

Tony Clement (Clement.T@parl.gc.ca)
Rona Ambrose (AmbroR@parl.gc.ca)

November 8, 2010

Dear Industry Minister Tony Clement and Public Works Minister Rona Ambrose

Re: Getting Nortel Long Term Disabled Employees Paid

We are pleased to see that the Government is saying in the House of Commons on October 27, 2010 that help is on the way for the Nortel long term disabled employees.

(See [Hansard Transcript October 27, 2010](#))

Now that the Government of Canada announced its purchase of Nortel's Ottawa Carling Facilities for \$208 million, there is flexibility for the Government to facilitate a solution to this unfortunate situation, without requiring a taxpayer bailout or causing resistance from foreign Nortel bond owners.

I have been working with lawyers in Toronto and two senior actuaries, Joann Williams of Welton Parent Inc. in Ottawa and Jeremy Bell of the B.C. Health Care Trust in British Columbia, to get a better financial outcome for the Nortel long term disabled (LTD) employees. You are aware from my previous communications that about 375 Nortel LTD employees will become impoverished when Nortel potentially cuts their disability income by over 70% and stops their medical funding at the end of this year. The actual % of disability income cut depends upon J. Morawetz's pending decision on the Nortel HWT Distribution. We are retained by the Dissenting Nortel Disabled Beneficiaries, however, all of the Nortel disabled employees, both unionized and non-unionized, will benefit from the legal arguments and supporting actuarial and financial opinions and evidence we bring to the table.

Lawyers from Rochon Genova together, with myself, and several well informed Nortel LTD employees have met with officials at Industry Canada and Finance Canada over the past year. Our expert team wishes to continue our consultations with the Federal Government to ensure that the Nortel LTD employees receive a fair settlement based on independent facts on the circumstances of why there is a shortfall of assets within their HWT and a fair process for determining the actuarial liabilities owed to this group.

Nortel, Nortel's actuary Mercers, Nortel's legal counsel Ogilvie Renault LLP, the Court Monitor Ernst & Young, the Court Monitor's legal counsel Goodmans LLP, the Representative Legal Counsel Koskie Minsky LLP (KM) for the pensioners, severed employees and LTD continuing employees, KM's actuary Segal, and KM's financial advisor RSM Richter, the CAW Canada and Sue Kennedy's newly retained legal counsel Sacks Goldblatt Mitchell LLP have all overlooked the assets improperly withdrawn from this irrevocable HWT and the laws and generally acceptable actuarial principles and practices that must govern the distribution of the HWT assets upon its wind-up.

We reviewed the thousands of pages of new financial and actuarial information and legal contracts released by the Canadian Nortel CCAA Court Monitor on August 30, 2010 and reached three key conclusions:

1. Based on law and the supporting actuarial and financial expert opinions and evidence, the \$80 M of HWT assets should be distributed at \$58 M to the LTD Employees Income Beneficiaries; \$15 M to the Survivors Income Beneficiaries; and, just \$8 M to the Pensioners for 2010 group life insurance premiums, the latter amount agreed to under the March 31, 2010 interim settlement agreement.
2. There was \$32 M of employer contributions improperly withdrawn from the HWT during May 2005 to April 2006, to pay for the medical claims of pensioners and the medical claims and life insurance premiums of employees. This was confirmed by the financial analysis of the HWT financial statements in Diane Urquhart's affidavit, Appendix "GGG" of the new August 30th information, and the affidavit of former Nortel Treasurer Mike McCorkle, who was in charge of a 2005-06 project evaluating whether Nortel could wind-up the HWT.
3. There is a \$27 M amount "Due from Sponsoring Company" amongst the assets on the HWT balance sheet. This amount "Due from Sponsoring Company" is a loan to Nortel that was written off at December 31, 2009. This HWT loan asset was not repaid from Nortel's available cash of \$1.8 B in its Global Estate and \$261 M in its Canada Estate just prior to the Nortel bankruptcy filing at January 14, 2009. The purpose of this loan was to officially recognize the proportion of the required employer contributions that was paid by an IOU, rather than in cash. This loan has been improperly submitted as an unsecured creditor claim within the Canada Estate.

Given the significance of the matters to the health and dignity of the Nortel LTD Employees, our team of experts continue to explore all legal, government and negotiated avenues for remedy of the breaches of trust that have occurred within the Nortel HWT.

I have written the attached November 3, 2010 letter to PIMCO, asking this Nortel bond owner to act as a catalyst for a US Nortel bond owners' agreement to concede \$59 M out of the \$75 M prior charge for the Canada Estate DIP financing that was secured by the Carling Facilities sale proceeds. The Nortel Canada Estate would bear less of the burden, if US bond owners made this \$59 M concession to reimburse all of the withdrawn assets to the HWT for the Canadian LTD Employees and Survivors Income Beneficiaries.

This prior charge concession, together with a positive decision from J. Morawetz on the distribution of the remaining HWT assets, will expeditiously resolve the wrongfully withdrawn HWT assets and enable a full settlement of the Canadian LTD Employees' Income Benefits, as shown in Table 1. In Table 2, we show the consequence of the US Estate \$59 M Prior Charge concession on the use of the

Carling Facilities Sale Proceeds as a solution for the damaged LTD Employees and Survivors
Income Benefits.

Table 3 shows that there are estimated \$63 M of actuarial liabilities owed for other LTD Benefit Plan benefits, such as medical, life insurance and pension accruals between now and retirement. These other benefits are not legal obligations of the HWT, but are obligations of the Nortel Estate because Nortel promised to pay these benefits for the long term disabled until they reached age 65, death or in some cases their recovery.

This is an unfortunate situation that the Canadian Government, the US Nortel bond owners and the Nortel Canadian LTD employees should not allow to fester. Weaknesses in the Canadian CCAA court procedures and the imbalance of power between large bond owners and disabled persons should not be reasons to push fellow human beings into despair and homelessness. There was an HWT trustee contract, Nortel management governance committees and third party trustees, professional actuarial firms involved, and income tax laws and related interpretation guidelines for HWTs and Long Term Disability Wage Loss Replacement Plans, and yet all these have failed to protect our most vulnerable citizens, the seriously sick and injured. Their disabilities are through no fault of their own and these people have endured 21 months of unbearable financial and legal distress that is by all accounts worse than their disability.

Let's get this file done for the sake of these Nortel long term disabled persons and to bring some semblance of integrity back to our capital markets and the bankruptcy process in its treatment of trust accounts for the disabled.

Sincerely

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Table 1

Impact of HWT Distribution + Restored Misappropriated HWT Assets	HWT	Scenario 2 of Monitor			Restored Misappropriated Assets + Scenario 3 of RG LLP		
		LTD	Survivors	Pensioners	LTD	Survivors	Pensioners
\$ Millions							
HWT Assets in Scenario 2 Less 2010 Pensioners Life Insurance Premiums	\$72	\$29	\$7	\$36	\$58	\$15	\$0
Pensioners Group Life Insurance Premiums Paid Out of HWT for 2010	\$8	\$0	\$0	\$8	\$0	\$0	\$8
HWT Assets for Distribution	\$80	\$29	\$7	\$44	\$58	\$15	\$8
Restored Misappropriated Assets Employer Contributions Withdrawn for Medical and Life Insurance 2005 & 2006	\$32	\$0	\$0	\$0	\$25	\$3	\$0
Loan to Nortel Written Off	\$27	\$0	\$0	\$0	\$21	\$3	\$0
HWT Assets With Misappropriated Assets Restored *	\$139	\$29	\$7	\$44	\$103	\$20	\$8
* LTD and Survivors Income HWT Legal Obligation (Inc. \$7.8 M for PLIP in 2010)	\$131				\$103	\$20	\$8

Table 2

Use of Carling Facilities Sale Proceeds for LTD Employees Settlement \$ Millions	Canada Estate Only	US Estate Contribution
Carling Campus Purchase by Canadian Federal Government	\$208	\$208
Prior Charge for Inter-Country Debtor in Possession Financing *	-\$75	-\$16
Canada Estate Contribution from Carling Facilities Sale	\$133	\$192
Survivors Income Settlement	-\$6	-\$6
LTD Employees Income Settlement	-\$46	-\$46
Combined Settlement for Misappropriated HWT Assets	-\$51	-\$51
LTD Employees Other Benefits Settlement	-\$63	-\$63
Total LTD Employees Settlement	-\$109	-\$109
Remaining Carling Facilities Proceeds for Canada Estate	\$24	\$83

* US Estate Concession of Prior Charge to Restore Misappropriated HWT Assets

Table 3

Long Term Disabled Employees Benefit Claims

	HWT DISTRIBUTION Scenario 2	HWT DISTRIBUTION Scenario 3 + US Estate Settlement
HEALTH AND WELFARE TRUST DISTRIBUTION	(\$29 M)	(\$58 M)
USESTATE SETTLEMENT FOR MISAPPROPRIATED HWT ASSETS		(\$46 M)
ACTUARIAL LIABILITIES		
Income *	\$103 M	\$103 M
Life Insurance Core **	\$5 M	
Life Insurance Optional Waived **	\$3 M	
HEALTH AND WELFARE TRUST UNPAID LIABILITIES	\$82	\$0
Life Insurance Core **		\$5 M
Life Insurance Optional Waived **		\$3 M
Medical and Dental **	\$30 M	\$30 M
Pension Accruals	\$25 M	\$25 M
LTD ACTUARIAL LIABILITIES AFTER HWT DISTRIBUTION	\$137 M	\$63 M

* Mercers Estimate of Just \$80 M Actuarial Liabilities ** Mercers Estimated Actuarial Liabilities