

# Ruling on Nortel settlement due in a week

BY LEE GREENBERG, THE OTTAWA CITIZEN MARCH 6, 2010

An Ontario judge will rule in about a week on a controversial, \$57-million settlement with current and former Nortel employees, after hearing three days of submissions from scores of lawyers on the deal.

On Friday, lawyers for U.S. creditors and Canadian bondholders, argued against the deal between the insolvent company and its retired and disabled workers.

In particular, they opposed a clause in the agreement that would allow pensioners and other workers to gain priority treatment if the Canadian government changes the Bankruptcy and Insolvency Act.

"I'm asking for the removal of a tumour, your honour," said Alex MacFarlane, lawyer for the U.S. creditors. "A malignant tumour." The \$57-million settlement will fund long-term disability benefits and provide health, life, dental and pension benefits until Dec. 31.

Without it, those payments would expire at the end of March.

The controversial clause, known as H2, reflects a slim hope by current and former Nortel workers that any potential changes to Canadian bankruptcy law will come in time to help them. Otherwise, their claim will join the queue with a long list of unsecured creditors.

The Conservative minority government made vague mention of changes to the bankruptcy act in a one-line remark in Wednesday's throne speech, saying the "government will also explore ways to better protect workers when their employers go bankrupt. " While Nortel lawyer Derrick Tay dismissed the possibility of that legislation impacting the current case, MacFarlane said the clause nevertheless caused concern for his clients.

The company's pension plan is underfunded to the tune of \$1.1 billion, court heard.

MacFarlane and lawyers for the Canadian bondholders are asking Justice Morawetz to extract the clause from the settlement and send the two sides back to the bargaining table.

The U.S. creditors and Canadian bondholders objecting to the \$57 million settlement account for roughly \$6 billion of the \$27.9 billion in claims against the one-mighty telecom giant.

Nortel's assets stand at roughly \$5 billion.

It is still unclear whether they constitute a large enough proportion of creditors to scuttle the deal.

Under Canadian bankruptcy law, a company's reorganization needs approval from both a majority of

creditors in terms of numbers and dollars.

Morawetz, who is overseeing the Canadian reorganization of has also heard strong objections from a dissident group of LTD recipients. The group, object to another provision in the deal preventing them from suing over missing funds in a trust account designed to fund their disability payments.

The health and welfare trust account is missing between \$37 million and \$100 million, depending on estimates.

The missing funds mean the company's 409 disabled former workers will have to live on a fraction of what they were promised.

"We are not unhappy, your honour, we are scared to death," said Peter Burns, 54, a father of three who has fought both paralysis and the effects of a stroke since having a tumor removed in 2004.

Nortel's Tay acknowledged the pain the company's insolvency will cause.

"As much as we would like to help people, we are bound by the law and we are bound by practical commercial realities," he told court.

Meanwhile, Nortel lawyers in Delaware court won permission to pay a new round of bonuses worth as much as \$92.4 million for certain employees over the next two years, including \$4.5 million set aside for three executives.

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