

FORM 4F

Courts of Justice Act

NOTICE OF CONSTITUTIONAL QUESTION

BETWEEN:

GREG JOSEPH MCAVOY, JENNIFER HOLLEY

APPLICANTS
(Moving Parties)

-and-

NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION, NORTEL NETWORKS TECHNOLOGY CORPORATION, NORTEL NETWORKS INC., OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AD HOC GROUP OF BONDHOLDERS, ERNST & YOUNG INC. in its capacity as MONITOR, JOINT ADMINISTRATORS OF THE EMEA DEBTORS

APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED

RESPONDENTS
(Interested Parties)

NOTICE OF CONSTITUTIONAL QUESTION

Date: February 27, 2017

Joseph Greg McAvoy
Nortel CCAA LTD Creditor
Kingsland Terrace Supportive Living Facility
Suite 1, Room 2
835 68 Ave SW
Calgary AB, T2V ON5
(587) 582-8804
dignum.mcavoy@gmail.com

Jennifer Holley
Nortel CCAA LTD Creditor
2034 River Road
Ompah, ON, K0H 2J0
(613) 479-2653
jholley@xplornet.com

Self-Represented

Greg Joseph McAvoy and Jennifer Holley intend to question under S. 52(1) of the *Charter of Rights and Freedoms* the constitutional validity of:

Companies' Creditors Arrangement Act, RSC 1985

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under [sections 4](#) and [5](#), or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

General power of court

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

The question is to be argued on a date to be fixed by the Registrar at the Supreme Court of Canada, 301 Wellington Street, Ottawa, Ontario, K1A 0J1, reception@scc-csc.gc.ca.

TO:

The *Attorney General of Canada (as required by section 109 of the Courts of Justice Act)*
Suite 3400, Exchange Tower Box 36, First Canadian Place, Toronto, Ontario M5X 1K6 fax: (416) 952-0298

-and-

Justice Building, 234 Wellington Street, Ottawa, Ontario K1A 0H8 fax: (613) 954-1920
mcu@justice.gc.ca

The *Attorney General of Ontario (as required by section 109 of the Courts of Justice Act)*
Constitutional Law Branch, 4th floor, 720 Bay Street, Toronto, Ontario M5G 2K1 fax: (416) 326-4015
attorneygeneral@ontario.ca

The Attorney General of Alberta
c/o Constitutional and Aboriginal Law Section, 4th Floor, Bowker Building, 9833-109 Street, Edmonton, Alberta T5K 2E8
ministryofjustice@gov.ab.ca

NAMES AND ADDRESSES OF LAWYERS FOR ALL OTHER PARTIES EXPECTED TO RESPOND:

GOODMANS LLP

Barristers & Solicitors Bay Adelaide Centre
333 Bay Street, Suite 3400 Toronto, Ontario, Canada M5H 2S7

Benjamin Zarnett (LSUC#17247M) bzarnett@goodmans.ca

Jessica Kimmel (LSUC#32312W) jkimmel@goodmans.ca
Peter Kolla (LSUC#54608K) pkolla@goodmans.ca

Tel. 416.979.2211 / Fax 416.979.1234

Lawyers for the Monitor, Ernst & Young Inc.

GOWLING WLG (CANADA) LLP

Barristers & Solicitors One First Canadian Place
100 King Street West, Suite 1600 Toronto, Ontario, Canada M5X 1G5

Derrick Tay (LSUC#21152A) derrick.tay@gowlingwlg.com
Jennifer Stam (LSUC#46735J) jennifer.stam@gowlingwlg.com

Tel: 416.862.5697 / Fax: 416.862.7661

Lawyers for the Canadian Debtors

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900 Toronto, Ontario, Canada M5H 3R3

Mark Zigler (LSUC #19757B) mzigler@kmlaw.ca
Tel: 416.595.2090 / Fax: 416.204.2877

Susan Philpott (LSUC #31371C) sphilpott@kmlaw.ca
Tel. 416.595.2104 / Fax 416.204.2882

Barbara Walancik (LSUC #62620U) bwalancik@kmlaw.ca
Tel: 416.542.6288 / Fax: 416.204.2906

Lawyers for the Canadian Former Employees and Disabled Employees through their court appointed Representatives

TORYS LLP

79 Wellington St. W., Suite 3000 Box 270, TD Centre, Toronto, Ontario, Canada M5K 1N2

Sheila Block (LSUC#14089N) sblock@torys.com
Scott A. Bomhof (LSUC#37006F) sbomhof@torys.com
Andrew Gray (LSUC#46626V) agray@torys.com
Adam M. Slavens (LSUC#54433J) aslavens@torys.com
Jeremy Opolsky (LSUC#60813N) jopolsky@torys.com

Tel: 416.865.0040 / Fax: 416.865.7380

Lawyers for Nortel Networks Inc. and the other U.S. Debtors

CASSELS BROCK & BLACKWELL LLP

Suite 2100, Scotia Plaza 40 King Street West, Toronto, Ontario, Canada M5H 3C2

Shayne Kukulowicz (LSUC# 30729S) skukulowicz@casselsbrock.com

Michael Wunder (LSUC# 313510) mwunder@casselsbrock.com

Ryan Jacobs (LSUC# 59510J) ijacobs@casselsbrock.com

Geoff Shaw (LSUC #26367J) gshaw@casselsbrock.com

Tel: 416.869.5300 / Fax: 416.360.8877

Lawyers for the Official Committee of Unsecured Creditors of Nortel Networks Inc., et al.

BENNETT JONES LLP

I First Canadian Place Suite 3400, Toronto, Ontario, Canada M5X 1A4

S. Richard Orzy (LSUC# 23181I) orzyr@bennettjones.com

Gavin Finlayson (LSUC# 44126D) finlaysong@bennettjones.com

Richard Swan (LSUC# 32076A) swanr@bennettjones.com

Tel: 416.863.1200 / Fax: 416.863.1716

Lawyers for the Ad Hoc Group of Bondholders

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Suite 2750, 145 King Street W, Toronto, Ontario, Canada M5H 1S5 www.counsel-toronto.com

M. Paul Mitchell pmichell@counsel-toronto.com

Tel: 416.598.1744 / Fax: 416.598.3730

Lawyers for Joint Administrators of the EMEA Debtors

MATERIAL FACTS GIVING RISE TO THE CONSTITUTIONAL QUESTION:

1. Gregory McAvoy and Jennifer Holley, who have standing as Nortel CCAA long term disabled (“LTD”) creditors, made a submission and appeared before the Nortel CCAA Fairness Hearing on Jan. 24, 2017 requesting that the CCAA J. Frank Newbould make an adjustment of the Nortel CCAA Plan of Arrangement and Compromise (“Nortel Plan”), permitted under CCAA S. 6(2), to make it compliant with the Charter, fair and reasonable for the LTD, fair in regard to the interests of Greg McAvoy, Jennifer Holley and other members of the LTD and in the LTD’s best interests. This adjustment requires reconsideration of the [Representative Counsel Order for Long Term Disability Employees July 30, 2009](#) and the [Revised Interim Settlement Agreement March 30, 2010](#).
2. The J. Newbould [Nortel Certification Endorsement January 30 2017](#) says at Pt. [25] “I accept that any order I make to sanction the Plan may be subject to the Charter.”

3. J. Newbould says at Pt [28], “What the LTD Objectors seek is to have the allocation proceeds re-allocated by providing that 100% of the claims of the LTD Beneficiaries will be paid from the Sale Proceeds at the expense of all other claimants. This involves their economic interests which are not protected by section 7 of the Charter.”
4. J. Newbould says at Pt [33]: “In this case, it cannot be said that the LTD Objectors are being deprived of these section 15 rights because of discrimination based on physical disability. They are being treated like all creditors of Nortel. All unsecured creditors, be they bondholders, trade creditors, pensioners or LTD Beneficiaries, will receive the same pari passu treatment under the Plan.”
5. J. Newbould does not address the Supreme Court of Canada Oakes Test because he concluded there are no S. 7 and S. 15(1) Charter violations.
6. Greg McAvoy and Jennifer Holley filed a Motion for Leave to Appeal of the J. Newbould Feb. 14, 2017 order to sanction the Nortel Plan on the grounds of J. Newbould errors in respect to the applicability of S. 7 and S. 15(1) of the Charter of Rights and Freedoms and other issues.
7. The Responses and Reply to the Motion for Leave to Appeal were served on February 21, 2017 and February 24, 2017. The Leave to Appeal decision is pending.
8. It is anticipated that there will be an application made for Leave to Appeal to the Supreme Court of Canada by the losing parties at the Court of Appeal of Ontario decision in respect to the Nortel Plan. It is in this next legal proceeding that the Constitutional Question in this Form 4F dated Feb. 27, 2017 will be a central issue.
9. Below are all the relevant court decisions and filings:

COURT ENDORSEMENTS, PLEADINGS, RESPONSES AND REPLIES, AND RELATED BOOK OF AUTHORITIES

[Nortel Certification Endorsement January 30 2017](#)

[Nortel Endorsement on Reconsideration Motions July 6, 2015](#)

[McAvoy and Holley Submission to the Nortel CCAA Fairness Hearing Jan. 13, 2017](#)

[Affidavit Diane Urquhart Jan. 12, 2017](#)

[Monitor & Cdn Debtors Factum Jan. 22, 2017](#)

[Monitor & Cdn Debtors BOA Jan. 22, 2017](#)

[Court Appointed Representatives Factum Jan. 23, 2017](#)

[Court Appointed Representatives BOA Jan. 23, 2017](#)

[McAvoy and Holley Leave to Appeal Feb. 14, 2017](#)

[McAvoy and Holley Leave to Appeal BOA - Vol II Feb. 20, 2017](#)

[McAvoy and Holley Leave to Appeal BOA - Vol III Feb. 20, 2017](#)

[McAvoy and Holley Leave to Appeal BOA- Vol I Feb. 20, 2017](#)

[McAvoy and Holley Reply Feb. 24, 2017](#)

[Monitor & Cdn Debtors Response Factum Feb. 21, 2017](#)

[Monitor & Cdn Debtors BOA Feb. 21, 2017](#)

[Court Appointed Representatives Response Factum Feb. 21, 2017](#)

[Court Appointed Representatives BOA Feb. 21, 2017](#)

[EMEA Letter to Registrar Court of Appeal Feb. 21, 2017](#)

[NCCE Response Factum Feb. 21, 2017](#)

[US Interests Response Factum Feb. 21, 2017](#)

LEGAL BASIS FOR THE CONSTITUTIONAL QUESTION:

10. Approval of the Nortel Plan by the CCAA judge constitutes the use of his discretion under S. 6(1) and S. 11 of the CCAA to directly violate expressly protected LTD Charter rights: S. 15(1) on deprivation of substantive equality; and, S. 7 on deprivation of life, liberty and security. None of the Oakes test conditions for acceptable limitation of Charter rights have been met, that is: reasonable limits demonstrably justified in a free and democratic society in S.1; in accordance with [principles of fundamental justice](#) in S. 7; or, due to a notwithstanding clause within the statute enabled in S. 33.
11. Therefore S. 6(1) and S. 11 of the CCAA are unconstitutional to the extent of their provision of discretionary authority to a CCAA Judge to violate disabled Charter rights. This aspect of S. 6(1) and S. 11 of the CCAA are of no force or effect.
12. Approval of the Nortel Plan, combined with the 2010 revised interim settlement agreement, results in LTD being:
 - i) deprived of adequate disability income for basic housing, food, clothing and high medical and dental expenses, and so cannot live independently and with dignity:
 - a) 66% to 68% estimated combined HWT and CCAA recovery of the amount owed for Nortel disability income, is applied to Nortel's pre bankruptcy disability income that was already reduced to 50% to 70% of their working income before disability (most employees opted for the higher 70% coverage paid for by employee contributions.) The LTD outcome is Nortel disability income reduced to 33% to 48% of pre-disability

- income. The 160 dependent children cannot help but be seriously deprived compared to their peers with parents able to work. See TABLE 1 and TABLE 2.
- b) medical and dental expenses claim has only 45% to 49% recovery, of an average of Cdn\$7,291 per year for the LTD at 2010. See TABLE 1, TABLE 2 and TABLE 6.
 - c) LTD unable to preserve capital from both the HWT and CCAA settlements, due to the six year delay of the CCAA settlement. The deeply compromised 38% HWT and 45% to 49% CCAA settlements' capital is already used up by 2018 to cover the deficiencies in CPP disability income relative to reasonable basic housing, food and clothing expenses and the high medical and dental expenses during 2011 to 2017. The estimated average annual deficiencies of income over expenses have grown from \$27,015 in 2011 to \$33,223 in 2017. The 2017 average basic living costs are estimated at \$36,220 derived from adjustments made to the Statistics Canada average household expenditures in Canada. See TABLE 3 and TABLE 4.
 - d) due to settlement capital depletion by 2018, the LTD receives only CPP disability income, at a maximum of Cdn\$15,763 in 2017. See TABLE 3.
- ii) LTD deprived of substantive equality in Canadian society, through their loss of dignity, and exclusion and marginalization. An LTD, who once worked and who actively sought group LTD insurance coverage at Nortel, is by 2018 reduced to annual income at the maximum CPP disability income of Cdn\$15,763 in 2017.
13. All the pro and con legal arguments for this constitutional question are robustly argued in the McAvoy and Holley Submission to the Nortel CCAA Fairness Hearing, Motion for Leave to Appeal, Reply for the Motion for Leave to Appeal with reference to cases in their Book of Authorities; and in the Fairness Hearing and Leave to Appeal Response Factums of the Monitor & Debtors and the Court Appointed Representatives with reference to cases in their Books of Authorities.

(This notice must be served as soon as the circumstances requiring it become known and, in any event, at least 15 days before the question is to be argued, unless the court orders otherwise.)