

April 15, 2013

Honourable Minister of Finance Charles Sousa
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Dear Honourable Minister:

Diane and Hugh Urquhart in your riding have met with you to educate you on the Nortel disabled issues. They have kept you fully apprised from the time you were an MPP, Labour Minister, and now you are the Finance Minister.

On April 8, 2013, a Saskatchewan judge sent a warning to insurers who abusively deny income to long term disabled insureds, a decision that was covered by the Globe and Mail.

[Globe and Mail - Judge sends warning to insurers with \\$4.5 M award to disabled welder April 8, 2013](#)

Nortel sold us disability insurance in the workplace, under an Ontario exemption from needing to be licensed as an insurer. Make no mistake, however, that this is an insurance contract that was misrepresented to us by both Nortel and Sun Life, which is in violation of the Ontario Consumer Protection Act.

As the Urquhart's informed you, the Nortel disabled insureds have considerably higher damages and injustice from the Nortel CCAA proceedings than the pensioners for the reasons reiterated below.

The Ontario Government taxpayers provided an estimated \$350 million grant into the Ontario Pension Benefit Guarantee Fund, which guarantees the first \$1000 per month of pensions by making a top-up payment for the pension plan deficit % applicable to the first \$1,000 of pension income. The Nortel Ontario pensioners that were members of the Union had average Nortel pension income of \$12,811 before the Nortel CCAA filing, and have an average decline of -3% and loss of inflation indexing due to the pension plan wind-up. The Nortel Ontario Non-Union pensioners had Nortel pension income of \$22,537 before the Nortel CCAA filing, and have an

average expected decline of -19% and loss of inflation indexing. Nortel pensioners, who worked outside of Ontario, have an average expected decline of -40% due to the pension plans' wind-up.

You would be aware that the highest paid executives who are now Ontario pensioners have their pension supplemented from the OPBGF. You are also aware that many of the Nortel disabled were unable to accrue an adequate pension due to our younger age when we became disabled. You are aware that many of us do not have any pension at all. You would be aware therefore that the Nortel disabled would get a pittance from the OPBGF, which does little if anything for their situation post age 65

Most importantly, the Ontario Government has not assisted the Nortel disabled in respect to our incomes from now until age 65.

Beyond this, the Ontario Government supported the March 30, 2010 amended settlement agreement that resulted in the Nortel disabled losing our legal rights for our own civil remedy of the misrepresentations of our disability insurance under the Ontario Consumer Protection Act, and the breach of trust that occurred within our Health and Welfare Trust, except for fraud and Directors misrepresentations, oppression and wrongdoings.

It is evident there are some serious flaws in the bankruptcy process and for sure one serious injustice is the power given to a single non-elected and unsophisticated disabled representative to make binding decisions on our behalf. As a consequence of the settlement agreement, the Nortel disabled are reduced to the HWT wind-up settlement of only -65% of what is owed to us. The HWT settlement will for most Nortel disabled be used up this year to maintain our basic living expenses, assuming these are at \$35,000 per year or just half the average Canadian household expenditures for 2012. Going forward, the Nortel disabled must live on just their CPP disability income ranging from the average \$10,103 for 2012 to the \$14,555 maximum. As of December 31, 2010, there are 357 LTD income beneficiaries, of which 85 have 160 dependent children.

It is not just a case of we lose more than the pensioners in the CCAA proceedings, it is the injustice of we being denied the legal rights for remedying significant misrepresentations on the disability insurance sold to us by Nortel, which was administered by Sun Life. The Ontario Consumer Services Ministry has refused to enforce the Ontario Consumer Protection Act, which has the legal jurisdiction to provide for a remedial solution for the Nortel disabled which is not impeded by the March 30, 2010 settlement agreement with the Nortel disabled. One of us, Jackie Bodie, has exchanged emails with Frank Denton, the assistant deputy minister of the Ontario Consumer Services Ministry and he has put the file before the lawyers of the Attorney General's Office again for review.

[Correspondence between ADM Frank Denton and Jackie Bodie Feb 16 - March 1, 2013](#)

The Nortel dissenting disabled lawyer Joel Rochon has given a legal opinion on legal jurisdiction. Joel has had success using the Consumer Protection Act on a case against Dell Computer.

Part of the misrepresentation of Nortel disability insurance was its 2005 disclosure that this employer was playing a role similar to an insurance company. This was the very year that Nortel executives were executing a plan to wind-up the HWT, despite this being the vehicle holding the reserves backing the disability insurance it sold to its employees. This was during Nortel's 2003 to early 2006 period of financial distress caused by its three accounting restatements and the announcement of SEC and OSC securities regulatory investigations and the RCMP criminal investigation. As part of Nortel's aborted HWT wind-up, there was \$32 million of HWT assets misappropriated during May 2005 and April 2006 for the payment of Nortel expenses which increased Nortel's cash flow from operations. In addition, during the period of Nortel financial distress, Nortel paid its required employer contributions in the form of an IOU, which ended up being a \$28 million loan from the HWT to Nortel that was written off in the CCAA proceeding. The Nortel disabled allegations are well supported by the evidence and expert opinions of independent financial analyst, Diane Urquhart, investigative forensic accountant and private investigator, Charlotte Urquhart, and senior actuaries, Jeremy Bell and Joann Williams.

Diane Urquhart was invited to provide expert testimony to the Federal House of Commons Standing Committee on Industry, Science and Technology and the Senate Standing Committee of Banking Trade and Commerce on amendments to the Companies' Creditors Arrangement Act and Bankruptcy and Insolvency Act in respect to the priority of pension plan and long term disability income plan deficits amongst creditors at bankrupt corporations. Her expert testimony to the Federal legislators on these Standing Committees has had a positive outcome: The Federal Labour Code was amended in 2012 for mandatory purchase of long term disability insurance by federally registered private corporations offering LTD income benefits.

Also, the recent Supreme Court of Canada Indalex Pension Plan decision now makes Ontario pension deficits secured creditor claims, ahead of the unsecured creditors. Unfortunately, this new development makes disabled workers worse off than they were before as their claims are now legislatively below the pensioners.

It would appear that when it comes to the disadvantaged, in this case the Nortel disabled, your government can see no reason to assist in enforcing your own Consumer Protection Act as the Nortel disabled group are in your government's view powerless and unable to be a voting force to impact you and your government in an election. Also, we are no good to your government for fundraising purposes. So from your government's perspective, we can be thrown into poverty.

But, when it comes to the legal community where the Nortel legal fees are now at \$861 million, please don't give us the line that this is a sophisticated bankruptcy case. You turn a blind eye to the billing of lawyers gone wild and to the excessive power and conflicts of interest of Ernst & Young as the Nortel CCAA court monitor. The largest and much more complex CCAA case to date, ABCP had legal fees of only \$200 million in respect to \$32 billion of assets restructured. Stelco CCAA proceeding had legal fees of only \$100 million.

[National Post - Ernst & Young's multiple Nortel roles shrouded in mystery March 22, 2013](#)

[National Post - Employees on long-term disability the big losers in Nortel bankruptcy March 13, 2013](#)

[National Post - Gravy train at work in Nortel bankruptcy March 3, 2013](#)

It is time for you as the Minister of Finance, with access to Premiere Kathleen Wynne, to bring to her the simple solution that is available to address this atrocity. There are two lawyers, Jim Girling and Marilyn Marshall, in the Ontario Attorney General Office who without legal justification, are recommending that the Consumer Ministry Office not enforce the applicable sections of the Ontario Consumer Protection Act to correct the misrepresentations of the disability insurance sold to us by Nortel. It is critical you act in short order as the limitation period for the Consumer Services Protection Act applicable to our situation is May 30th, 2013.

Sincerely

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