

February 17, 2011

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Dear Ministers of Finance for Federal, Ontario, Quebec and Alberta Governments

We are writing today to seek a multi-lateral solution from your governments for the financial distress of the 360 Nortel disabled employees and their 160 children caused by the failure of their disability insurance upon Nortel's insolvency and the wind-up of Nortel's Health and Welfare Trust (HWT). Three alternative solutions are presented in Appendix A Page 1.

Solution 1 has two components: the first would require the Canada Revenue Agency to make a Ruling that the HWT Wind-up settlement is non-compliant with the Income Tax Act and CRA Rules for HWTs; and second, the establishment of an Emergency Relief Payment of \$50 M.

Solution 2 provides for an Emergency Relief Payment of \$80 M.

Solution 3 sees the Federal Government introducing a Nortel Disabled Emergency Relief Act that will compel a payment of \$80 M from the Nortel Canada Estate. Under Solution 3, there is no Emergency Relief Payment from the Governments. See Appendix C which relates to the Federal Government's authority to make legislation retroactive.

These three solutions are in addition to the estimated \$27 M of government assistance already provided, comprising of approximately \$4 M in allowing the HWT Wind-up settlement to be received on a tax exempt basis; and, the estimated \$23 M present value of the Provincial Prescription Drug Programs representing some 75% of the future actuarial liability for the medical and dental costs of the Nortel disabled.

The Nortel disabled are very appreciative of the help they are getting from the CPP Disability Income Program, the Disability Income Tax Credit, and the Provincial Prescription Drug Programs, such as Ontario's Trillium Drug Program, Quebec's Public Prescription Drug

Insurance Plan and the Alberta Health and Wellness Prescription Drug Program. Unfortunately, even these social security programs in the ordinary course are not enough to spare the Nortel disabled and their families from a life of poverty.

Appendix B Page 1 illustrates the degree of poverty for the Nortel disabled beginning on January 1, 2011. These dire conditions exist, notwithstanding the CPP disability income already in pay and assuming that 75% of the medical and dental costs are covered by the Provincial Prescription Drug Programs. The Nortel HWT Wind-up cash settlement provides only limited funding at an estimated 27% to 33% of the previous Nortel disability income. There is no CPP disability income increase to compensate for the massive cut in Nortel disability income.

Nortel disabled employees are having their average income reduced **from \$30,900 to \$13,600 per year**. This is the amount of income to live on after their drugs are paid. Even for the Nortel disabled employees with optional disability income coverage, their average income has dropped from **\$43,300 to \$16,900 per year**.

Some of the Nortel disabled are not currently receiving CPP disability income because they simply never applied, or they did not meet the disability definitions for the CPP, although they did meet the requirements for their Nortel disability income plan. For these Nortel disabled, the impact of the Nortel HWT Wind-up is very severe with their average income dropping from **\$30,900 per year to \$6,500 per year**.

Appendix B Page 6 shows that the Nortel disabled face poverty in their retirement years too, because their Nortel pension accruals to date are depressed by their younger ages and their disability income being well below what their career potential would have been. The disabled employees are expecting to get just a nominal Nortel Canada Estate settlement for their future pension accruals to age 65 and on their post retirement medical costs.

In addition to the obvious need created by the insult to injury, so to speak, of disability and then Nortel being insolvency, this group has been exposed to systemic failure of all the mechanisms in place to protect the assets in their Health and Welfare Trust (HWT):

- Nortel has not been held to account for making its self-insured disability income insurance unsafe, by withdrawing substantial assets from its HWT to pay corporate expenses;
- The trustees have not been held to account for allowing the Nortel HWT assets to be withdrawn and in permitting some 30% of the remaining assets to be loaned to Nortel (Appendix B Page 2);
- The Court Monitor being permitted to disperse life insurance benefits out of the HWT to pensioners who are still alive, even though the CRA disallows permanent prefunding of future life insurance benefits in HWTs (Appendix B Page 2);
- The governments have previously given Nortel generous tax deductions for employer contributions into the HWT and there have been no CRA audits to ensure that the employees received the intended income benefits;

- Despite governments knowing full well about self-insured disability income benefits being unsafe for over 25 years, there are no Disability Benefits Standards Acts similar to the Federal and Provincial Pension Benefits Standards Acts (even though disability income benefit plans cover 68% of the workforce compared to defined benefit pension plan covering 26%). This represents a massive legislative deficiency affecting a huge swath of the Canadian population;
- There have been no Federal bankruptcy law amendments to give priority for disability income claims where an employer fails to fund its disability income insurance;
- The CCAA judge used his significant judicial discretion to permit an interim settlement of just 7 cents on the dollar owed to the disabled, where the same interim settlement also provided for the release of the trustees for the alleged breach of trust in their HWT causing the disabled poverty (Appendix B Page 3);
- Appeals have not been granted in deference to the CCAA judge making his decisions expeditiously for successful restructuring, even though this liquidation is expected to produce cash for distribution in the Nortel Global Estate of more than \$6 B;
- The CPP Disability Income Program provides an inadequate safety net.

Appendix B Page 4 indicates that the **CPP Disability Income Program** provides 2011 maximum income of **\$13,840 and the average paid in 2010 was \$9,726 per year for a single disabled person.** This is below the poverty line. A retired single person has a combined maximum CPP and OAS income of \$17,811, which is \$3,971, or 29% higher, than a single person receiving the maximum CPP disability income.

Other countries take much better care of the disabled whose employers go bankrupt. Appendix B Page 5 shows the UK Pension Protection Fund covers 100% of disability income to a limit averaging \$36,068 per year. The US Social Security for a disabled person with 2 dependent children pays \$43,846 per year compared to the maximum Canada's CPP disability of \$19,084 per year for the same disabled mother with two children. Canada can and should do more to move up to international standards within its immediate peer group of the UK and US.

The Ontario Government has helped **the Nortel pensioners**, with its taxpayer funded discretionary grant of \$250 M to make top up payments for the first \$1000 per month of Ontario based pension income. It has committed to make Ontario Pension Benefit Guarantee Fund top up payments to the high end Nortel pensioners, who have successfully lobbied it for a legislative change to allow them to invest their pension assets in a risky Financial Sponsorship Model. The Ontario Government has not provided any relief funding for the massive loss of Nortel disability income. The Nortel disabled participation in the \$250 M Ontario grant for their pension accruals is estimated to be only \$3 M or about 1% of the grant.

As long as we have an inadequate social security net for the disabled and a legal structure that permits unsafe self-insured disability income benefits and the withdrawal of trust assets to

benefit corporation bond and share owners, the governments can justifiably offer emergency relief to the Nortel disabled.

Our professional team is available to assist you in planning and executing any of the solutions provided for the Nortel disabled.

Sincerely,

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Appendix A - Three Alternative Solutions for the Nortel Disabled

Appendix B - Financial Status of the Nortel Disabled

Appendix C - Federal Government Retroactive Legislation

SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS

| Present Value of Actuarial Liabilities Owed and Solution: | Income | Medicines | Combined | Government Incremental Relief |
|--|---------------|------------------|-----------------|--------------------------------------|
| Actuarial Liabilities Owed | \$104 | \$30 | \$134 | |
| HWT Settlement | \$29 | \$0 | \$29 | |
| Net Amount Owed After HWT Settlement | \$75 | \$30 | \$105 | |
| HWT Settlement Nov. 9, 2010 | | | | |
| Income Tax Free | \$4 | \$0 | \$4 | |
| Provincial Drug Prescription Programs | \$0 | \$23 | \$23 | |
| Net Owing After Above Gov't Assistance | \$71 | \$8 | \$78 | |
| TO DATE - Total Taxpayer Downloading | \$4 | \$23 | \$26 | |
| SOLUTION # 1 | | | | |
| Canada Revenue Agency Ruling on HWT Wind-up and/or Supreme Court Appeal Win | \$30 | \$0 | \$30 | |
| HWT Wind-up Settlement Overturned | | | | |
| Income Tax Free | \$4 | \$0 | \$4 | |
| Net Owing After HWT Wind-up Settlement Overturned | \$37 | \$8 | \$45 | |
| CPP/QPP Disability Special Relief (1) | \$15 | \$0 | \$15 | |
| Government Emergency Relief Payment | \$23 | \$8 | \$30 | |
| SOLUTION # 1 - Total Taxpayer Downloading | \$45 | \$30 | \$75 | \$48 |
| SOLUTION # 2 | | | | |
| CPP/QPP Disability Special Relief (1) | \$15 | \$0 | \$15 | |
| Government Emergency Relief Payment | \$56 | \$8 | \$64 | |
| SOLUTION # 2 - Total Taxpayer Downloading | \$75 | \$30 | \$105 | \$78 |
| SOLUTION # 3 | | | | |
| Introduce a Nortel Disabled Emergency Act (Force the Creditors to Pay) | | | | |
| | \$71 | \$8 | \$78 | |
| SOLUTION # 3 - Total Taxpayer Downloading | \$4 | \$23 | \$26 | \$0 |

SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS

| Present Value of Actuarial Liabilities Owed and Solutions (\$ M) | Income | Medicines | Combined | Federal (2) | Ontario | Quebec | Alberta | B.C. | |
|--|--------------|-------------|--------------|-------------|---------|--------|---------|-------|-------|
| | | | | 0% | 67% | 22% | 10% | 1% | |
| | | | | 70% | 20% | 7% | 3% | 0% | |
| Actuarial Liabilities Owed | \$104 | \$30 | \$134 | | | | | | |
| HWT Settlement | \$29 | \$0 | \$29 | | | | | | |
| Net Amount Owed After HWT Settlement | \$75 | \$30 | \$105 | | | | | | |
| HWT Settlement Nov. 9, 2010 | | | | | | | | | |
| Income Tax Free | 12% | \$4 | \$0 | \$4 | \$2.7 | \$0.8 | \$0.3 | \$0.1 | \$0.0 |
| Provincial Drug Prescription Programs | 75% | \$0 | \$23 | \$23 | \$0.0 | \$15.1 | \$5.0 | \$2.3 | \$0.2 |
| Net Owing After Above Gov't Assistance | | \$71 | \$8 | \$78 | | | | | |
| TO DATE - Total Taxpayer Downloading | | \$4 | \$23 | \$26 | \$2.7 | \$15.8 | \$5.2 | \$2.4 | \$0.2 |
| SOLUTION # 1 | | | | | | | | | |
| Canada Revenue Agency Ruling on HWT Wind-up and/or Supreme Court Appeal Win | | \$30 | \$0 | \$30 | | | | | |
| HWT Wind-up Settlement Overturned | | | | | | | | | |
| Income Tax Free | 12% | \$4 | \$0 | \$4 | \$2.7 | \$0.8 | \$0.3 | \$0.1 | \$0.0 |
| Net Owing After HWT Wind-up Settlement Overturned | | \$37 | \$8 | \$45 | | | | | |
| CPP/QPP Disability Special Relief (1) | | \$15 | \$0 | \$15 | \$0.0 | \$9.7 | \$3.2 | \$1.5 | \$0.1 |
| Government Emergency Relief Payment | | \$23 | \$8 | \$30 | \$21.0 | \$6.0 | \$2.0 | \$0.9 | \$0.1 |
| SOLUTION # 1 - Total Taxpayer Downloading | | \$45 | \$30 | \$75 | \$26.4 | \$32.4 | \$10.6 | \$4.8 | \$0.5 |

SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS

| Present Value of Actuarial Liabilities Owed and Solutions (\$ M) | Income | Medicines | Combined | Federal (2) | Ontario | Quebec | Alberta | B.C. | |
|--|--------------|-------------|--------------|-------------|------------|-----------|-----------|----------|-------|
| | | | | 0% 70% | 67% 20% | 22% 7% | 10% 3% | 1% 0% | |
| Actuarial Liabilities Owed | \$104 | \$30 | \$134 | | | | | | |
| HWT Settlement | \$29 | \$0 | \$29 | | | | | | |
| Net Amount Owed After HWT Settlement | \$75 | \$30 | \$105 | | | | | | |
| HWT Settlement Nov. 9, 2010 | | | | | | | | | |
| Income Tax Free | 12% | \$4 | \$0 | \$4 | \$2.7 | \$0.8 | \$0.3 | \$0.1 | \$0.0 |
| Provincial Drug Prescription Programs | 75% | \$0 | \$23 | \$23 | \$0.0 | \$15.1 | \$5.0 | \$2.3 | \$0.2 |
| Net Owing After Above Gov't Assistance | | \$71 | \$8 | \$78 | | | | | |
| TO DATE - Total Taxpayer Downloading | | \$4 | \$23 | \$26 | \$2.7 | \$15.8 | \$5.2 | \$2.4 | \$0.2 |
| SOLUTION # 2 | | | | | | | | | |
| CPP/QPP Disability Special Relief (1) | | \$15 | \$0 | \$15 | \$0.0 | \$9.7 | \$3.2 | \$1.5 | \$0.1 |
| Government Emergency Relief Payment | | \$56 | \$8 | \$64 | \$44.8 | \$12.9 | \$4.2 | \$1.9 | \$0.2 |
| SOLUTION # 2 - Total Taxpayer Downloading | | \$75 | \$30 | \$105 | \$47.4 | \$38.4 | \$12.6 | \$5.7 | \$0.6 |

SOLUTIONS FOR NORTEL DISABLED EMPLOYEES FINANCIAL CRISIS

| Present Value of Actuarial Liabilities Owed and Solutions (\$ M) | Income | Medicines | Combined | Federal (2) | Ontario | Quebec | Alberta | B.C. | | |
|---|--------------|--------------------------|--------------|-------------|---------|--------|---------|-------|-------|-------|
| | | | | 0% | 67% | 22% | 10% | 1% | | |
| | | | | 70% | 20% | 7% | 3% | 0% | | |
| Actuarial Liabilities Owed | \$104 | \$30 | \$134 | | | | | | | |
| HWT Settlement | \$29 | \$0 | \$29 | | | | | | | |
| Net Amount Owed After HWT Settlement | \$75 | \$30 | \$105 | | | | | | | |
| HWT Settlement Nov. 9, 2010 | | | | | | | | | | |
| Income Tax Free | 12% | \$4 | \$0 | \$4 | \$2.7 | \$0.8 | \$0.3 | \$0.1 | \$0.0 | |
| Provincial Drug Prescription Programs | 75% | \$0 | \$23 | \$23 | \$0.0 | \$15.1 | \$5.0 | \$2.3 | \$0.2 | |
| Net Owing After Above Gov't Assistance | | \$71 | \$8 | \$78 | | | | | | |
| TO DATE - Total Taxpayer Downloading | | \$4 | \$23 | \$26 | \$2.7 | \$15.8 | \$5.2 | \$2.4 | \$0.2 | |
| SOLUTION # 3 | | | | | | | | | | |
| Introduce a Nortel Disabled Emergency Act (Force the Creditors to Pay) | | | | | | | | | | |
| | | Not Pay Medicines | \$71 | \$8 | \$78 | | | | | |
| SOLUTION # 3 - Total Taxpayer Downloading | | Not Pay Medicines | \$4 | \$23 | \$26 | \$2.7 | \$15.8 | \$5.2 | \$2.4 | \$0.2 |

Notes

| (1) CPP/QPP Disability Special Concessions | % | # | After | Before | Difference | PV Factor | PV Cost |
|--|-----|-----|----------|----------|------------|-----------|---------|
| Below Max | 80% | 288 | \$13,840 | \$9,728 | \$4,112 | 9.5 | \$11 |
| Not On CPP/QPP | 10% | 36 | \$9,728 | \$0 | \$9,728 | 9.5 | \$3 |
| Total CPP/QPP Change | | | | | | | \$15 |
| Nortel Income | | 360 | | \$30,500 | | 9.5 | |

| (2) Federal and Provincial Income Taxes (\$ Millions) | Federal | Provincial | Combined |
|---|------------------|-----------------|------------------|
| Personal Income Taxes | \$189,222 | | |
| Corporate Income Taxes | \$50,277 | | |
| Total Income Taxes | \$239,499 | \$95,652 | \$335,151 |
| Mix of Income Taxes | 71% | 29% | 100% |

Federal Government income taxes are assumed to contribute to taxpayer downloading in terms of income tax free settlements and additional government bailout required, and not for CPP/QPP special concessions.

Comparison of Nortel Disabled and Pensioners Income Including CPP, OAS & Provincial Prescription Drugs Reimbursement

Includes CPP Disability, CPP & OAS Pension Income, Unless Noted Otherwise.

■ Before ■ After

Includes Provincial Prescription Drug Programs After at 75% Funding Compared to Nortel Before.

Income Before Is on an Average Basis Reported By Nortel.

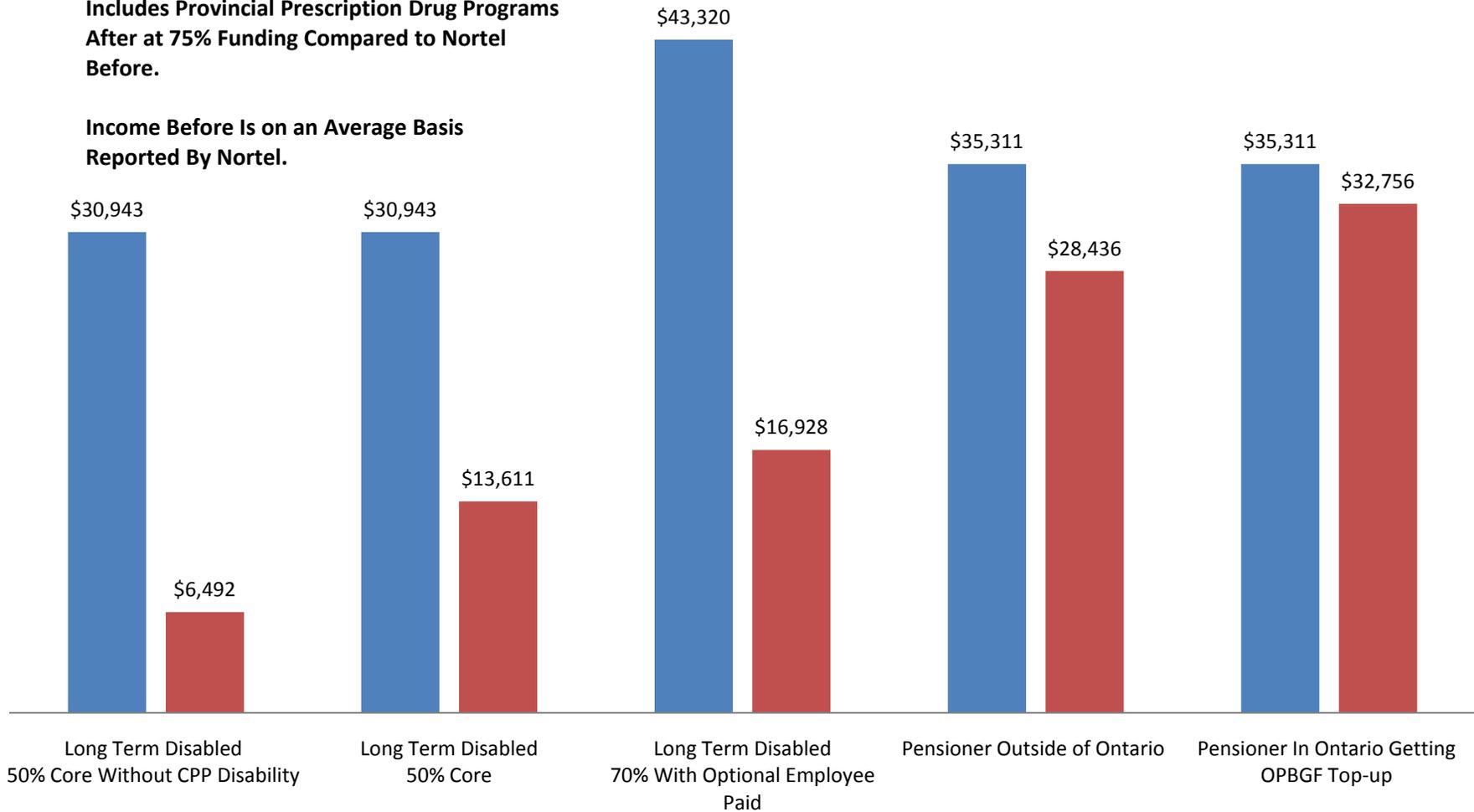
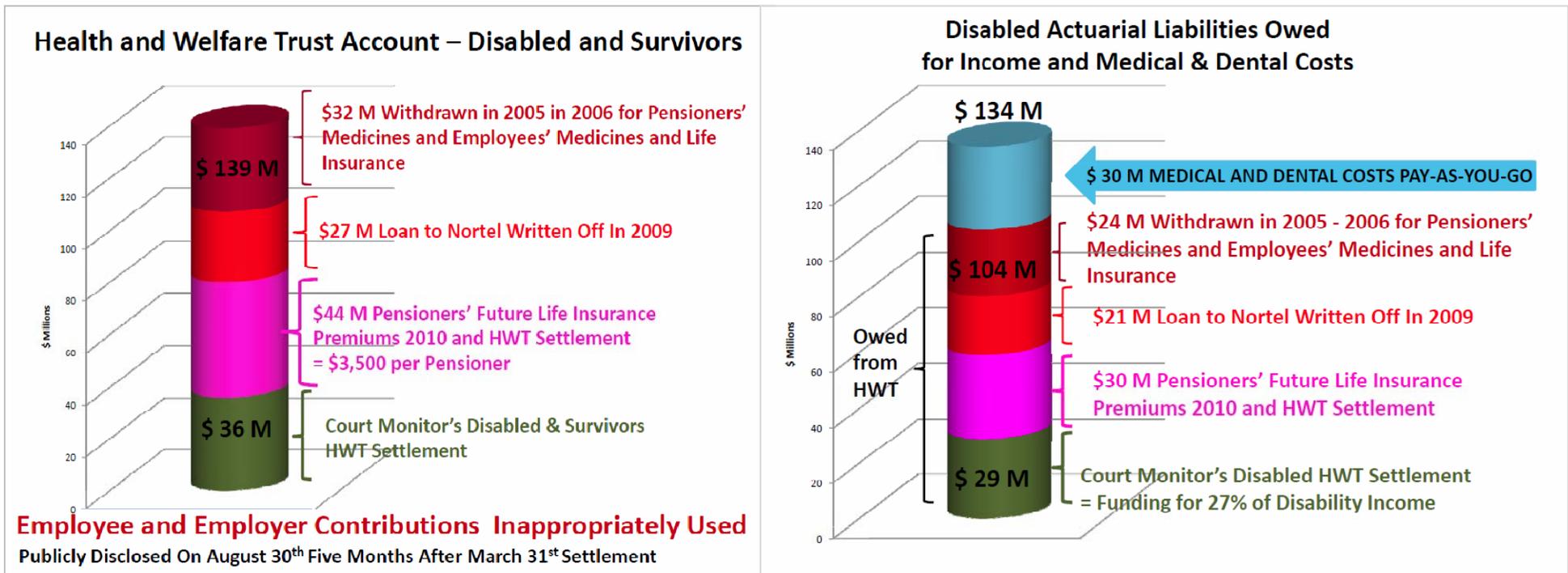


Figure 2: Health and Welfare Trust Withdrawal of Assets a Form of Misappropriation



Gains and Losses If Life Insurance Not a Legal Obligation of HWT

\$ Millions

March 31st Settlement - Incremental Gain 2010 Employee Benefits
March 31st Settlement - Pensioners Life Insurance from HWT for 2010
Nov. 9th HWT Settlement
Total March 31st Settlement and Nov. 9th HWT Settlement

| Pensioners | Disabled | Survivors | Creditors | Combined |
|-------------|-------------|-------------|--------------|-------------|
| \$23 | \$12 | \$3 | -\$38 | \$0 |
| \$8 | \$0 | \$0 | \$0 | \$8 |
| \$36 | \$29 | \$7 | \$0 | \$72 |
| \$67 | \$41 | \$10 | -\$38 | \$80 |

March 31st Legal Release Ignores Breach of Fiduciary Duties for Withdrawn HWT Assets
Nov. 9th HWT Settlement Pays Pensioners Life Benefits Notwithstanding No Death Incurred
Combined Impact of Disabled and Survivors Mistreatment

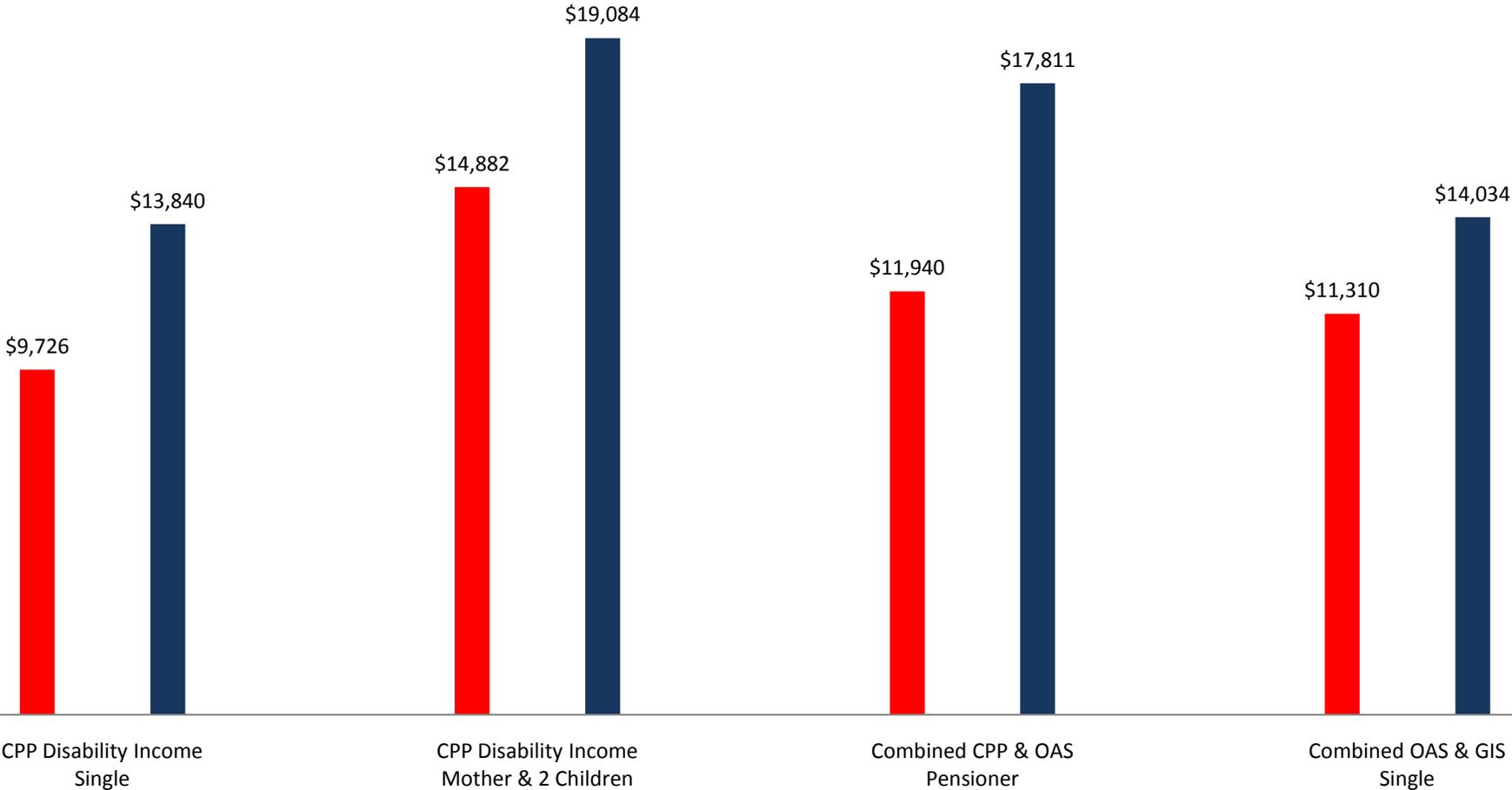
| | | | | |
|-------------|--------------|-------|------|-----|
| \$0 | -\$45 | -\$6 | \$51 | \$0 |
| \$36 | -\$30 | -\$6 | \$0 | \$0 |
| \$36 | -\$75 | -\$12 | \$51 | \$0 |

OPBGF Grant from Taxpayers

| | | | | |
|--------------|-----|-----|-----|-------|
| \$250 | \$0 | \$0 | \$0 | \$250 |
|--------------|-----|-----|-----|-------|

Comparison of CPP, OAS & GIS Social Security Benefits

■ Average 2010 ■ Maximum 2011



Comparison of Canada, U.S. And U.K. Maximum Government Disability Benefits

| 2011 | Canada Pension Plan | U.S. Social Security | UK Pension Protection Fund* |
|---|------------------------|-------------------------|--------------------------------|
| Disability income | \$13,840 | \$25,044 | |
| Supplement for children of disabled parent | \$5,244 | \$18,802 | |
| Disability income for family | \$19,084 | \$43,846 | \$36,068 |

*Average of all ages

Nortel Health and Welfare Trust Distribution Court Decisions

J. Morawetz - November 9, 2010 Ontario Superior Court of Justice Decision

J. Weiler - January 7, 2011 Court of Appeal of Ontario Decision

| | ACTUARIAL LIABILITIES |
|---|-----------------------|
| Income * | \$104 M |
| Life Insurance | |
| Core | \$5 M |
| Optional Waived | \$3 M |
| Life Insurance Total | \$8 M |
| Medical & Dental | \$30 M |
| Pension Accruals | \$26 M |
| Post Retirement Medical & Dental and Life | \$13 M |
| <hr/> | |
| Total LTD Actuarial Liabilities | \$180 M |



* Mercers says just \$80 M Actuarial Liabilities

HOW ARE THE DISABLED SUPPOSED TO GO ON WITHOUT MOST OF THEIR INCOME?

2010 Ontario Budget: Chapter III: Tax and Pension Systems for Ontario's Future

March 25, 2010

The Pension Benefits Guarantee Fund

One of the issues raised by the Expert Commission was the continuing viability of the Pension Benefits Guarantee Fund

(PBGF). The PBGF is the only fund of its kind in Canada. The Pension Benefit Guaranty Corporation in the United States and the Pension Protection Fund in the United Kingdom operate in similar pension systems. All three face considerable financial challenges.

While intended to be self-financing, the annual assessments paid by the employer sponsors of DB pension plans (which averaged \$48 million per year from 2005 to 2009) have been insufficient to meet the claims on the PBGF. The Province has provided a series of loans to the Fund that resulted in debts outstanding to the Province of \$275 million at March 31, 2009.

Stabilizing the PBGF

Responding to the increasing challenges faced by the PBGF, the government is providing a \$500 million grant to the Fund in 2009-10. This grant will help ensure the PBGF has sufficient assets to cover claims in the near term.

Appendix C

Federal Government Retroactive Legislation

Appendix C discusses the technical legal arguments surrounding the Transition Clauses in Bill S-216 and Bill C-624 and the authority of the Federal Government to make retroactive legislation.

[Senate Hansard Transcripts on Nortel Disabled 2010](#) show that the Conservative Senators defeated Bill S-216 on December 10, 2010 primarily based on their technical legal reading that the transition clause wording is retrospective and not retroactive. The Bill was defeated before its clause by clause reading in the Senate Banking Trade and Commerce Committee on November 25, 2010. The Conservative Senators did not amend Bill S-216 to overcome their legal concerns about the transition clause causing litigation.

BILL S-216

TRANSITIONAL PROVISION

8. For greater certainty, this Act applies to a debtor in respect of whom proceedings under the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* have commenced before the coming into force of this section, [Clause Amendment Offered and Rejected - notwithstanding any judgment or order by any Court during those proceedings.]

Dec. 8, 2010 Senate Hansard, Hon. Marjory LeBreton (Leader of the Government): All senators sympathize with these unfortunate people; however, witnesses before our committees have told us that the bill will not help Nortel long-term disability recipients and instead will lead to endless litigation to the detriment of all involved. This situation is the result of a Court - approved agreement between the parties enacted under the legislation in effect at the time, and yesterday my colleague Senator Greene in his excellent remarks here in the Senate succinctly put the facts on the record.

Dec. 7, 2010 Senate Hansard, Hon. Stephen Greene: ...We have heard plenty of arguments as to how the will of Parliament is supreme and that it can legislate retroactivity. This is true. *British Columbia v. Imperial Tobacco Canada Limited*, 2005 confirmed this.

...This is not a case of simple retroactive legislation, though. The CCAA procedures underline that if any claims are to be paid, Nortel itself must file a Plan of Compromise, by which the remaining funds in the company are divided and paid to creditors. ... In the Nortel case this plan has been Court approved. There is also a clause in the Court agreement that immunizes the agreement from future changes in the law that might affect the plan. All of the creditors are bound by this, including the Nortel workers. The Ontario Superior Court's decision states very plainly that Nortel can choose to ignore any future legal changes that have a retroactive effect on the order of claims. The judge stated that such compromises, as found in the sad case of Nortel, are final.

... It is thus highly unlikely that, just because a law has been changed, Nortel would file a new plan without a legal fight, and likely a lengthy and costly one, because there is no requirement for Nortel to do so. We all must recognize this. Retroactivity is not the only issue here. The Court agreement allows Nortel to ignore legal changes. Thus, for the LTD claims to be extended, Nortel itself must recognize that the laws have been changed and then must decide to file a new plan in order that Nortel LTD claimants are satisfied. ... In short, the bill changes the rules under which the previous compromise plan was made, but it is powerless in forcing a new compromise to be made and it is powerless in avoiding the Court's decision that Nortel can ignore retroactive legal changes to the priority of claimants. As it is, the bill would simply state that the order of claimants is different, to which Nortel can legally answer, "So what? We have a Court agreement that says we can ignore it," and they can, without legal consequences.

...As it turns out, because of the Court agreement, this bill, as it applies to Nortel, is a retrospective piece of legislation, not a retroactive piece. There is a difference.

The Supreme Court of Canada, in *Benner v. Canada*, adopted these definitions to explain the distinction: A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in the future with respect to a past event. [Dissenting Disabled Lawyers' Response (4)]

Dissenting Disabled Lawyers' Response on Retroactive Law Not Possible in This Case

New Federal statutes can apply retroactively, even if they affect the substantive rights and obligations of prior Court approved settlements. The prospects for successful litigation of the retroactive statute is squashed by clear language in the retroactive clause to achieve the specific purpose of altering specific provisions in a specific prior Court approved settlement: *Smith Estate v. National Money Mart Company*, 2008 CanLII 27479 (ON S.C.); *British Columbia v Imperial Tobacco Canada Ltd.*, S.C.C. 49 [2005]; *Angus v. Sun Alliance Insurance Co.*, 1988 CanLII 5 (S.C.C.), [1988] 2 S.C.R. 256; *Acme (Village) School District No. 2296 v. Steele Smith*, [1933] S.C.R. 47.

As such, in the face of a clearly worded retroactivity clause it is highly unlikely that any litigation will be commenced on the retroactive effect of Bill S-216, or another government bill, striving to obtain a preference for the Nortel disability income and medical claims above the unsecured creditors notwithstanding the Interim Settlement.

Private contracts are generally considered not to constrain governments' legislative competence, and Courts are required to apply the law that's given to them, provided the matter is within the jurisdictional competence of the government that enacted the law, and further provided the law is not in conflict with the Charter of Rights and Freedoms.

In Canada, there is a restriction on new laws with retroactive effect only in the field of criminal law under Section 11(g) of the Charter of Rights and Freedoms. This restriction on retroactivity does not apply to statutes dealing with civil matters.

The Canada Library of Parliament Report, "Coming Into Force of Federal Legislation," dated May 15, 2009 says, "A common practice is to give legislation a retroactive effect, meaning that its provisions are deemed to have come into force on a date prior to Royal Assent. Such an Act, although it is not enforceable before its Royal Assent can apply once enacted to the facts and situations that occurred before its Royal Assent " Income Tax Act amendments routinely go into retroactive effect on the date of their announcement, and before the amendment is given Royal Assent.

Furthermore, litigation is unlikely from the CAW Canada, the non-union pensioners and severed workers, bond owners, banks, the U.S. Pension Benefit Guarantee Corporation and the UK Pension Protection Fund due to the untold reputational damage to their organizations if they attempted to prevent the government ordered settlement of these very ill and injured persons.

Dissenting Disabled Lawyers' Response on Already Court Approved Plan of Compromise

The Conservative Senators have misunderstood that Nortel has filed a Plan of Compromise, which is Court approved. Nortel has filed an Interim Agreement only, that is Court approved. Nortel needs to file a CCAA Final Plan of Compromise or Arrangement for Court approval before it can close on its liquidation. A corporation doing a liquidation under CCAA needs to get a final Court order to enable the closing of the liquidation, even if it does not file a CCAA Final Plan of Compromise or Arrangement. The CCAA judge can force a liquidation under BIA by lifting his CCAA stay.

The actuarial liabilities owed to the Nortel disabled after the HWT settlement is paid are not payable until the Court order for liquidation closing has occurred. The retroactive clause in Bill S-216 would supersede the methodology of CCAA compromise prescribed by the Interim 2010 settlement agreement through the Federal Government's right to enact retroactive legislation. In addition, the LTD employee CCAA claim settlement was not paid at the time of the March 31, 2010 Interim Settlement and it will be payable at the time of the CCAA Final Plan Date.

A judge must make his orders compliant with the CCAA and BIA. This includes making his order approving the final liquidation of Nortel compliant with the retroactive clause in the CCAA and BIA amendments in effect prior to the date of his order and notwithstanding any prior order he has made that is superseded by the explicit intent of the Federal Parliament in its passage of the clearly written retroactive clause whose purpose is to do so.

Dissenting Disabled Lawyers' Response on the Transition Provision of Bill C-624

There is a new House of Commons Private Members LTD Bill C-624 that was tabled by Liberal MP Mark Eyking from Sydney-Victoria, Cape Breton, Nova Scotia on Feb. 11, 2011. Bill C-624 effectively replaces Bill C-610 tabled by MP Judy Sgro on Dec. 15, 2010, since its place is higher in the queue for consideration in the House of Commons.

BILL C-624

TRANSITIONAL PROVISION

8. For greater certainty and despite any agreement or court decision or order to the contrary, this Act applies to a debtor in respect of whom proceedings under the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* have commenced before the coming into force of this section.

The Transition Clause of Bill C-624 should meet the concerns of the Conservative Senators about Bill S-216's Transition Clause being retrospective and not retroactive. The new Transition Clause of Bill C-624 is clearly intended to be retroactive and is written in plain English to be applicable to any agreement or court decision or order to the contrary, which in this case is the March 31st Interim Settlement. The Nortel CCAA proceedings commenced and are not expected to be completed before the expected coming into force date for Bill C-624.