

Overview

The Nortel Canadian LTD Persons were informed through a press release, on Feb. 8th, 2010 about a Settlement Agreement for the Long-Term Disability (LTD) Employees and Former Employees of Nortel. The Feb. 8th Settlement Agreement at the following link was signed by John Doolittle, President and Anna Ventresco, General Counsel and Corporate Secretary, of Nortel; Murray MacDonald, the Ernst and Young Canada Court Monitor; the Legal Steering Committee of the Canadian Nortel Employees on Long-Term Disability (CNELTD) comprising of Sue Kennedy; the Legal Steering Committee for the Nortel Retirees and Terminated Employees comprising of Don Sproule, David Archibald and Michael Campbell (NRPC); Susan Philpott of Koskie Minsky LLP (KM), the court appointed Representative Counsel for both the CNELTD and the NRPC; and, Peter Kennedy, National Secretary-Treasurer of CAW-Canada. Mark Zigler, KM Co-Counsel under the Representative Counsel Order, and Barry Wadsworth, CAW-Canada internal legal counsel, presented their support for the Feb. 8th agreement in court on March 3 to 5, 2010.

[Feb.8th Settlement Agreement](#)

The Feb. 8th agreement was so unfair and abusive in terms of the confiscation of legal rights concerning Breach of Trust in the Nortel Health and Welfare Trust that a dissenting long term disabled employees group sought emergency legal representation from Rochon Genova LLP to oppose it in the Companies' Creditors Arrangement Act court hearing in Toronto on March 3 to 5, 2010. The case has been heard and Justice Geoffrey Morawetz's decision is expected in the next week or two.

Peter Burns, one of the disabled, said the agreement to him was a Hobsons' Choice. "The committee and monitor and the lawyers of Koskie Minsky give me a Hobson's choice of when to be poor or dead – it is March 31 if I don't sign – otherwise it is December 31. Diane Urquhart calculates that my income, once \$90,000 annually, will drop down to \$2,500 per year, after I pay for my medical bills."

The extreme hardship can be seen by considering the impact on a typical LTD Beneficiary. The average LTD Beneficiary had pre-disability income of about \$70,000 per year with his/her medical and dental costs paid by Nortel, then went on disability at 50% of their pre-disability income, producing a combined annual CPP disability and Nortel disability income of \$35,000 with his/her medical and dental costs paid by Nortel. As a result, after the continuation of benefits cease on December 31, 2010, the typical LTD Beneficiary's income would decrease to \$16,496 per year on a net basis, including the \$13,272 of CPP disability, after now paying for his/her own medical and dental costs. This result would drive LTD Beneficiaries below the Statistics Canada poverty line measures.

Table 1 - Individual With Pre-Pension Income of \$70,000	Long Term Disabled Employee Employer Paid to 50%	Employee Paid Optional Added to 70%
Working Income Before	\$70,000	\$70,000
% Benefit Relative to Working Income	50%	70%
Health & Welfare Trust / Pension Fund Funding % on Income	17%	17%
Medical and Dental Benefits Funding %	17%	17%
Bankruptcy Cash Settlement Ratio %	15%	15%
H & WT / Pension Fund and Bankruptcy Cash Settlement %	29%	29%
Income All Sources and M & D Benefits Before	\$39,500	\$53,500
Medical and Dental Costs Before	\$4,500	\$4,500
Effective Income Net of Medical and Dental Costs Before	\$35,000	\$49,000
Medical and Dental Benefits Nortel Before	\$4,500	\$4,500
Income All Sources Before	\$35,000	\$49,000
Old Age Security	\$0	\$0
CPP First Payer	\$13,272	\$13,272
Income Nortel Before	\$21,728	\$35,728
Income All Sources and M & D Benefits After	\$20,986	\$25,104
Medical and Dental Costs After	\$4,500	\$4,500
Effective Income Net of Medical and Dental Costs After	\$16,486	\$20,604
Medical and Dental Benefits Nortel After	\$1,324	\$1,324
Income All Sources After	\$19,663	\$23,780
Old Age Security	\$0	\$0
CPP First Payer	\$13,272	\$13,272
Income Nortel After	\$6,391	\$10,508
% Reduction Nortel Income and M & D Benefits	-71%	-71%
% Reduction Effective Income Net of M & D Costs	-53%	-58%

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16/03/2010

The Settlement Agreement was Negotiated With Conflicts of Interest:

Nortel Canadian Retirees and LTD Current Employees were all represented in negotiations by Mark Zigler and Susan Philpott of Koskie Minsky LLP for Non-Union and Teamster Union people, or Barry Wadsworth, CAW Canada internal legal counsel for the CAW Canada Union people. There is a legitimate concern by many LTD Current Employees that their legal representation did not serve their best interests. Rather their best interests were conceded for the benefit of the majority of persons represented by these legal counsel, who were the Retirees at 85% of the persons who received benefits under this agreement.

Distribution of Nortel Pensioners, Terminated and LTD Employees Feb. 8th Agreement	Number	%
Retirees	10,667	76%
Survivors Retirees	1,214	9%
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Sub-total Retirees and Survivors Retirees	11,881	85%
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Terminated Employees	1,650	12%
Survivors - Income and Transitional Benefits Plans	93	1%
Long Term Disabled Employees	399	3%
Total	14,023	100%

The Difference Between Retiree Pensions and LTD Wage Loss Replacement Pensions

Both Retirees and LTD persons receive pensions. A pension is a regular payment to a person that is intended to allow him or her to live without working to produce income. In the case of the Retirees, a pension occurs at the reaching of age 65, which is when most employees retire. In the case of LTD Persons, the pension begins when the employee becomes disabled. Failing to make employer contributions into the HWT to fund the LTD persons' pensions, while making the employer contributions into the retirees' pension fund, is constructive discrimination.

It does not matter that the creation and funding of the HWT is not subject to statutory or regulatory provisions to ensure the payment of employer contributions, while the pension fund is so subject. The HWT trustee agreement was created and sets out the obligation for Nortel to make employer contributions into the HWT to fund the current and future claims for the LTD Benefits Plan on a sound actuarial basis. Not to fund the required employer contributions into

the HWT for the LTDs' wage loss replacement pension is a Breach of Trust that requires remedy in the form of full restoration into the HWT of the omitted employer contributions plus lost investment income. The HWT deficit related to the LTD Benefits Plan is defined as the difference between the actuarial liability owed on the LTDs' wage loss replacement pensions less the assets in the HWT allocated to the LTD Benefits Plan. The HWT deficit can arise due to Nortel's failure to fund LTDs' wage loss replacement current and future pension claims or due to assets having declined in value in the market.

Neither a decline in asset values within the HWT nor Pension Fund would be a Breach of Trust. So any HWT or Pension Trust deficit caused by a decline in asset value would be a simple unsecured creditor claim under the current Bankruptcy and Insolvency Act.

a) LTDs' Wage Loss Replacement Pensions Have Less Employer Contributions Than Retirees' Pensions in the Post- Bankruptcy Filing Period

There is worse treatment in the post January 14, 2009 bankruptcy filing period of the LTD Persons' Wage Loss Replacement Pensions compared to the Retirees' Pensions, in terms of how many months of required employer contributions are being made to the HWT and pension fund, respectively. In the case of saying No to the Feb. 8th agreement, there are no required employer contributions being made into the HWT for the LTDs' wage loss replacement pensions, while there will be 15 months of required employer contributions into the pension fund for the retirees' pensions. Even saying Yes to the Feb. 8th agreement results in the discrimination, where the required employer contributions into the HWT for LTDs' wage loss replacement pensions is 12 months compared to the required employer contributions into the pension fund for the retirees' pensions of 21 months.

Employers Contributions to HWT & Pension Fund	H & WT for LTD		Pension Fund	
	Regular Contr.	Regular Contr.	Special Contr.	
No Feb. 8th Agreement				
2009 Jan-Dec	0	1	1	
2010 Jan-March	0	1	1	
2010 April-Sept	0	0	0	
2010 Oct-Dec	0	0	0	
Yes Feb. 8th Agreement				
2009 Jan-Dec	0	1	1	
2010 Jan-March	1	1	1	
2010 April-Sept	1	1	0	
2010 Oct-Dec	1	0	0	
No. of Mos. Contributions Made				
No to Feb. 8th Agreement	0	15	15	
Yes to Feb. 8th Agreement	12	21	15	

b) LTDs' Wage Loss Replacement Pensions Have Had Less Employer Contributions Than Retirees' Pensions for Many Years

Nortel appears to have not made required employer contributions for many years, and has certainly only paid a nominal fraction of the required employer contributions in 2007 and 2008 according to the financial statement for the HWT for the period ending December 31, 2008. The consequence of Nortel's failure to make its required employer contributions into the HWT to fund the LTD Persons' current and future claims on a sound actuarial basis is that the HWT severely under-funds the LTD Benefits Plan. When the HWT is severely under-funded and this Breach of Trust is not remedied, then the LTD Persons suffer a massive reduction in their wage loss replacement pension after the HWT wind-up settlement and the Nortel bankruptcy settlement. It is when the LTD wage loss replacement pensions are cut that the human rights violation of not having made the required employer contributions into the HWT for many years is exposed. Until, February 18, 2010, the LTD Current Employees were not aware of this differential treatment of Nortel not making required employer contributions into the HWT for the LTD Benefits Plan over many years versus Nortel making its required employer contributions to the pension fund for the same years.

On February 18, 2010, the Ernst and Young Court Monitor released financial information that had never before been disclosed by Nortel that showed there was a reported funding % of just 29% of the LTDs' wage loss replacement pensions. This funding percentage is based on the actuarial liability for the LTD wage loss replacement pensions disclosed in the Mercers Actuarial Report of \$105M for the period ending December 31, 2008 and the \$31M reserve assets allocated to the LTD wage loss replacement pensions according to the HWT financial statements for the period ending December 31, 2008. From the HWT financial statement for the period ending December 31, 2008, the LTD persons also learned for the first time that the HWT had loaned Nortel \$37M at some time in its history. Assuming that this HWT creditor claim against the Nortel bankruptcy estate is comprised 85% as an unsecured creditor claim, the funding percentage of the LTDs' wage loss replacement pensions falls to 22%.

LTD Persons' wage loss replacement pensions having only 22% funding from the HWT is a clear violation of Human Rights relative to the Retirees' pensions having a funding from the Pension Fund at much higher levels. There has been no omission of Nortel's required employer contributions into the Pension Fund.

Retirees' Pensions are Funded from Pension Fund before OPBGF Payment at **69%**.

Ontario Retirees' Pensions are Funded from Pension Fund after OPBGF Payment at **92%**.

VERSUS

LTD Persons' Pensions are Funded from HWT at **22%**.

- c) LTD Persons' Total Benefits Have Much Less Funding than Retirees' Total Benefits Due to Nortel Not Making Required Employer Contributions into the HWT.

Retirees' Total Benefits are Funded from Pension Fund and HWT before OPBGF Payment at **64%**.

Ontario Retirees' Total Benefits are Funded from Pension Fund and HWT after OPBGF Payment at **85%**.

VERSUS

LTD Persons' Total Benefits are Funded from HWT at **17%**.

- d) 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%.

Canada Agreed to the United Nations Convention on the Rights of Persons with Disabilities

The United Nations Convention on the Rights of Persons with Disabilities, was tabled in the House of Commons by the government on Thursday, December 3, 2009. It is subject to pending approval by the House of Commons. The list of basic rights found to be routinely denied in the world are listed at the following website. We are disturbed to see that the Feb. 8th agreement and its Hobson's Choice "to be dead or poor" violates basic rights in the United Nations Convention on the Rights of Persons with Disabilities noted in red below.

<http://www.un.org/disabilities/default.asp?id=218>

<http://www.cbc.ca/health/story/2009/12/03/un-disabilities-rights.html#ixzz0hUkV3xGk>

Persons with disabilities are routinely denied these basic rights:

- Receiving an education
- Moving around freely
- **Living independently in the community**
- Getting jobs, even when well qualified
- **Accessing information**
- **Obtaining proper health care**
- Exercising political rights, such as voting
- **Making their own decisions**

This issue should be addressed at the highest levels of Canadian Parliament regardless of the Judge's decision on this specific Nortel CCAA interim agreement in the next week or two. No Canadian court procedure, governing bankruptcy situations or otherwise, should permit a negotiated settlement to stand, that takes away the right of a long term disabled person to adjudicate an alleged Breach of Trust within trusts whose purpose is to fund the long term disabled person's wage loss replacement pension. All conflicts of interest by court-appointed representative legal counsel and their legal steering committees directed to represent and negotiate on behalf of the long term disabled must be acknowledged and rectified so that the interests of the long term disabled are paramount in the case at hand.

Rights to Oppose CCAA Agreements by Union LTD Employees Should Not be Inhibited

The CAW-Canada lawyer, Barry Wadsworth, made it very clear in his Information Update on the Feb. 8th agreement dated Feb. 8th, 2010 that "It must be noted that the Union, as a signatory to the agreement, cannot take a position opposing the agreement on your behalf and you will have to represent yourself or seek other counsel for that purpose.

[CAW Canada Information Update Dated Feb. 8, 2010](#)

Barry Wadsworth, however, appears to have rescinded this position in CCAA court on March 3rd, 2010 when he said that CAW-Canada LTD persons who oppose the Feb. 8th agreement could not be represented by Rochon Genova LLP, who represents a group of Dissenting LTD Employees. This could be verified in the court transcript.

<http://www.rochongenova.com/news/article.aspx?aid=95>

The CAW-Canada lawyer was a signatory to the Feb. 8th agreement, which had a clear process for all persons who sought to oppose the Feb. 8th agreement that was negotiated on their behalf by the Legal Steering Committees, KM LLP and the CAW-Canada Lawyer. Such a procedure for opposition to interim CCAA agreements is essential to provide a safeguard in the CCAA process, otherwise serious mistakes or conflicts of interest can be executed that cause undue duress and serious confiscation of legal rights for a small sub-group of persons without any opportunity for these persons to bring their important concerns to the attention of the court. The judge has the authority and discretion to ensure that agreements such as this one do not present an unacceptable Hobson's Choice to the disabled of either death by loss of medical benefits after March 31, 2010 or almost certain poverty after December 31, 2010 if the Breach of Trust within the HWT affecting the LTD persons' wage loss replacement pensions is not rectified.

It would not be logical for unions to oppress a minority of disabled persons for the advantage of a majority of retirees getting benefits from an agreement that covers both disabled and retirees. If it is the position of the CAW-Canada Union to drive its long term disabled members into poverty then it should say so. Surely, the CAW-Canada Union would support there being an adjudication of the alleged Breach of Trust that took place in the Nortel HWT. If this Breach of

Trust occurred then it is the cause of the Nortel disabled being pushed into poverty. In any case, even without the allegations of Breach of Trust in the HWT affecting the LTD persons, why would the CAW-Canada Union impose a requirement on its LTD members to sign an interim CCAA agreement that forces them to accept a pari passu status with unsecured creditors when the CCAA process itself is guided by equal is not equitable. Furthermore, the CAW-Canada should know that every CCAA Plan vote is followed by a Fairness Motion that allows legal counsel for the disabled to make a motion for a better than equal cash settlement on equitable grounds. There are no persons more deserving for better than equal cash settlement on equitable grounds than Canada's disabled persons. This is especially so for the Nortel disabled persons because Nortel misrepresented that their LTD benefit was insured before 2005, later disclosed that their LTD benefit was self-insured with Nortel operating similar to an insurance company, and all the while Nortel was not making its required employer contributions into the HWT, which is an alleged Breach of Trust to the disabled.

Comparison of Nortel Feb. 8th Agreement Between Pensioners and LTD Employees	Pensioners	LTD Employees
\$ Cdn. Millions		
Pension Actuarial Liability - Income (Urquhart estimate, Nortel has not disclosed this)	-4,500	0
HWT Actuarial Liability - Income (Mercers estimate for Dec. 31, 2008)	0	-105
Medical & Dental Benefits (Urquhart estimate for pensioners, Mercers for LTD)	-261	-18
Life Insurance (Mercers estimates for pensioners and LTD)	-135	-12
Combined Actuarial Liabilities	-4,896	-135
Pension /HWT Income Funding Ratio (Before Ontario Pension Benefit Guarantee Fund Payment)	69%	22%
Medical & Dental Funding Ratio	0%	0%
Life Insurance Funding Ratio	27%	0%
Future Benefits Funding Ratio (excl. Pension Accruals for LTD and Before OPBGF) \$ Mil *	3,142	23
Future Benefits Funding Ratio (excl. Pension Accruals for LTD and Before OPBGF) % **	64%	17%
2010 Benefits Being Paid	24	15
2010 Benefits Paid As % of Combined Actuarial Liabilities	0.5%	11.2%
Lost HWT Litigation Rights	-62	-82
% of Combined Actuarial Liabilities Owed	1%	61%
* Ontario Pension /HWT Income Funding Ratio (After OPBGF)	92%	
** Ontario Future Benefits Funding Ratio (excl. Pension Accruals for LTD and After OPBGF) %	85%	

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