafe.org/Nortel1/Letter from Clarica on COLA adjustment payment Dec. 11, 2001.pdf>

<http://ismymoneysafe.org/Nortel1/Letter from Clarica on CPP approval impact March 20, 2002.pdf>

<http://ismymoneysafe.org/Nortel1/Letter from Sun Life request to complete CPP agreement and assignment forms March 15, 2006.pdf>

<http://ismymoneysafe.org/Nortel1/Sun Life issued CPP agreement form April 27, 2006.pdf>

Letters received by the Nortel disabled from the Federal Government's Human Resources Canada, and a predecessor Social Development Canada, informed them that the Federal Government is communicating with and making payments to their insurer or insurance company. For example, these letters have phrases of:

"The amount of \$6,302.11 was paid to your Insurance Company on your behalf," "Paying to your insurance company, Sun Life of Canada," "Less Withhold Total CPP Payment: Private Insurer," "Consent for Service Canada and Insurer to Communicate Disability Benefit Information," "My Insurer will provide Service Canada with the following insurance disability benefit information: My insurance plan and policy number," "Legal Name of Your Insurer [Sun Life Assurance Company of Canada]," "If you do sign, keep a photocopy for your records and return Page 1 to your Insurer who will forward it to the nearest Service Canada Centre," "Irrevocable Consent to Deduct and Pay an Insurer," and "An amount payable to my insurer will be deducted from the retroactive payment of my CPP Disability benefits and Service Canada will make no further payments directly to my Insurer after that time,"

<http://ismymoneysafe.org/Nortel1/Letter from Human Resources Canada disability benefit payable to insurer March 5, 2002.pdf>

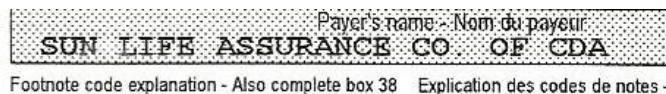
<http://ismymoneysafe.org/Nortel1/Letter from Human Resources Canada Payment to Insurance Company Sept. 7, 2005.pdf>

<http://ismymoneysafe.org/Nortel1/Human Resources Canada Payment Explanation Statement 2005.pdf>

<http://ismymoneysafe.org/Nortel1/Social Development Canada consent for service canada & insurer to share benefit info April 10, 2006.pdf>

[http://ismymoneysafe.org/Nortel1/Social Development Canada CPP irrevocable consent to deduct & pay an insurer \[Sun Life\] April 10, 2006.pdf](http://ismymoneysafe.org/Nortel1/Social Development Canada CPP irrevocable consent to deduct & pay an insurer [Sun Life] April 10, 2006.pdf)

Sun Life, or predecessor insurance companies, completed the Canada Revenue Agency Forms, T4A STATEMENT OF PENSION, RETIREMENT, ANNUITY, AND OTHER INCOME for Nortel disabled employees to use in their annual income tax filing. After September 2003, when Sun Life acquired the predecessor, Clarica Life, the T4A's clearly showed "WAGE LOSS - REPLACEMENT BENEFIT," and "Payer's name - Nom du payeur "SUN LIFE ASSURANCE OF CDA."



<http://ismymoneysafe.org/Nortel1/T4A CRA Form.pdf>

WAGE LOSS - REPLACEMENT BENEFIT

<http://ismymoneysafe.org/Nortel1/T4A Nortel Networks Health and Wage Loss Replacement 2003.pdf>

<http://ismymoneysafe.org/Nortel1/T4A Sun Life Wage Loss Replacement 2004.pdf>

<http://ismymoneysafe.org/Nortel1/T4A Sun Life Wage Loss Replacement 2007.pdf>

<http://ismymoneysafe.org/Nortel1/T4A Sun Life Wage Loss Replacement 2009.pdf>

A Nortel disabled employee wrote to Nortel in 2005 to ask questions about why his disability income was taxable. In the reply he got from Nortel, there was this false statement made: "**Wage Loss Replacement** - there is no such benefit plan at Nortel and there never has been. There are no funds being collected or accumulating anywhere at Nortel or our administrators for a benefit by this name, therefore Nortel cannot provide a letter that states anything regarding this." ""WAGE LOSS - REPLACEMENT BENEFIT," was clearly written on the T4A Forms at the time.

<http://ismymoneysafe.org/Nortel1/Letter from Nortel Wage Loss Replacement - There is no such benefit plan July 21, 2005.pdf>

Nortel first disclosed long term disability was self-insured in its 2005 and subsequent benefit handbooks on or about p. 2:

“Did you know: Most of Nortel's Health & Group Benefits, including short-term disability, long-term disability, medical and dental/vision/hearing care, are self-insured. This means that Nortel plays a role similar to that of an insurance company for its employees. In other words, the Company assumes the risks and pays the claims directly from its net income or retained earnings. The insurance company only provides administrative services such as claims processing.”

EMPLOYEE BENEFIT BROCHURES 2005 AND SUBSEQUENT YEARS

<http://ismymoneysafe.org/Nortel2/2005 FLEX Benefits Enrolment Guide.pdf>

<http://ismymoneysafe.org/Nortel2/2005 FLEX Benefits Handbook.pdf>

<http://ismymoneysafe.org/Nortel2/2005 Guide D'Inscription Au Regime d'avantages sociaux a la carte.pdf>

<http://ismymoneysafe.org/Nortel2/2005 Brochure d'avantages sociaux a la carte.pdf>

<http://ismymoneysafe.org/Nortel2/2006 FLEX Benefits Enrolment Guide.pdf>

<http://ismymoneysafe.org/Nortel2/2006 FLEX Benefits Handbook.pdf>

<http://ismymoneysafe.org/Nortel2/2008 FLEX Benefits Explore Your Possibilities.pdf>

<http://ismymoneysafe.org/Nortel2/2008 FLEX Benefits Handbook.pdf>

<http://ismymoneysafe.org/Nortel2/2009 FLEX Benefits Enrollment Guide.pdf>

<http://ismymoneysafe.org/Nortel2/2009 FLEX Benefits Handbook.pdf>

<http://ismymoneysafe.org/Nortel2/2009 New Hire Benefits Information.pdf>

The disability self-insured disclaimer provided in Nortel's 2005 and subsequent year employee benefit brochures is false, misleading and deceptive. Starting in 2005, Nortel did not maintain adequate financial reserves to fund its disability insurance as it should have done in playing its role similar to that of an insurance company. The Nortel Health and Welfare Trust wind-up distribution funds just 34% of the December 31, 2010 actuarial liabilities estimated by Mercers for the current and future income within the incurred claims of the Nortel disabled former employees.

<http://ismymoneysafe.org/Nortel/Appendix D Revised Illustrative Allocation Scenarios.pdf>
[Endorsement HWT Distribution J. Morawetz Nov. 9, 2010](#)

In the Nortel employee brochures for 2005 and later and in the following correspondence from Sun Life, references to "Administrator," "Administration," and "Administered by," were not defined. Given that the Nortel disabled employees were interacting almost exclusively with Sun Life, or its predecessor life insurance companies, they would not interpret that "Administrator," "Administration," and "Administered by" had any significance in terms of Sun Life, or its predecessor insurance companies, being responsible or not responsible for the funding their disability income. In any case, by the time the administrative related terms associated with the insurer were disclosed, the vast majority of Nortel employees were already disabled and could not qualify for a replacement individual disability insurance policy.

Nortel employees already disabled by 2004, were not sent Nortel employee benefit handbooks containing this disclaimer. Nortel may have made the employee benefit handbooks available on-line. Unfortunately, the Nortel disabled employees were removed from Nortel's user list and thus prevented from logging on to the Nortel web site. Once per year, the Nortel disabled employees received a letter from Nortel on what's new for FLEX, like the one shown on Page 4 dated Nov. 24, 2000. It is interesting that this annual letter did not include long term disability benefit information because the employees were already disabled. Once per year, all Nortel employees, including the disabled employees, received a customized Default Coverage Statement, or a Confirmation Statement, if they had made optional selections that were different than the Default Coverages. The Default Coverage Statement and Confirmation Statement did not disclose that the disability income is funded by Nortel and administered by Sun Life. Nortel disabled employees did not become aware of Nortel self-insuring its disability benefit until August 2009, after receiving a letter from a CCAA court appointed lawyer.

<http://ismymoneysafe.org/Nortel1/Letter from Ernst & Young notice of CCAA filing no mention of HWT shortfall Jan. 14, 2009.pdf>

The 2005 and later employee benefit brochures made the statement that "Sun Life Financial is the LTD *plan administrator*" on the page describing the level of their core and optional long term disability benefits.

When Sun Life acquired Clarica Life Insurance Company it sent an announcement in English and French to Nortel's employees that mentions the word "Administration."

"Administration of Nortel Networks Group Benefits Transfers to Sun Life Financial beginning September 1, 2003"

[http://ismymoneysafe.org/Nortel1/Sun Life Important Announcement Administration of Nortel benefits transfer to Sun Life Sept. 1, 2003.pdf](http://ismymoneysafe.org/Nortel1/Sun%20Life%20Important%20Announcement%20Administration%20of%20Nortel%20benefits%20transfer%20to%20Sun%20Life%20Sept.%201,%202003.pdf)
[http://ismymoneysafe.org/Nortel1/Financiere Sun Life Annonce Importante 1er Septembre 2003.pdf](http://ismymoneysafe.org/Nortel1/Financiere%20Sun%20Life%20Annonce%20Importante%201er%20Septembre%202003.pdf)

Sun Life's correspondence to Nortel disabled employees began to acknowledge its administrative role in its return address at about December 2008.

"Administered by Sun Life Assurance Company of Canada
Kitchener Claims Office
PO Box 100 Stn c
Kitchener ON N2G 3W9"

[http://ismymoneysafe.org/Nortel1/Letter from Sun Life receipt of confirmation of ongoing total disability form Dec. 15, 2008.pdf](http://ismymoneysafe.org/Nortel1/Letter%20from%20Sun%20Life%20receipt%20of%20confirmation%20of%20ongoing%20total%20disability%20form%20Dec.%2015,%202008.pdf)
[http://ismymoneysafe.org/Nortel1/Letter from Sun Life cost of living increase Dec. 21, 2009.pdf](http://ismymoneysafe.org/Nortel1/Letter%20from%20Sun%20Life%20cost%20of%20living%20increase%20Dec.%2021,%202009.pdf)

The Merriam-Webster Dictionary commonly used by non-insurance persons has the following definition of "administer," which does not discern who is funding the activity being administered.

ad·min·is·ter

verb \əd-'mi-nə-stər\
ad·min·is·tered ad·min·is·ter·ing\

Definition of ADMINISTER

transitive verb

- 1: to manage or supervise the execution, use, or conduct of <administer a trust fund>
 - 2 a: to mete out : DISPENSE <administer punishment> b: to give ritually <administer the last rites> c: to give remedially <administer a dose of medicine>
- intransitive verb
- 2 b: to perform the office of administrator
 - 2 c: to furnish a benefit : MINISTER <administer to an ailing friend>
 - 3: to manage affairs

<http://www.merriam-webster.com/dictionary/administering>

Sun Life Focus Update # 265 dated January 27, 2011 states that "Due to the recent attention to Administrative Services Only (ASO) employee benefits plans in the legislature in connection with employers who are having financial difficulties, Sun Life has clarified the wording in the Plan Member Booklet to better inform your plan members about the benefit funding arrangements of their plan. (See below)."

"The contract holder, <Name of the contract holder>, self-insures the <XXX> benefit. This means that <name of the contract holder> plays a role similar to that of an insurance company for its employees. <Name of the contract holder> has the sole legal and financial liability for this benefit and funds the claims from its net income, retained earnings or other financial resources. Sun Life provides administrative services only (ASO) such as claims processing."

Sun Life Focus Update # 269 dated February 24, 2011 changes the wording in the Plan Member Booklet a second time since "We received a lot of feedback regarding Focus Update #265 that was distributed on January 27. In light of these comments we are making some changes to our new ASO booklet wording to make it clearer."

"The contract holder, <Name of the contract holder>, self-insures the <XXX> benefit. This means <Name of the contract holder> has the sole legal and financial liability for this benefit and funds the claims. Sun Life provides administrative services only (ASO) such as claims adjudication and claims processing."

Sun Life's second change in wording for its ASO Plan Member Booklet removes the sentence: "This means that <name of the contract holder> plays a role similar to that of an insurance company for its employees." This sentence in its exact wording was within Nortel's self-insured disclaimer and so Sun Life was of direct influence in the drafting of this sentence. It is this sentence that is false, misleading and deceptive in Nortel's case and so it is not surprising that Sun Life has decided to remove the sentence from its ASO Plan Member Booklet in order to mitigate its role in this false, misleading and misleading disclosure at corporations in similar circumstances to Nortel.

[http://ismymoneysafe.org/Nortel1/Sun Life Focus Update Administrative Services Only \(ASO\) - update to Plan Member Booklet #265 January 27, 2011.pdf](http://ismymoneysafe.org/Nortel1/Sun%20Life%20Focus%20Update%20Administrative%20Services%20Only%20(ASO)%20-%20update%20to%20Plan%20Member%20Booklet%20#265%20January%2027,%202011.pdf)
[http://ismymoneysafe.org/Nortel1/Sun Life Focus Update Administrative Services Only \(ASO\) - update to Plan Member Booklet #269 February 24, 2011.pdf](http://ismymoneysafe.org/Nortel1/Sun%20Life%20Focus%20Update%20Administrative%20Services%20Only%20(ASO)%20-%20update%20to%20Plan%20Member%20Booklet%20#269%20February%2024,%202011.pdf)

Nortel's Administrative Only Services Agreement with Sun Life or its predecessor insurance companies, Mutual Life and Clarica Life, was not accessible to the Nortel employees. The ASO agreement shows that Sun Life, or its predecessor insurance companies, were directly involved with assisting with the plan design, maintaining Nortel's employee benefit brochures and with making annual estimates of incurred claims and of disability and survivor reserves.

"Definitions

Plan means the Nortel Networks Limited Employee Benefit Plan"

"Our Obligations

1. We will prepare and maintain documents for the Plan and Spending Account."

"Base Fees include the following services:

- assistance with plan design and review
- annual estimate of incurred but not reported claims
- annual estimates of disability and survivor reserves
- maintenance of a plan document and ASO Agreement"

[ASO Agreement with Clarica Insurance Jan. 1, 1999](#)

Nortel denied disclosure of its ASO agreement with insurers in a discovery process undertaken by a Nortel employee as part of her appeal on being denied disability coverage.

A Nortel lawyer said in his May 30, 2002 letter to the lawyer for this Nortel employee:

"Request for copy of ASO denied because it is a commercial agreement between Sun Life and Nortel and has no impact on client's entitlement to LTD benefits."

[http://ismymoneysafe.org/Nortel1/Correspondence between LTD's Lawyer and Nortel April 26, 2002 to Feb. 3, 2003.pdf](http://ismymoneysafe.org/Nortel1/Correspondence%20between%20LTD's%20Lawyer%20and%20Nortel%20April%2026,%202002%20to%20Feb.%203,%202003.pdf)

The Nortel Internal Company Manual dated in or about 1981 says Nortel's disability income insurance creates an actuarial liability beginning in the year in which the claims are incurred and that this actuarial liability is to be paid at 20 percent per year uniformly over a five year period. Once again, the Nortel employees would not have received the

Nortel Internal Company Manual, and it was not accessible to them at any disclosed location. This Nortel Internal Company Manual says that Mutual Life, a predecessor of Sun Life is responsible for advice on plan design trends, estimates of outstanding liabilities for future periods and of the level of funding required for expected claims.

P.32

" 11.02 Long-Term Disability

Funding of actuarial liability at 20 percent per year uniformly over a five year period beginning in the year in which the claims are incurred is acceptable and consistent with the Advance Income Tax Ruling from the Department of National Revenue. Payments are made at fiscal year-end."

P.6

"1.15 Mutual Life

As administrator of the Administrative Services Agreement, Mutual Life shall provide the following services in addition to claims payments.

4. Claim Forms;
5. Costs analysis including projections :or future periods and estimates of outstanding liabilities;
6. Advice on Plan Design Trends;

1.16 Mutual Life shall advise the Trustees and Northern Telecom of the level of funding required to pay for expected claims.. This advice is to be provided no later than year end for each year. Mutual Life's Group Policyholder Service officer is Mr.. Gerry Ward; their actuary is Mr. Kurt Von Schilling. The phone number is 456-0471/2/3/5."

[Appendix KKK - Internal Company Manual 1981](#)

Nortel was responsibly fully funding its HWT for disabled and survivors' income on a sound actuarial basis until 2005. This funding was required in the HWT Trustee Agreement and accepted actuarial practice applicable to it; in the Advance Income Tax Ruling from the Department of National Revenue on Dec. 28, 1979; in the statutes of the Income Tax Act and Canada Revenue Agency (CRA) Rules for HWTs and Disability Wage Loss Replacement Plans; in Nortel's Internal Company Manual discussed earlier; in

the March 15, 1999 NOTICE LONG TERM DISABILITY (LTD) - DEDUCTION CHANGES," and, in other Nortel communications to specific Nortel disabled employees below.

The January 1, 1980 HWT Trustee Agreement says the following on funding :

"ARTICLE IV - EMPLOYER'S CONTRIBUTIONS

2. The Trustee shall determine or cause to be determined, on a sound actuarial basis from time to time, and in any event, once every calendar year, the level of contributions to the Trust necessary to fund adequately the Health and Welfare Plan."

"ARTICLE VI - AMENDMENT AND TERMINATION

2. Upon sixty (60) days prior written notice to the Trustee , the Corporation may terminate its obligation to make Employer's contributions in respect of benefits after the date of written notice to the Trustee (hereinafter called the "Notice of Termination.") Upon receipt of the Notice of Termination the Trustee shall within one hundred twenty (120) days determine and satisfy all expenses, claims and obligations arising under the terms of the Trust Agreement and Health and Welfare Plan up to the date of the Notice of Termination. The Trustee shall also determine upon a sound actuarial basis, the amount of money necessary to pay and satisfy all future benefits and claims to be made under the Plan in respect to benefits and claims up to the date of the Notice of Termination."

[Nortel - Montreal Trust HWT Trustee Agreement Jan. 1, 1980](#)

[Nortel - Montreal Trust Reorg HWT Trustee Agreement Transfer Sept. 24, 1984](#)

[Nortel - Montreal Trust HWT Trustee Agreement Amendment June 1, 1994](#)

[Nortel - Northern Trust HWT Successor Trustee Appointment and Acceptance Dec. 1, 2005](#)

[Letter From Nortel To Northern Trust Dec. 1, 2005](#)

The Dec. 28, 1979 Advance Tax Ruling says the following in respect to the Long Term Disability Plan:

"The Company's contributions to the trust will be sufficient to satisfy all claims"

[Appendix I - Request for Advanced Income Tax Ruling December 16, 1979](#)

[Appendix J - CRA Advanced Tax Ruling Dec. 28, 1979](#)

The Income Tax Act 6 (1) (a) sets out when employer contributions are not a taxable benefit to employees and S. 6 (1) (f) sets out when an employee benefit received is taxable to the employee. Canada Revenue Agency Interpretation Bulletins and Ruling Documents provide the agency's administrative rules for how it interprets the application of S.

6(1) (a) and S. 6 (1) (f) of the Income Tax Act. The most important interpretation applicable to the funding of employer sponsored disability insurance is found in IT428 - Wage Loss Replacement Plans April 30, 1979. This IT Bulletin says:

7. A plan for purposes of paragraph 6(1)(f) of the Act and section 19 of the ITAR must be an "insurance" plan. Those provisions are not applicable, therefore, to uninsured employee benefits such as continuing wage or salary payments based on sick leave debits, which payments are included in income under paragraph 6(1)(a). It is to be noted that, while a plan must involve insurance, it is not necessary that there be a contract of insurance with an insurance company. If, however, insurance is not provided by an insurance company, the plan must be one that is based on insurance principles, i.e., funds must be accumulated, normally in the hands of trustees or in a trust account, that are calculated to be sufficient to meet anticipated claims. If the arrangement merely consists of an unfunded contingency reserve on the part of the employer, it would not be an insurance plan.

[**IT85R - Pre 1986 Health and Welfare Trusts for Employees Jan. 20, 1975**](#)

[**IT428 - Wage Loss Replacement Plans April 30, 1979**](#)

[**IT85R2 - Health and Welfare Trusts for Employees July 31, 1986**](#)

[**Canadian Pacific Case on LTD Benefits Not a Contingency Reserve Sept. 10, 1998**](#)

The following sworn affidavits were submitted to the Ontario Nortel CCAA court proceedings, which describe the accepted actuarial practice for the funding of employer sponsored disability insurance within Health and Welfare Trusts. J. Geoffrey Morawetz rejected these senior actuary expert opinion affidavits on the premise that they were neither necessary, nor relevant, to his decision on interpretation of the termination clause in the HWT Trustee Agreement. Unfortunately, J. Geoffrey Morawetz's decision on the Nortel HWT wind-up distribution and the Court of Appeal of Ontario and the Supreme Court of Canada not being willing to hear the appeal of it, has caused all employer sponsored disability insurance funded within Health and Welfare Trusts to be unsafe. The reason is that pensioners now have a legal right to claim a share of HWT assets for the settlement of future life insurance benefits, despite pensioners not being dead at the time of the HWT termination, there being no funding in place within the HWT by the employers' funding policy and by the limitations set within the Income Tax Act and the CRA Rules for not allowing death benefits and not allowing tax deductions for employer contributions in respect to life insurance benefits beyond the current year.

[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](#)

[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](#)

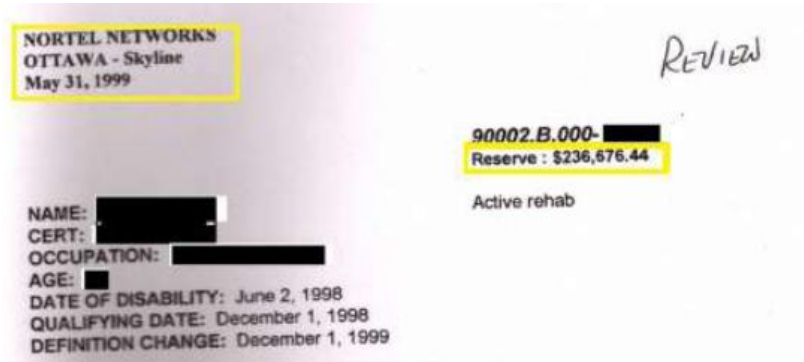
On March 15, 1999 Nortel disabled employees received a NOTICE LONG TERM DISABILITY (LTD) - DEDUCTION CHANGES, in which it was disclosed that CPP-QPP contributions would no longer be a payroll deductions from their wage loss replacement income. The reason given provides another disclosure that Nortel's "wage loss replacement plan" was funded under the Northern Health and Welfare Trust:

"Why the Change?

The change stems from our consultants' review of tax issues related to the LTD Program. That review determined that, since the LTD plan is a "wage loss replacement plan" funded under the Northern Telecom Health and Welfare Trust (HWT), CPP?QPP contributions should not apply to LTD benefit payments. The other required change is that LTD benefits will reported on a T4A slip rather than a T4 slip."

[http://ismymoneysafe.org/Nortel1/NOTICE LONG TERM DISABILITY \(LTD\) - DEDUCTION CHANGES March 15, 1999.pdf](http://ismymoneysafe.org/Nortel1/NOTICE LONG TERM DISABILITY (LTD) - DEDUCTION CHANGES March 15, 1999.pdf)

An internal Nortel report dated May 31, 1999 received by a Nortel disabled employee in a court discovery process showed that Nortel held a \$236,676.44 reserve for a disability incurred claim in her specific name and policy certificate number.



[http://ismymoneysafe.org/Nortel1/Nortel Internal Document Showing Reserve \\$ Amount for LTD Claimant May 31, 1999.pdf](http://ismymoneysafe.org/Nortel1/Nortel%20Internal%20Document%20Showing%20Reserve%20$%20Amount%20for%20LTD%20Claimant%20May%2031,%201999.pdf)

Nortel acknowledged that its Health and Welfare Trust held a reserve from which reimbursement for current and future claims liability for approved LTD claims is paid. A Nortel disabled employee's lawyer asked 3 questions in a letter to a Nortel lawyer dated November 5, 2002:

1. Is Nortel's LTD plan underwritten by an insurer?
2. Does Nortel's LTD plan have a segregated fund for financing benefit payments?
3. What measures has Nortel taken to provide funding for future LTD benefits in the event of an assignment in bankruptcy?

The Nortel lawyer responded to the 3 questions in a letter dated November 8, 2002:

1. No, our LTD plan is self-insured.
2. Contributions are paid into and claims are paid out of a Health & Welfare Trust.
3. Nortel's contributions are for core coverage. Employees contribute for optional coverage using company-provided FLEX credits.

I will not engage in this exercise in speculation. I would, however, point out that there is a Health & Welfare Trust that holds a reserve from which reimbursement for current and future claims liability for approved LTD claims is paid, as noted above.

[http://ismymoneysafe.org/Nortel1/Correspondence between LTD's Lawyer and Nortel April 26, 2002 to Feb. 3, 2003.pdf](http://ismymoneysafe.org/Nortel1/Correspondence%20between%20LTD's%20Lawyer%20and%20Nortel%20April%2026,%202002%20to%20Feb.%203,%202003.pdf)

Beginning in 2005, Nortel misdirected HWT assets for uses that were not their intended purpose, while the HWT was in deficit. This was done without Nortel's disclosure to its disability insurance employee consumers. There was no disclosure made, nor intervention taken, by Nortel's HWT Governance Committees, who had fiduciary duties to protect the trust beneficiaries. There was no disclosure, nor intervention taken, by Sun Life either, and Sun Life was the primary communicator and decision-maker in relation to the Nortel employees' disability insurance. Sun Life did not inform the Nortel disabled that HWT assets were being misdirected and that Nortel could not maintain ongoing disability income, when there were dramatically insufficient assets in its HWT, while Nortel itself was experiencing financial difficulty.

The HWT had two purposes. One purpose was for the HWT to be a conduit for the administration of receiving employer contributions to fund annual pay as you go medical and life insurance benefits. The second purpose of the HWT was for the accumulation of employer contributions, together with investment income, to fund disability insurance and survivors insurance sponsored by Nortel, and not through third party insurers. The HWT assets are needed to pay the incurred claims of the disabled and survivors of deceased Nortel employees.

\$32 M of HWT assets were withdrawn during May 2005 to April 2006 to pay for the medicines of the pensioners, active and disabled employees and the life insurance premiums of the active and disabled employees. \$18 M of these withdrawn HWT assets are visibly taken from the Nortel disabled book-keeping account as shown in the Mercers' Valuation of the Obligations of the Health and Welfare Trust for the year ending September 30, 2005.

<http://ismymoneysafe.org/Nortel/Appendix GGG - Page 28 Reconciliation of Trust Assets Sept.pdf>

<http://ismymoneysafe.org/Nortel/Appendix GGG - Valuation of the Obligations of the Health and Welfare Trust as at September 30, 2005.pdf>

<http://ismymoneysafe.org/Nortel/Appendices O-RR HWT Financial Statements 1982 to 2009.pdf>

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

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

Nortel purported to meet some of its obligations to pay employer contributions with amounts "due from the sponsoring company" in lieu of cash. The "due from sponsoring company" is listed as an asset in the Statement of Net Assets for the HWT. This is effectively a loan to Nortel, which did not pay interest and did not require security to make this loan a sound investment.

<http://ismymoneysafe.org/pdf/AppendixRR-DebtDuefromSponsoringCompanyinHWT.pdf>

The HWT loan has been outstanding at various face amounts during the HWTs history. The loan increased dramatically from 22% of the HWT's net assets in 2005 to 30% in 2008. The \$27 M HWT loan to Nortel was written off at December 31, 2009.

<http://ismymoneysafe.org/pdf/NortelHWTDueFromSponsoringCompany%NetAssets.pdf>

At no time to our knowledge before or after Nortel filed for bankruptcy protection on January 14, 2009 did Nortel, or Sun Life, take any steps for the HWT loan to Nortel to be repaid. This was despite evidence of financial distress at Nortel, including it not making employer contributions into the HWT between May 2005 and April 2006.

Nortel bought Sun Life disability insurance to cover its continuing employees during the post CCAA filing period starting on January 14, 2009. This was in recognition of the difficulty of retaining employees with an unsafe long term disability benefit in place.

[http://ismymoneysafe.org/Nortel1/New Nortel Insured LTD Coverage Aug. 1, 2010.pdf](http://ismymoneysafe.org/Nortel1/New%20Nortel%20Insured%20LTD%20Coverage%20Aug.%201,%202010.pdf)

[http://ismymoneysafe.org/Nortel2/2010 New Hire Benefits Information.pdf](http://ismymoneysafe.org/Nortel2/2010%20New%20Hire%20Benefits%20Information.pdf)

Page 21 of the 2004 FLEX Benefits Handbook says that Nortel employees would not have their core and optional disability income reduced, if they were getting income from an individual income policy. However, Nortel employees would be limited on the amount of supplementary individual disability insurance coverage they could buy, such that their combined group and individual disability insurance and CPP disability income coverage would be less than 100% of their pre-disability income. If employees could insure themselves at more than 100% of their pre-disability income, they would have an incentive to become disabled and to not work. Provision of excess disability insurance is uneconomic for the individual disability insurance policy insurer. So, employees could not buy replacement for their 50% group core disability insurance coverage at work, nor could employees opt out of their group core disability insurance coverage at work. Even if they could opt out they had no idea that they should be considering to do so due to the unsafeness of Nortel's sponsorship of their group disability insurance at work. Plus, the cost of individual disability insurance is 2 to 3 times higher or more relative to group disability insurance coverage due to the economies of scale and bargaining power of large employers. It was much cheaper to buy the additional optional 20% disability insurance coverage at work than to buy the same amount of individual disability insurance.

Your monthly core and optional LTD coverage payments will be reduced by payments you receive from:

- Canada/Quebec Pension Plan (C/QPP), excluding benefits for dependent children,
- Workers' compensation, and
- Disability income from other sources.

Note: Core and optional LTD coverage are coordinated with any government and other disability benefits so that your income from all Hint sources combined doesn't exceed 50% (core LTD coverage) and 70% (optional LTD coverage) of your pre-disability FLEX Earnings. This doesn't mean you'll receive a lower benefit in total - you'll just receive payments from more than one source.

Any increase in government disability benefits after payments start doesn't affect the payment received under core or optional LTD coverage.

Benefits from other sources of income means benefits resulting from your disability, which you qualify to receive or would be eligible to receive if you made an application. These sources include but are not limited to:

- Another group insurance plan (including association group plans),
- An automobile insurance policy, where allowed by legislation, and/or
- Any government plan providing income, excluding benefits for dependent children.

Other sources of income don't include:

- An individual disability income policy,
- A disability attachment to an individual life policy,
- Acts or plans for or on behalf of children,
- An increase in C/QPP benefits after you have begun receiving benefits and/or
- Benefits from military service.

Employees would generally not be thinking they needed to buy more than 70% of disability insurance coverage, especially when this type of individual coverage is very expensive to buy. In retrospect, had the employees known their group disability insurance was unsafe, employees would not have bought the optional disability insurance coverage and would have bought the maximum permitted of individual disability insurance coverage.

<http://ismymoneysafe.org/Nortel2/2004 FLEX Benefits Handbook.pdf>

Nortel "grandfathered " all the benefits current employees on Long Term Disability had when they went on disability. This shows that Nortel understood that it had a vesting liability for benefits promised to the disabled employees after the date they became disabled.

Here is an example: The CARP Program (Capital Accumulation and Retirement Program) The CARP program was changed in 2008 for the current employees' Defined Contribution Pension Plan, such that the employer's contribution was reduced from 4% to 2 % and the Retiree Health Care and Life Insurance was removed for people younger than 50 with less than 5 years of services. Even though Nortel said in the CARP Program "in accordance with applicable laws and each plan and or program, Nortel reserves the rights to further amend, or discontinue the plans or programs at any time." Nortel did not apply these changes to the disabled. The original CARP terms were grandfathered and vested with the disabled. The June 30, 2006 letter to the disabled employees on changes to the Capital Accumulation and Retirement Program, says:

"You will not be impacted by the CARP changes and remain in current CARP program." " If you return to active employment with Nortel or cease to qualify for LTD benefits the encloses changes describes how the Carp changes will affect you""

<http://ismymoneysafe.org/Nortel1/Letter from Nortel on Changes to Capital Accumulation and Retirement Program June 30, 2006.pdf>