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Nortel's disabled workers still fighting for better deal after bankruptcy

“For us to get so little, it’s a real tragedy.”



Greg McAvoy, 62, worked at Nortel for 10 years before he was forced to go on long-term disability leave because of his worsening multiple sclerosis. He's among a group of employees still fighting for a better deal after his benefits were cut off when the tech giant went bankrupt in 2009. (GREG MCAVOY)

By **ALEX BALLINGALL** News

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Greg McAvoy was already exhausted when his worsening multiple sclerosis forced him onto disability leave from Nortel in 2001. Imagine how he feels now, seven years after the company went bankrupt, scraping by without a paycheque at a Calgary care facility and still fighting for what he feels is his fair shake of what's left of the fallen company.

McAvoy, 62, is among a group of roughly 40 disabled or sick former Nortel workers who insist they have been shortchanged as various creditors, bondholders, pensioners and their lawyers scabble over the carcass of the once-mighty tech giant. They argue the decision this fall to divvy up the **\$7.3 billion (U.S.)** that Nortel left behind — as well as a prior settlement relating to the company's Health and Welfare Trust — is grossly unfair to former employees who were on long-term disability leave when the business went bankrupt in 2009.

In a last-ditch Hail Mary before the deal is finalized, the group is trying to pressure the federal innovation minister to change Canada's bankruptcy laws to give disabled people preferred status when a defunct company's assets are divided amongst its creditors — something at least some Liberals **supported** while they **were the Opposition**.

“For us to get so little, it's a real tragedy,” McAvoy said in a recent phone interview.

“People are having a very difficult time just managing. It's been six years since we've got any money from Nortel, so we've been living on fumes.”

At every turn of the drawn-out Nortel bankruptcy proceedings, the group referred to in court as the “dissenting” long-term disability beneficiaries has fought for a better deal. First it was over the dispersal of Nortel's Health and Welfare Trust, then over the wider settlement involving the company's \$7.3-billion “lockbox” of remaining assets.

According to Mark Zigler, a lawyer with the firm assigned to represent Nortel pensioners and long-term disabled employees in 2009, people on disability leave from the company — roughly 360 employees, according to court documents — were supposed to get two-thirds of their salary each year until age 65. Then the company went bankrupt and payments were cut off at the end of 2010.

Their first chunk of the bankruptcy money was approved that year as part of a settlement that dealt with the Health and Welfare Trust, an account Nortel set up for the payment of life insurance, health and dental benefits and disability payments for its workers. But because of an acknowledged \$37-million shortfall in the trust, the settlement only provided each disabled former worker with a lump sum of 38 per cent of what each they would have received until age 65 had the company stayed afloat, according to Zigler and financial expert Diane Urquhart.

After the recent “lockbox” settlement, which could be confirmed in late January, Zigler said the disabled former workers will get another chunk of money to bring their total haul up to almost 70 per cent of what they would have received over time, had the company survived.

Urquhart said the dissenting group has been “cheated” out of a good deal. For the “lockbox” settlement, disabled former workers are slated to get 45 to 49 cents of each dollar they would have received, she said. That pales in comparison to American bondholders, for instance, some of whom are set to get more than 90 cents on the dollar, she said. From a pot of billions of dollars, Urquhart argues there should be room to support former employees who can't work because of their illnesses or disabilities.

“This group is getting the worst treatment,” she said. “They cannot work . . . They’re left in poverty as a result of this decision.”

In McAvoy’s case, as a former manager at Nortel who was in his mid-50s when the company went bankrupt, he received roughly \$150,000 in the first payout in 2010, and expects another \$110,000 or so if the new settlement gets final approval.

“His (trust) settlement was used up quickly to pay for his basic housing, food, clothing and medical expenses,” Urquhart said of McAvoy, who is now getting by on disability benefits of \$14,000 per year.

“(The new) settlement capital will also be used up within a couple of years to pay for Greg’s accumulated debt during the six-year delay,” she added.

Zigler, the lawyer with the Koskie Minsky firm representing the disabled workers, countered that the group got the best deal that was realistically possible. American bondholders got a better share because there were fewer creditors and more money involved in the bankruptcy case south of the border, he said. “Unfortunately, insolvency is a zero sum game. There’s only so much in the pie and you have to divide it fairly.”

According to court documents on the case, [Nortel](#) set up its Health and Welfare Trust in 1980, largely for tax reasons. The trust held \$80 million by the time the company went bankrupt in 2009, court documents show. However, there was also \$37 million missing from the trust. As outlined in a judge’s decision on the trust settlement, the company drew from the trust to pay for certain worker benefits, but for several years before the bankruptcy, Nortel did not refill the money drawn from the trust. The missing money was essentially a \$37-million I.O.U. to the trust that would never be repaid, according to the decision.

In 2010, Urquhart filed an affidavit alleging funds had been misappropriated from the trust, and a group of 40 former workers broke off to join her from the wider group represented by Koskie Minsky. The Superior Court Justice ruling on the case recognized “inadequate contributions to the fund,” but dismissed Urquhart’s allegations as “questionable” at best and “at worst, reckless.” The settlement was granted and all former disabled employees, including those dissenting the decision, were paid 38 per cent of their trust entitlements.

The dissenting group tried to appeal the decision to Ontario’s top court and the case was dismissed as ineligible in January 2011. Then they took it to the Supreme Court of Canada, which also declined to hear the case.

Meanwhile, another member of the dissenting group, Jennifer Holley, tried to start a class-action lawsuit against the companies that ran the trust: the Northern Trust Company and Royal Trust. She said she worked at Nortel for five years before she was forced to go on disability leave because of Crohn’s disease. In her lawsuit, she alleged the trust companies committed fraud over missing trust money.

In February 2014, a judge dismissed her suit because, though there may have been a case for the lesser charge of “constructive fraud,” the 2010 settlement barred Holley from suing over such an allegation.

In an interview, the 52-year-old from the Ottawa area said the experience has shaken her faith in the justice system. Her only income at the moment is from government disability benefits, which she said amounts to about \$860 per month. Her husband is now retired, and the couple’s savings — including the \$60,000 she has received from the Nortel settlements so far — are dwindling, Holley said.

“We’re already down to the bare bones,” she said. “The way we’ve been treated in the bankruptcy court and the courts in general has been absolutely horrible.”

Urquhart agreed, and has been pushing the federal government to change corporate bankruptcy laws to ensure people like McAvoy and Holley get better settlements. She has appealed repeatedly to Navdeep Bains, Canada’s

Minister of Innovation, Science and Economic Development, to change the law before those with a remaining interest in Nortel's assets vote on the final settlement in January.

Philip Proulx, Bains's press secretary, declined to discuss the matter because the Nortel bankruptcy case is still before the courts. In an emailed statement, he said the government is aware and recognizes the challenges of the disabled former workers, and that ministry staff have met with them and discussed their concerns. "They remain committed to continuing the dialogue and have indicated that they are open to further meetings," Proulx said.

In a letter to Urquhart, McAvoy and Holley on Nov. 10, the assistant deputy minister of innovation wrote that the proposals to change legislation would have significant policy implications and economic consequences, though he did not specify what those would be. Any reform should be considered in such context, the assistant deputy wrote.

The dissenting group feels the Liberals will not help them, and are now looking to mount a Charter of Rights challenge of the Nortel settlement.

Zigler, the lawyer for the group from Koskie Minsky, acknowledged the "unfortunate" situation for the group. But as it stands, he said there's no law to give them the preferred status over other creditors and bondholders to ensure a better deal in the event of a bankruptcy.

"Unfortunately, when there's an insolvency like this, there's no monopoly on misery," he said.

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