

**From:** Urquhart [mailto:urquhart@rogers.com]

**Sent:** March-16-10 9:04 PM

**To:** Peter Burns (snrub.retep@rogers.com)

**Cc:** Diane & Hugh Urquhart (urquhart@rogers.com); Arlene Plante (arleneplante@hotmail.com); Nanc Ekiert (ekiert@comcast.net); marin.josee@sympatico.ca; connie@walshclan.biz; jgmcavoy@shaw.ca

**Subject:** FW: Difference between Long Term Disability and Pensioners

Peter Burns

In order to answer your question about how the average Nortel Long Term Disabled (LTD) Employee would compare to the average Nortel Retiree I have used a similar approach to what I used in my Financial Affidavit dated March 1st showing the probable impact of the Feb. 8th agreement, the Health and Welfare Trust wind-up and the Nortel liquidation on an average Nortel LTD Employee beginning on January 1, 2011. In Tables 1, 2 and 3 below. in order to compare apples and apples, I compare a LTD Employee and a Retiree who had the same working income before they became disabled or before they reached age 65, respectively. Table 2 is for an Individual with Pre-Pension Income of \$70,000 and Table 3 is for an Individual with Pre-Pension Income of \$50,000.

Table 1 is a summary of the bottom-line conclusions I reach from the details provided in Table 2 and Table 3.

<b>Table 1 - Summary Comparison Effective Income Net of M &amp; D Costs Sum of Income from Nortel and Government Social Security Plans Medical and Dental Costs Without Provincial Government Assistance</b>	<b>Long Term Disabled Employee Employer Paid to 50%</b>	<b>Employee Paid Optional Added to 70%</b>	<b>Retiree Not in Ontario 60%</b>	<b>Retiree In Ontario 60%</b>
<b>Pre-Pension Income</b>	\$70,000	\$70,000	\$70,000	\$70,000
<b>Effective Income Net of Medical and Dental Costs Before</b>	\$35,000	\$49,000	\$48,204	\$48,204
<b>Effective Income Net of Medical and Dental Costs After</b>	\$16,496	\$20,619	\$38,225	\$41,945
<b>% Reduction Effective Income Net of M &amp; D Costs</b>	-53%	-58%	-21%	-13%
<b>Multiple of LTD Employee Whose Disability Income is \$70,000 @ 50%</b>			2.3	2.5
<b>Pre-Pension Income</b>	\$50,000	\$50,000	\$50,000	\$50,000
<b>Effective Income Net of Medical and Dental Costs Before</b>	\$25,000	\$35,000	\$36,204	\$36,204
<b>Effective Income Net of Medical and Dental Costs After</b>	\$13,551	\$16,496	\$29,387	\$33,107
<b>% Reduction Effective Income Net of M &amp; D Costs</b>	-46%	-53%	-19%	-9%
<b>Multiple of LTD Employee Whose Disability Income is \$50,000 @ 50%</b>			2.2	2.4
<b>Multiple of LTD Employee Whose Disability Income is \$70,000 @ 50%</b>			1.8	2.0

I have concluded that the Nortel LTD employees are considerably worse off than the Nortel retirees due to the Nortel liquidation and the consequent wind-up of the Nortel Health and Welfare Trust / LTD Benefit Plan and the Nortel Defined Benefit Pension Plans. This is so when one makes an apples to apples comparison between an LTD employee starting with the same pre-pension income as a retiree. It is also the case taking into account that Nortel LTD employees appear to have had higher pre-pension income than Nortel retirees. For example, I conclude that an average Ontario Nortel Retiree with pre-pension income of \$50,000 will still be two times better off than the average Nortel LTD employee with pre-pension income of \$70,000 and who was on the employer paid 50% wage loss replacement plan. The Nortel liquidation has a probable impact on the average Ontario Nortel Retiree of a 9% reduction of effective income net of medical and dental costs to \$33,107 (before any further damage from a forced annuity purchase at today's low interest rates). This compares to the base case LTD employee experiencing a 53% reduction of effective income net of medical and dental costs to \$16,496 (before any further damage from a forced annuity purchase at today's low interest rates).

The more severe negative impact of the Nortel liquidation on the LTD employees is the reason why Joel Rochon quoted from CCAA case precedents in the March 3rd to 5th CCAA hearing that "equal is not equitable." It is not equitable for the Nortel liquidation to cause the LTD employees to be pushed below the poverty line, when there is a projected \$5.9B of cash for disbursement at the time of Nortel's liquidation to its creditors around the world. While the Canada Estate has projected cash of only \$134 million at April 24, 2010, it will be getting a future portion of the projected \$4B cash in the lock box from its businesses' sale proceeds.

The single long term disabled person in Canada has a maximum CPP disability income of just \$13,272, compared to the single retiree who gets a combined maximum CPP and OAS pension of \$17,109. The Nortel LTD employees have a second blow of deficient treatment because Nortel has only enough assets allocated within the Health and Welfare Trust for the LTD Benefits Plan at a funding ratio of just 17%. This is an average funding % based on 22% of the \$105M actuarial liability provided by Mercers for the wage loss replacement income, and 0% of the \$30M actuarial liability provided by Mercers for the LTD medical, dental and life costs. I have taken into account the likely compromise of the HWT loan to Nortel discussed below.

By comparison, the Nortel retirees' pension funds provide for 69% of the average pension income outside of Ontario and 92% of the average pension income in Ontario after the OPBGF payment (assuming the outside of Ontario and Ontario average pension income is the same and using Mercers April 2009 unofficial actuarial report for the Nortel pension plans). The average Nortel retiree has funding in place for combined pension income and medical and dental costs of 62% outside of Ontario and 85% in Ontario after the OPBGF payment.

The average age of the Nortel LTD employees is 42 years old and many LTD employees became disabled at younger ages than this. These younger disabled employees have had their lives frozen at 50% of their income at the time of their disability (70% with an employee paid optional LTD benefit), which is apt to be well below their earnings potential had they not gotten sick. These younger disabled persons have not been able to accumulate personal savings from their low disability incomes. Their pension accruals while being sick through age 65 are similarly constrained by the amount of lower pre-disability income compared to retirees whose incomes were growing up to age 65.

The more severe negative impact of the Nortel liquidation on the LTD employees is why this group needs distinct protection from the Federal Government in an amendment of the CCAA and BIA to give priority to LTD employees' claims over other creditor groups. If the Federal Government makes

amendments of the CCAA and BIA to give preference to the pensioners and unpaid severance of terminated employees, as I have been recommending throughout the past year, then the LTD employees will need to be put ahead of the pensioners and unpaid severance of terminated employees because of their vulnerable position in Canadian society and because corporations, like Nortel, have abused employees through the provision of long term disability benefits in the form of self-insured benefits that are not fully funded. The abuses range from Nortel not making required employer contributions for many years into the Health and Welfare trust as prescribed by the trust's trustee agreement (over \$100 million missing in a Breach of Trust by Nortel and the HWT trustees), to corporations funding their long term disability benefit plans on a completely Pay as You Go Basis with no trust accounts or trustee agreements. Nortel compounded its abuse by arranging for the Health and Welfare Trust to make a \$37M loan to Nortel itself (another Breach of Trust by Nortel and the HWT trustees).

The Nortel bankruptcy and other cross-border bankruptcies have the added uncertainty about Canadian Estates being depleted by U.S. bond holders and the U.S. Pension Benefit Guaranty Corporation controlling international bankruptcies through their powerful Unsecured Creditor Committee. So the priority status of the LTD employees' claims over the claims of former employees will best ensure that these very vulnerable Canadians are protected at corporations that operate internationally.

Even if there were to be Federal and Provincial Company Acts, Employment Standards Acts, Health and Welfare Trust Standards Acts to require the establishment of trust accounts, trustee agreements and full funding requirements for all LTD benefits plans in Canada, there would still be a need to amend the Federal bankruptcy laws so as to protect disabled employees. The disabled are the most vulnerable in Canadian society, with an inadequate safety net in the CPP Disability Pension. Corporations who offer LTD benefits need to be held to account to pay for them at the time of bankruptcy proceedings, as corporations are in the inter-connected network of actors in society required to give equality for persons with disability under the UN Convention on Rights for Persons on Disability, which Canada ratified on March 11, 2010.

Table 1 and Table 2 show that a LTD employee, who earned \$70,000 pre-disability and who was on Nortel's 50% LTD wage loss replacement plan with medical and dental benefits paid to age 65, goes from an effective income net of medical and dental costs before of \$35,000 to an amount after of only \$16,496. The effective income is the sum total from Nortel and government social security programs. The retiree not in Ontario, who had pre-retirement income of \$70,000 and accumulated enough years of service to get a pension of 60% with medical and dental benefits paid, goes from an effective income net of medical and dental costs before of \$48,204 to an amount after of \$38,225. The Ontario pensioner is better off due to the Ontario Government's February 8th decision to honour the calculated guarantee on the first \$12,000 per year of Ontario-based pension income from the Ontario Pension Benefit Guarantee Fund. The Ontario pensioner, who started with pre-retirement income of \$70,000, ends up with effective income net of medical and dental costs of \$41,945 after the pension fund wind-up and the Nortel liquidation.

I do not take into account for either the LTD employee or retiree, the impact of these persons applying for and receiving provincial government prescription drug and medical equipment assistance post Nortel's liquidation. I do not do so because Table 2 and Table 3 are intended to show the impact of Nortel not paying for its employee benefits in full. The CPP pension and disability incomes are being paid currently on a first payer status and the OAS is a universal pension program. New actions will be required to obtain provincial government prescription drug and medical equipment assistance, and this would represent a clear downloading onto these provincial government programs, despite Nortel having a projected \$5.9 billion of cash for disbursement to Nortel creditors around the world. I also do not make an extra income discount for either the LTD

employee or the retiree, if annuities need to be purchased at interest rates that are below the actuarial liability wind-up assumed interest rates for the LTD Benefit Plan and Defined Benefit Pension Plans.

<b>Table 2 - Individual With Pre-Pension Income of \$70,000</b>	<b>Long Term Disabled Employee Employer Paid to 50%</b>	<b>Employee Paid Optional Added to 70%</b>	<b>Retiree Not in Ontario</b>	<b>Retiree In Ontario</b>
<b>Working Income Before</b>	\$70,000	\$70,000	\$70,000	\$70,000
<b>% Benefit Relative to Working Income</b>	50%	70%	60%	60%
<b>Health &amp; Welfare Trust / Pension Fund Funding % on Income</b>	17%	17%	69%	83%
<b>Medical and Dental Benefits Funding %</b>	17%	17%	0%	0%
<b>Income and Medical and Dental Funding %</b>	17%	17%	65%	78%
<b>Bankruptcy Cash Settlement Ratio %</b>	15%	15%	15%	15%
<b>H &amp; WT / Pension Fund and Bankruptcy Cash Settlement %</b>	29%	29%	70%	81%
<b>Income All Sources and M &amp; D Benefits Before</b>	\$39,500	\$53,500	\$50,304	\$50,304
<b>Medical and Dental Costs Before</b>	\$4,500	\$4,500	\$2,100	\$2,100
<b>Effective Income Net of Medical and Dental Costs Before</b>	\$35,000	\$49,000	\$48,204	\$48,204
<b>Medical and Dental Benefits Nortel Before</b>	\$4,500	\$4,500	\$2,100	\$2,100
<b>Income All Sources Before</b>	\$35,000	\$49,000	\$48,204	\$48,204
<b>Old Age Security</b>	\$0	\$0	\$6,204	\$6,204
<b>CPP First Payer</b>	\$13,272	\$13,272	\$10,905	\$10,905
<b>Income Nortel Before</b>	\$21,728	\$35,728	\$31,095	\$31,095
<b>Income All Sources and M &amp; D Benefits After</b>	\$20,996	\$25,119	\$40,325	\$44,045
<b>Medical and Dental Costs After</b>	\$4,500	\$4,500	\$2,100	\$2,100
<b>Effective Income Net of Medical and Dental Costs After</b>	\$16,496	\$20,619	\$38,225	\$41,945
<b>Medical and Dental Benefits Nortel After</b>	\$1,325	\$1,325	\$315	\$315
<b>Income All Sources After</b>	\$19,671	\$23,794	\$40,010	\$43,730
<b>Old Age Security</b>	\$0	\$0	\$6,204	\$6,204
<b>CPP First Payer</b>	\$13,272	\$13,272	\$10,905	\$10,905
<b>Income Nortel After</b>	\$6,399	\$10,522	\$22,901	\$26,621
<b>% Reduction Nortel Income and M &amp; D Benefits</b>	-71%	-71%	-30%	-19%
<b>% Reduction Effective Income Net of M &amp; D Costs</b>	-53%	-58%	-21%	-13%

<b>Table 3 - Individual With Pre-Pension Income of \$50,000</b>	<b>Long Term Disabled Employee Employer Paid to 50%</b>	<b>Employee Paid Optional Added to 70%</b>	<b>Retiree Not in Ontario</b>	<b>Retiree In Ontario</b>
<b>Working Income Before</b>	\$50,000	\$50,000	\$50,000	\$50,000
<b>% Benefit Relative to Working Income</b>	50%	70%	60%	60%
<b>Health &amp; Welfare Trust / Pension Fund Funding % on Income</b>	17%	17%	69%	92%
<b>Medical and Dental Benefits Funding %</b>	17%	17%	0%	0%
<b>Income and Medical and Dental Funding %</b>	17%	17%	62%	83%
<b>Bankruptcy Cash Settlement Ratio %</b>	15%	15%	15%	15%
<b>H &amp; WT / Pension Fund and Bankruptcy Cash Settlement %</b>	29%	29%	68%	85%
<b>Income All Sources and M &amp; D Benefits Before</b>	\$29,500	\$39,500	\$38,304	\$38,304
<b>Medical and Dental Costs Before</b>	\$4,500	\$4,500	\$2,100	\$2,100
<b>Effective Income Net of Medical and Dental Costs Before</b>	\$25,000	\$35,000	\$36,204	\$36,204
<b>Medical and Dental Benefits Nortel Before</b>	\$4,500	\$4,500	\$2,100	\$2,100
<b>Income All Sources Before</b>	\$25,000	\$35,000	\$36,204	\$36,204
<b>Old Age Security</b>	\$0	\$0	\$6,204	\$6,204
<b>CPP First Payer</b>	\$13,272	\$13,272	\$10,905	\$10,905
<b>Income Nortel Before</b>	\$11,728	\$21,728	\$19,095	\$19,095
<b>Income All Sources and M &amp; D Benefits After</b>	\$18,051	\$20,996	\$31,487	\$35,207
<b>Medical and Dental Costs After</b>	\$4,500	\$4,500	\$2,100	\$2,100
<b>Effective Income Net of Medical and Dental Costs After</b>	\$13,551	\$16,496	\$29,387	\$33,107
<b>Medical and Dental Benefits Nortel After</b>	\$1,325	\$1,325	\$315	\$315
<b>Income All Sources After</b>	\$16,726	\$19,671	\$31,172	\$34,892
<b>Old Age Security</b>	\$0	\$0	\$6,204	\$6,204
<b>CPP First Payer</b>	\$13,272	\$13,272	\$10,905	\$10,905
<b>Income Nortel After</b>	\$3,454	\$6,399	\$14,063	\$17,783
<b>% Reduction Nortel Income and M &amp; D Benefits</b>	-71%	-71%	-32%	-15%
<b>% Reduction Effective Income Net of M &amp; D Costs</b>	-46%	-53%	-19%	-9%

The Nortel retirees, who are members of the Defined Benefit Pension Plans, appear to have had lower average pre-retirement incomes than in Table 2. I know this because we learned from the April 2009 Mercers unofficial actuarial liability analysis for the pension plans, that there were 5,610 retirees in the Managerial Defined Benefit Pension Plan with an average Nortel pension of \$22,537 and there were 6,059 retirees in the Negotiated Defined Benefit Pension Plan with an average Nortel pension of \$12,811. All 11,669 retirees combined therefore have an average Nortel pension of \$17,876 and this equates to an average combined Nortel and CPP pension of \$28,781. The pre-retirement income for this average retiree at the 60% income replacement rate would be \$47,968. I have rounded this pre-retirement income to \$50,000 in Table 3, and show again on an apples to apples basis, what happens to a LTD employee with pre-disability income of \$50,000.

Table 1 and Table 3 show that a LTD employee, who earned \$50,000 per annum pre-disability and who was on Nortel's 50% LTD wage loss replacement plan with medical and dental benefits paid to age 65, goes from an effective income net of medical and dental costs before of \$25,000 to an amount after of only \$13,551. The retiree not in Ontario, who had pre-retirement income of \$50,000 and accumulated enough years of service to get a pension of 60% with medical and dental benefits paid, goes from an effective income net of medical and dental costs before of \$36,204 to an amount after of \$29,387. The Ontario pensioner is better off due to the Ontario Government's February 8th decision to honour the calculated guarantee on the first \$12,000 per year of Ontario-based pension income. The Ontario pensioner, who started with pre-retirement income of \$50,000, ends up with effective income net of medical and dental costs of \$33,107 after the pension fund wind-up and the Nortel liquidation.

I sent to you earlier a report entitled "Nortel Feb. 8th Agreement - Inequitable Treatment and Conflict of interest," which you can find at the following link. In this report, I reached the conclusion that the Nortel LTD employees were treated less favourably within the Feb. 8th agreement than the Nortel Retirees.

[http://ismymoneysafe.org/pdf/NortelFeb\\_8thAgreement-InequitableTreatmentandConflictofInterest03102010.pdf](http://ismymoneysafe.org/pdf/NortelFeb_8thAgreement-InequitableTreatmentandConflictofInterest03102010.pdf)

### **The LTD Persons are Giving Up Much More HWT Litigation Value Relative to All Benefits Owed Than the Retirees Are.**

(after HWT wind-up settlement and after est.15% bankruptcy settlement)

Retirees give up HWT litigation value relative to all benefits owed of **1%**.

VERSUS

LTD Persons give up HWT litigation value relative to all benefits owed of **61%**.

The Retirees and the LTD Persons who are going to participate in Retiree Pensions at age 65 are both assumed not to be giving up any Pension Fund litigation rights since there is no prima facie evidence of any misconduct in the Pension Fund. All required employer contributions into the Pension Fund have been made and there is no prima facie evidence of Pension Fund making loans to Nortel like we see in the HWT and there is no indication of any investment improprieties or negligence in the Pension Fund.

### **There is Unbalanced Quid Pro Quo in the Feb. 8th Agreement**

(After HWT wind-up settlement and est. 15% bankruptcy settlement):

Overall Feb. 8th Agreement:

**Quid:** Nortel gives \$44M for 9 Mos. **Quo:** Release for Est. \$157M in HWT liability.

Agreement for LTD Persons:

**Quid:** Nortel gives \$11M for 9 Mos. **Quo:** Release for Est. \$82M in HWT liability.

Agreement for Retirees:

**Quid:** Nortel gives \$18M for 9 Mos. **Quo:** Release for Est. \$62M in HWT liability.

The ratio of Quid to Quo in the Feb. 8th agreement for the LTD Persons is 13% and for the Retirees is 29%. Unfortunately the quo give-up for the LTD employee has a much more detrimental impact on his or her quality of life as we showed above because his or her HWT funding of wage loss replacement income is 22% and of the medical, dental and life benefits is 0% for an average funding ratio of 17% for all LTD employee benefits.

Sincerely

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-----Original Message-----

From: Peter Burns [mailto:[snrub.retep@rogers.com](mailto:snrub.retep@rogers.com)]  
Sent: March-16-10 1:59 PM  
To: Urquhart  
Subject: Difference between Long Term Disability and Pensioners

Hi Diane,

I have been speaking with Parliamentarians about the extremely dependent, or poor lifestyles, that the LTD recipients would be asked to tolerate after Dec 31, 2010 - fired from Nortel without sufficient means of support.

Frequently, the LTDers are compared with pensioners, and some people make convincing arguments that pensioners are the same as LTD recipients. The final outcome of these arguments, is that they say LTD recipients should not get special treatment on the Hill, such as has been proposed recently.

I must confess that I am not familiar with the differences between the LTD recipients and Nortel Pensioners in a numerical way. I would like to ensure that our legislators see the real numbers from someone that can do it objectively, like you.

Would it be possible Diane, for you to make an analysis of the two cases, Pensioner and LTDer, and see if there is a real numerical inequity that can be identified between the two groups.

Here is what I'd like to claim, and only if the facts justify it, of course ...

1. I want to claim to legislators, that special treatment for the disabled is needed.
2. That Legislative changes, made solely for the disabled, and separate from the retirees, can be justified on very sound financial terms.

If this information is available, I would like to share it with the CNELTD, RFNDE and the MPs and Senators.

Thanks  
Peter Burns