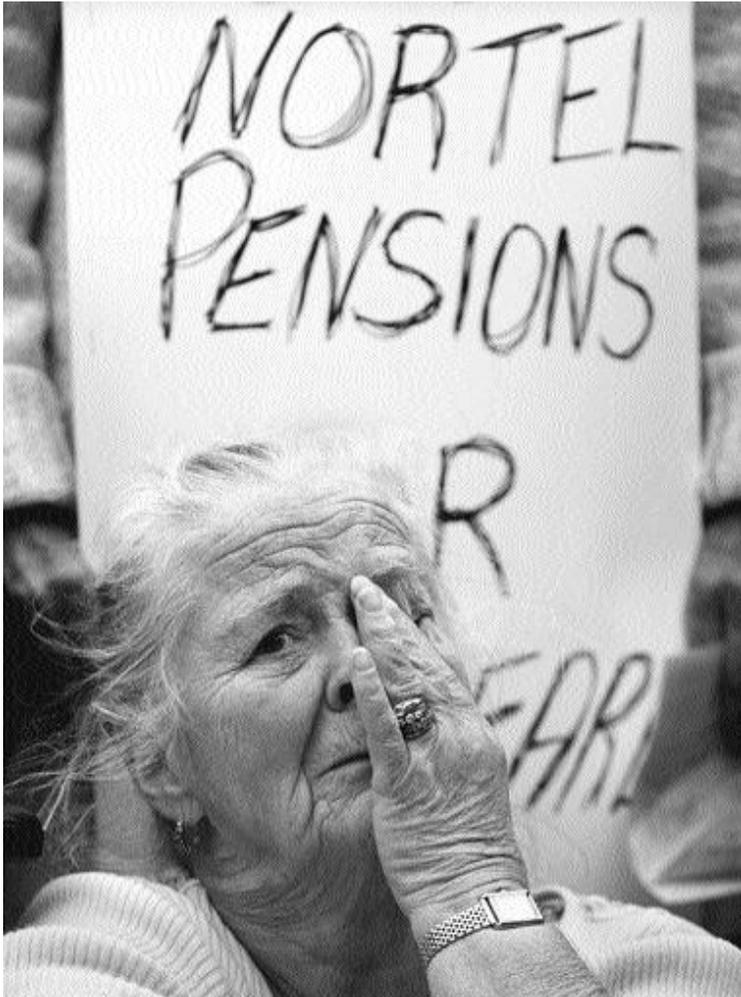


U.S. creditors lodge objections to Nortel deal with ex-employees

Ontario judge sets March 3 hearing for arguments against \$57M settlement

BY BERT HILL, THE OTTAWA CITIZEN FEBRUARY 19, 2010



Barbara Araélien, a former employee of Nortel Networks Corp., wipes her eye during a gathering in front of Queen's Park in Toronto to protest the loss of pensions and severance pay. Nortel's U.S. creditors are fighting a key part of the deal.

Photograph by: Mark Blinch, Reuters, The Ottawa Citizen

Major U.S. creditors of Nortel Networks are lining up to fight a key part of a controversial \$57-million Canadian sunset deal for former Nortel employees.

The creditors oppose a provision which opens the door to former Canadian employees getting a bigger share of Nortel assets if the federal government changes insolvency laws.

An Ontario Superior Court judge has acknowledged this will be one of the issues to be heard when he

holds a hearing on the deal March

The deal extends pension, health-care, and long-term disability benefits to the end of December. An estimated 1,200 employees dismissed without severance in the last year will get \$3,000 each toward claims.

But in return for the cash, Nortel and U.S. creditors extracted concessions preventing employee groups from seeking higher priority before U.S. and Ontario courts in claims to Nortel assets.

A key provision, however, allows ex-employees to open the issue if Canadian insolvency laws are changed.

At present, virtually all creditors are unsecured. Nortel assets are likely to cover only 50 per cent to 70 per cent of claims.

The big U.S. creditors are worried that a campaign by former Nortel employees could change the balance of power. The creditors include giants like the Bank of New York Mellon representing bondholders owed about \$4 billion; Flextronics, which makes 70 per cent of Nortel equipment, and the Pension Benefit Guarantee Corp. representing 30,000 U.S. Nortel pension plan members.

The former employees are arguing that Canadian law should be brought in line with France, Sweden, Brazil, Mexico, Australia and other countries which give employee claims higher priority, according to research by Diane Urquhart, an independent adviser.

Other countries like the U.S., England and Germany don't give employees special status, but have major pension insurance funds. In Canada, only Ontario has such protection and only on the first \$1,000 of monthly income.

If the Nortel employee groups are successful, their claims would get a bigger slice of the pie and other creditors would get less.

The campaign has the support of opposition parties on most issues. But the Conservative government has yet to support changes.

With the Canadian minority government situation in the mind, the deal was structured by Nortel and major creditors to minimize risks to other creditors.

Judges in insolvency cases enjoy sweeping powers because their decisions are rarely overturned. They can, for example, rule that particularly vulnerable groups like older pensioners on small pensions or spouses on reduced survivor benefits keep all their benefits.

The deal is under fire in Canada because it prevents these appeals from being expressed in the critical final stages in court proceedings when asset divisions are decided.

It also prevents specific groups from being recognized who might garner enough opposition to block settlements.

They also are unhappy that the deal prevents them from suing Nortel directors and executives for alleged mismanagement of pension and health and welfare funds and pursuing a Supreme Court appeal that would enforce provincial law on severance payments.

Ontario Superior Court justice Geoffrey Morawetz revealed the U.S. opposition in a decision setting out the basic terms of the proposed \$57-million deal.

"There is no question that certain aspects of the settlement agreement are being disputed by the main creditor groups; namely the bondholders and the Unsecured Creditors Committee.

"In particular, these groups take exception to (a) clause ... which addressed the possibility of future changes to the Bankruptcy and Insolvency Act."

Morawetz allowed a small change to the notice letter being sent to an estimated 17,000 Canadians who will be affected by the settlement.

It removes a paragraph which would have prevented the Ontario Pension Benefit Guarantee Fund from asserting a higher priority claim against Nortel to help finance its obligations.

With the Ontario government promising to top up the first \$1,000 of monthly Ontario Nortel pensioner incomes, the Ontario government has an obligation of about \$200 million in long-term support.

"This issue, and perhaps others, will be the subject of argument on March 3."

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