

# Prime Minister Harper Allows CRA to Abuse Disabled

- 1) Why Are the IRS – CRA Advanced Pricing Agreements That Make a \$2,063 Million Charge Against the Nortel Canada Estate Sealed in the Delaware and Toronto Bankruptcy Courts?

## What Was the Cost to Canadians of the IRS – CRA Advanced Pricing Agreements

- Nortel Canada Former Employees - \$282 Million
  - Nortel Disabled Employees – 10% of Their Income To Age 65
- 2) Minister of CRA is not enforcing the **CRA Rule in CRA IT-428** that Disability Wage Loss Replacement Plans operate on an “insurance plan”.
  - 3) Minister of CRA is not enforcing the **CRA Rules for Health and Welfare Trust Wind-up as set out in CRA Ruling Document #9433745.**
  - 4) Minister of CRA does not require CRA officials to intervene in court hearings to explain and protect the integrity of the Income Tax Act and CRA Rules for **Health and Welfare Trusts.** (Nortel got tax deductions for employer contributions to fund future life insurance benefits that are not permitted under the Income Tax Act.)

**Why Are the IRS & CRA Nortel Advanced Pricing Agreements (APA)  
That Make a \$2,063 Million Charge Against the Nortel Canada Estate  
Sealed in the Delaware and Toronto Bankruptcy Courts?**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

-----X	:	
	:	Chapter 11
<i>In re</i>	:	
	:	Case No. 09-10138 (KG)
Nortel Networks Inc., <i>et al.</i> , <sup>1</sup>	:	
	:	Jointly Administered
Debtors.	:	
	:	<b>RE: D.I. 2294</b>
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**ADVANCED PRICING AGREEMENT BETWEEN NORTEL NETWORKS, INC. AND  
THE INTERNAL REVENUE SERVICE - CONFIDENTIAL FILED UNDER SEAL**

**CONFIDENTIAL FILED UNDER SEAL - PURSUANT TO THE [PROPOSED] ORDER  
AUTHORIZING THE DEBTORS (I) TO FILE UNDER SEAL THE IRS ADVANCE  
PRICING AGREEMENT AND (II) GRANTING RELATED RELIEF (D.I. \_\_\_\_\_)**

**January 21, 2010**

## CRA Condoned Charge of \$2,063 Million Against the Nortel Canada Estate Same Size as the Expected \$2,058 Million Claims for Nortel Employee Benefits

Nortel Pensioners, Severed and Disabled Employees CCA Creditor Claims  
(After HWT Settlement)

\$ Millions

Pension Plans	1400	
Pensioners Medical	251	
Pensioners Life Insurance	83	
<b>Pensioners Total</b>	<b>1734</b>	<b>84%</b>
LTD Income	74	
LTD Medical	30	
LTD Life Insurance	8	
LTD Pension Accruals	26	
LTD Retirement Medical & Life	13	
<b>LTD Total</b>	<b>151</b>	<b>7%</b>
Survivors Income	13	1%
Severance for Terminated Employees	160	8%
<b>Former Employees Total</b>	<b>2058</b>	<b>100%</b>

# We Learn About the CRA's Nortel Advanced Pricing Agreement from this US Chapter 11 Nortel Court Filing

## IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

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*In re* Chapter 11  
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Nortel Networks Inc., *et al.*,<sup>1</sup> Case No. 09-10138 (KG)  
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Debtors. Jointly Administered  
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:  
Hearing date: January 21, 2010 at 11:00 a.m. (ET)  
:  
Objections due: January 14, 2010 at 4:00 p.m. (ET)  
:  
-----X

**MOTION PURSUANT TO 11 U.S.C. § 105(a), § 363, § 505(a) AND  
FED. R. BANKR. P. 9019 FOR AN ORDER APPROVING THE  
SETTLEMENT STIPULATION BETWEEN NORTEL NETWORKS INC.  
AND THE INTERNAL REVENUE SERVICE, ENTRY INTO  
THE ADVANCE PRICING AGREEMENT, AND RELATED RELIEF**

## **Nortel's Canadian Management and the Court Monitor Ernst & Young Secretly Negotiated the CRA Advanced Pricing Agreement and Arranged for Its Sealing in Canada's Bankruptcy Court**

34. Representatives of NNI have engaged in extensive discussions with the IRS regarding the IRS APA, the IRS Proofs of Claim, and NNI's possible tax liabilities for the tax years 1998 through 2008. Representatives of NNL and the Monitor have engaged in similar discussions with the CRA with respect to the CRA APA.

## **CRA Agrees to Reverse \$2,063 Million of Transfer Pricing Payments Paid During the 2000's by Nortel US for Nortel Canada's Research and Head Office, So That Nortel US is Spared Questionable \$3,016 Million IRS Claim**

50. The IRS APA and Settlement Stipulation are supported by sound business purposes because they allow the Debtors to close all possibility of assessment of U.S. federal taxes for the tax years up to and including NNI's taxable year ending on December 31, 2008. In addition, the IRS APA and Settlement Stipulation are essential elements of a package of agreements that, among other items, reduces the IRS Proofs of Claim amount from \$3,016,650,830.82 to \$37.5 million and acknowledges a claim against NNL in favor of NNI in excess of US \$2 billion. They also provide finality with respect to the IRS APA and the IRS Proofs of Claim and allow the Debtors to refocus the time, energy and expenses heretofore expended on those matters on other matters important to maximizing the value of the Debtors' estate, including Nortel's various asset sales.

**CRA APA Produces a Valid and Enforceable Claim of \$2,063 Million  
Against the Nortel Canadian Former Employees in Favour of the US Nortel Bond Owners.  
Why Again is the CRA APA a Sealed Legal Document ?**

39. Funding Agreement. NNI, NNL, the Monitor, the Committee and the Bondholder Group recently reached an agreement, the Final Canadian Funding and Settlement Agreement (the “Canadian Funding Agreement”), subject to court approval, that will resolve material issues among the US and Canadian Debtors and will, among other things, establish a valid and enforceable pre-filing claim in favor of NNI against NNL in the amount of \$2,062,700,000 (the “NNI Claim”) and provide for payments to NNL in the amount of \$190,800,000 (subject to certain adjustments). Contemporaneously with this Motion, the Debtors have sought this Court’s approval of the Canadian Funding Agreement by filing a Motion Pursuant to 11 U.S.C. § 105(A), § 363, § 503 and Fed. R. Bankr. P. 9019 for an Order (A) Approving the Final Canadian Funding and Settlement Agreement, and (B) Granting Related Relief (the “Canadian Funding Motion”).

# Here's the US IRS \$3,017 Million Claim Released in the CRA APA That Neither the CRA, Nor the Labour Lawyers Representing the Adversely Affected Canadian Former Employees, Contested

## Proof of Claim for Internal Revenue Taxes

Department of the Treasury/Internal Revenue Service

**In the Matter of:** NORTEL NETWORKS INC.  
2221 LAKESIDE BOULEVARD  
RICHARDSON, TX 75082



Form 10  
Attachment

Case Number 09-10138
Type of Bankruptcy Case CHAPTER 11
Date of Petition 01/14/2009

Amendment No. 1 to Proof of Claim dated 02/11/2009.

The United States has not identified a right of setoff or counterclaim. However, this determination is based on available data and is not intended to waive any right to setoff against this claim debts owed to this debtor by this or any other federal agency. All rights of setoff are preserved and will be asserted to the extent lawful.

### Unsecured Priority Claims under section 507(a)(8) of the Bankruptcy Code

<i>Taxpayer ID Number</i>	<i>Kind of Tax</i>	<i>Tax Period</i>	<i>Date Tax Assessed</i>	<i>Tax Due</i>	<i>Interest to Petition Date</i>
XX-XXX6332	CORP-INC	12/31/1998	1 Pending Examination	\$379,232,841.00	\$381,443,153.08
XX-XXX6332	CORP-INC	12/31/1999	1 Pending Examination	\$269,847,546.00	\$225,240,882.06
XX-XXX6332	CORP-INC	12/31/2000	1 Pending Examination	\$163,600,825.00	\$131,915,859.74
XX-XXX6332	CORP-INC	12/31/2001	1 Pending Examination	\$5,000.00	\$0.00
XX-XXX6332	CORP-INC	12/31/2002	1 Pending Examination	\$5,000.00	\$0.00
XX-XXX6332	CORP-INC	12/31/2003	1 Pending Examination	\$438,470,651.00	\$226,245,167.63
XX-XXX6332	CORP-INC	12/31/2004	1 Pending Examination	\$209,405,631.00	\$89,653,639.33
XX-XXX6332	CORP-INC	12/31/2005	1 Pending Examination	\$344,065,092.00	\$108,249,930.98
XX-XXX6332	CORP-INC	12/31/2007	1 Pending Examination	\$5,000.00	\$0.00
XX-XXX6332	WT-FICA	12/31/2008	2 Unassessed-No Return	\$0.00	\$0.00
				\$1,804,637,586.00	\$1,162,748,632.82

**Total Amount of Unsecured Priority Claims: \$2,967,386,218.82**

### Unsecured General Claims

Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$49,264,612.00

**Total Amount of Unsecured General Claims: \$49,264,612.00**



**What Was the Cost to Canadians of the IRS – CRA APA's  
Nortel Canada Former Employees - \$282 Million  
Nortel Disabled Employees – 10% of Their Income To Age 65**

<b>Nortel Canada Estate</b>	<b>With IRS &amp; CRA APA's</b>	<b>Without IRS &amp; CRA APA's</b>
\$ Millions		
Available Cash in Treasury Feb. 5, 2011	281	281
Canada Share of Sale Proceeds (1)	800	800
Cash for Disbursement	1081	1081
Prior Charges	150	150
Net Cash for Unsecured Creditors	931	931
IRS-CRA APA's US Claim Against Canada	2063	0
UK Pension Plan Claim Against Canada	494	494
Canada Employee Benefits' Claim	2058	2058
Other Creditor Claims	300	300
Unsecured Creditor Claims	4915	2852
Cash Settlement Ratio	19%	33%

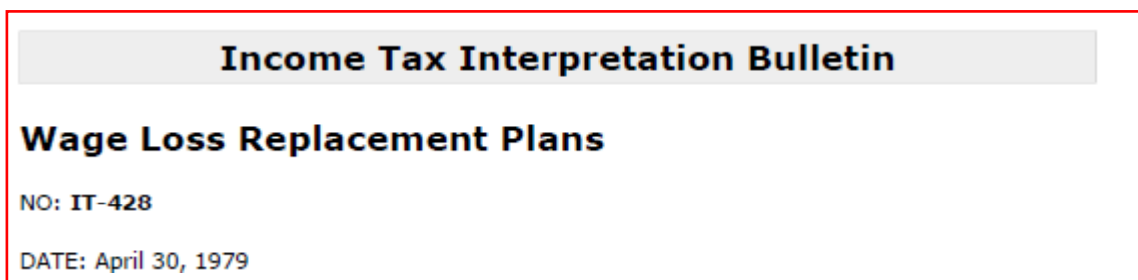
Loss of Settlement \$ to Canada Former Employee Benefits Due to IRS-CRA APA's	282
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(1) Sale Proceeds in Lock-Box	4000
Canada Share of Sale Proceeds	20%

# Letter from Minister of Canada Revenue Agency Keith Ashfield on March 15, 2011

“It is not the CRA’s responsibility as tax administrator to require an employer to ensure any minimum level of funding [in reference to disability wage loss replacement plans].”

The Minister is not enforcing the CRA Rule that Disability Wage Loss Replacement Plans operate on an “insurance plan”



“It is to be noted that, while a plan must involve insurance, it is not necessary that there be a contract of insurance with an insurance company. If, however, insurance is not provided by an insurance company, the plan must be one that is based on insurance principles, i.e., **funds must be accumulated, normally in the hands of trustees or in a trust account, that are calculated to be sufficient to meet anticipated claims.** If the arrangement merely consists of an unfunded contingency reserve on the part of the employer, it would not be an **insurance plan.**”

# Letter from Minister of Canada Revenue Agency Keith Ashfield on March 15, 2011

“It is not the role of the CRA to determine what amounts should be distributed or to whom on wind-up. “

The Minister is not enforcing the CRA Rules for Health and Welfare Trust Wind-up as set out in [CRA Ruling Document #9433745](#).

“Prior to issuing a ruling, we generally look at the clause in the trust agreement which deals with the distribution of trust assets in the event the trust is wound up. [Acceptable uses of trust funds upon windup include distribution to a registered charity as defined in section 149.1 of the Act and the provision of additional qualifying benefits as described in paragraph 1 of IT-85R2 to the employees covered by the plan.](#)”

# Letter from Minister of Canada Revenue Agency Keith Ashfield on March 15, 2011

“It is also not within the CRA’s authority to override the particular distributions directed by a court order. “

The Minister is not prepared to hold CRA officials to account for allowing Nortel to contravene the Income Tax Act and CRA Rules for Health and Welfare Trusts and Wage Loss Replacement Plans.

- 1) Nortel got tax deductions for employer contributions to fund future life insurance benefits that are not permitted under the Income Tax Act.
- 2) Nortel’s Health and Welfare Trust Wind-up Distribution is not in compliance with Ruling Document # 9433745.
- 3) Minister does not require CRA officials to intervene in court hearings to explain and protect the integrity of the Income Tax Act and CRA Rules for Health and Welfare Trusts, which results in court decisions that are not tax compliant.

**[Endorsement Leave to Appeal Nortel HWT Distribution J. Weiler Jan. 7, 2011](#)**

**[Endorsement HWT Nortel Distribution J. Morawetz Nov. 9, 2010](#)**

# Canada Revenue Agency Listens to Multi-Employer Benefits Council of Canada (MEBCO)

MEBCO Submission to Alberta Finance 2002 says:

- 1) It should not be mandatory for disability insurance to be provided by insurers.
- 2) It is not necessary to have regulation of full funding of disability insurance provided by employers.
- 3) The existence of trusts and trustees, who must meet the common law requirements for fiduciary duties, are adequate protection for disabled employees

## **None Of the Labour Lawyers Raise The Legal Arguments of Breach of ITA Rules and Breach Of Fiduciary Duties of Nortel and Third Party Trustees At The Nortel Health And Welfare Trust**

- Not CAW Canada Lawyer Barry Wadworth
- Not Koskie Minsky Lawyers Mark Zigler or Susan Philpott
- Not Sacks Goldblatt Mitchell Lawyers Fiona Campbell or Peter Engleman

Sue Kennedy, the unelected representative of the Nortel non-union disabled employees, signs a settlement for 9 months of benefits in exchange for a legal release of \$75 M of damages allocable to the Nortel disabled from alleged breach of fiduciary duties.

Four Ontario court judges agree to order this settlement without a vote and without evidence of informed consent. (Material disclosure of the HWT financial statements, actuarial reports and benefit plan legal documents not released by the Court Monitor Ernst & Young until five months after the settlement was court ordered.)

[Endorsement Leave to Appeal Interim Settlement J. Winkler, J. Goudge, J. MacPherson June 3, 2010](#)

[Endorsement Interim Settlement J. Morawetz March 31, 2010](#)

[Endorsement Interim Settlement J. Morawetz March 26, 2010](#)

For Additional Information Go To:

[www.protectourtomorrow.com](http://www.protectourtomorrow.com)

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