

1. Good Morning everyone. My name is Arlene Borenstein and I'm a Nortel Employee on Long-Term Disability. First, I'd like to thank you all for taking the time to come here I wanted to take just one moment to tell you why I'm here again.

2. What I really want to accomplish here today is to make clear exactly what the situation is with respect to Nortel's LTD employees and why we feel that Senator Eggleton's Bill S-216 to amend the bankruptcy laws in Canada must be passed. We're asking all decision-makers to look beyond political boundaries and agendas, and to accomplish a much higher purpose: That of ensuring that Canadian employees are finally given the long term disability protection they deserve. It's been 25 years since Massey Combines put its disabled employees into poverty It is absolutely TIME to give those of us already suffering with our chronic and debilitating illnesses, relief from stress and worry from our employer's insolvency. Bankruptcy is not a place for a person who is disabled and already vulnerable.

3. Now is the time to pass Bill S-216 so that never again will vulnerable workers who are unable earn an income due to chronic illness "fall through the cracks" in the case of insolvency.

4. The Nortel Bankruptcy is one of Canada's largest and most complicated. And it is likely for that reason, that we Nortel employees on LTD have had such a difficult time in getting what is our rather uncomplicated story, to be heard and understood. That, and the fact that our numbers are so few compared with the thousands and thousands of other creditors of which we are only 400, but most of all, because all of us, suffer from various chronic physical and mental illnesses.

5. I couldn't possibly say exactly where things went wrong with our long-term disability plan, but I believe it started out with the very best and noblest of intentions. We have to go back to Montreal and New Years Day, 1980, when Nortel, then Northern Telecom, decided it would begin to self-insure its LTD benefits. In other words, Nortel stopped paying premiums to an insurance company for long-term disability insurance, and decided that it would carry the risk and the responsibility of any employee becoming disabled and having to pay them a disability income until age 65.

6. In fact, Nortel had decided to self-insure all of its employee benefits at that time, meaning that Nortel took it upon it "self" to act "like" an "insurance" company". Nortel even describes it this way in their own benefits handbooks:

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.

7. And it appears that Nortel did in fact have every intention of playing a role “similar to that of an insurance company for its employees”. Instead of just paying each claim as it arose, Nortel showed that it had the intention to provide much more security than this for its workers, because the Company went one step further: and this “next step” is a very important part of the LTD employees’ story: Going back to Montreal and News Year Day 1980: this was also the day that Nortel met with The Montreal Trust Company. On that day Nortel appointed Montreal Trust to be the Trustee, the so-called “watchdog” over our funds in the Trust that would pay for our LTD plan benefits and secure our futures. Along with this appointment, they signed the Northern Telecom HWT Agreement which, to this very day, outlines the terms of the trust itself.

8. So what exactly is a Trust or even a Trustee? The term trust is defined as "a legal title to property held by one party for the benefit of another perhaps to administer the property of another ". A Trustee has a Fiduciary relationship with the beneficiaries of this trust he’s watching over for them. A fiduciary has an absolute duty of loyalty to the Beneficiaries in exercising any power under the Trust, they are obligated by statute and common law to look out for us.

9. Nortel’s LTD employees are beneficiaries of the Nortel HWT. Those individuals that are granted powers under the trust to make the required employer contributions and control our assets are in a fiduciary relationship with us. This Fiduciary relationship flows from the “vulnerability of a beneficiary to the unilateral exercise of power or discretion which affects the beneficiaries’ interests”. We are the vulnerable ones whose best interests have all but been forgotten. The law says that a Trustee owe us a duty of care, to act for us, as though they were acting for themselves, to act as any prudent and responsible person would act.

10. There has been a Breach of Trust with Nortel’s HWT. It’s missing over 100 Millions dollars in Employee and Employer contributions.

11. Article IV of our Trustee Agreement says:

The corporation and its designated affiliated or subsidiary corporations agree to make Employer's contributions to the Trust Fund in amounts sufficient to pay any claims which may be asserted against the Trust Fund as a result of the administration of the Health and Welfare Plan, and as otherwise be required from time to time by the Trust for the purpose of the Health and Welfare Trust, as determined by the Trustee on a sound actuarial basis.

12. Court appointed legal representatives, the court appointed monitor and their legal counsel want Canadians to believe that there is no legal obligation for Nortel to fund the LTD benefits. They say this because there are no statutes or regulations governing the self-insurance and the HWT. It seems there is a desire on behalf of court appointed officials to give the impression that a HWT is simply a tax efficient vehicle. But that's just not the case here because we have a trust and this trust is a true trust under common law. The current Trustee, Northern Trust Company took over from Royal Trust in 2005, and they are obligated to follow a very high standard of fiduciary duty of care to us, the beneficiaries, both under common law and the Trustee Act of Ontario. A breach of fiduciary duty by a Trustee is a very serious matter.

13. It is a concern of all employees in Canada with self-insured LTD Benefits that their employers are not making their required employer contributions and are borrowing money from their trust accounts. Now they face the prospect that employers are not required to restore assets in trusts for the disabled, if their employers file for bankruptcy protection. The trust assets could be unpaid employer contributions owing, loans made to employers, or simply money taken from the trusts without adequate records.

14. While our lawyers tell us we have a legal basis to appeal the March 31st settlement, I have to say that we are getting sicker by the day as we get dragged through these complex court procedures. Passing Bill S-216 will make us whole and spare us from further pain and suffering from the financial abuse we are exposed to. We are making a humanitarian plea for non-partisan all party support for Senator Art Eggleton's Senate Bill S-216.

15. The amount of money required to make the LTD Employees whole is less than

2% of the expected cash for disbursement in the Nortel Global Estate and so resolution of our problem by passing Bill S-216 is not disruptive to the bankruptcy process and cannot have a material impact on other creditor groups.

16. We urge that all the parties act together on a non-partisan basis and on principle for humanitarian reasons, to protect the Nortel LTD Employees. This is a humanitarian action that will have a continuing benefit for all Canadian employees, who may someday become disabled and discover that their long term disability benefits are not protected and their very futures are at risk.