

## **Trust Account Drained, While the Disabled are Trowned**

Wednesday, September 15, 2010 10:30 A.M. to 11:00 A.M. EST  
Charles Lynch Press Conference Room, 130-S Center Block  
Parliament of Canada, Ottawa, Ontario, K1A 0A9

### **Arlene Borenstein**

Good Morning everyone

**Thank you for taking the time to come here today. My name is Arlene Borenstein and I'm a Nortel Employee on Long-Term Disability. Two fellow colleagues from Nortel are here with us today as well, one in person, Peter Burns, and Greg McAvoy, who is with us by way of telephone from Calgary, Alberta.**

**The last time we stood here, we spoke about how Nortel's bankruptcy was impacting all of our disabled colleagues. We've come back today, to give you some shocking news, but this time, not only are we here for our 400 fellow disabled employees, we're also here to speak for 83 Nortel employees who died over 15 years ago and left behind a surviving wife, husband and perhaps even their children.**

Professionals involved in the Nortel bankruptcy proceedings are proving to be responsible for the greatest abuse of the disabled in Canadian history. With over \$6 billion in the Nortel global estate, there are no valid excuses to explain why 400 Canadian ill and injured persons are being pushed into homelessness and abject poverty.

We hear the standard line often from the "professional pack" in the bankruptcy court room and even in our emails, "We have empathy, BUT, We know it's frustrating, BUT, ..." **These are nothing but empty, meaningless and insincere words. They are given as the explanation for why we are told we'll be fired as of December 31<sup>st</sup> and dropped to the curb and below the poverty line. But FAR WORSE than the use of these insincere words,** is the fact this "Professional Pack" is ignoring the laws and legal precedents that exist to protect the money in trust accounts for the disabled and the survivors. Even the provisions in federal bankruptcy laws to prevent the compromise of claims arising due to misappropriations of money while acting in a fiduciary capacity are being ignored.

**The last time we were here I said : "I couldn't possibly say exactly where things went wrong with our long-term disability plan, but I believe it started out with the very best and noblest of intentions." It turns out that this was true, Nortel did have noble intentions, and something did go very wrong, and now we've discovered what that wrongdoing was and when it happened.**

New information released on August 30, 2010 reveals that Nortel management took \$32 million of employer contributions out of the HWT in 2005 and 2006. The HWT assets are there to fund the incomes of the disabled and survivors. Nortel management used the HWT like a corporate bank account to pay for the medical and life insurance benefits of the pensioners and active employees in these two years. These are large pay as you go expenses that Nortel pays for through the HWT on an annual basis. They are not supposed to pay for these large expenses out of the HWT assets.

The professional pack, after months of negotiations behind closed doors and without permission from any of us, or other disabled employees, have all agreed that it is not necessary for Nortel to

return \$51 million of assets taken out of the Nortel Health and Welfare Trust (HWT) in recent years. These assets were supposed to be protected by the trustees of the trust account on behalf of disabled employees and survivors of Nortel deceased employees.

Nortel was forced by the US SEC to restate its financial statements in 2005 due to irregularities in the Canada Health and Welfare Trust, such as commingling the trust account with Nortel operations. Only now, five years later do the disabled learn that they are the victims of Nortel management using their trust account to manage Nortel's earnings.

The new documents released at the Ontario Superior Court of Justice on August 30, 2010 were withheld from all of us, for 19 months, despite repeated requests for them from our court appointed legal counsel and the court monitor.

The professional pack in the courtroom now says it isn't necessary for Nortel to repay the \$27 million of loans made to Nortel either. We first knew about this loan five days before court hearing on the interim settlement agreement in March 2010. The August 30th disclosures indicate that this HWT loan to Nortel is being written off.

The Federal and Provincial governments have historically been convinced by employers and unions that HWTs should be allowed to operate without regulation because they are governed by director and management governance committees and third party trustees. The bankruptcy court in the Nortel case is failing to enforce the one mechanism that employers and unions said were soundly in place to protect the disabled and other beneficiaries of trust accounts - the ability to hold the governance committees and trustees responsible for breach of fiduciary duties.

After 19 months of literally wearing the Nortel disabled out, the professional pack continues to plot the final crushing of the Nortel disabled into homelessness. The professional pack now says it's OK for the Canadian pensioners to take another \$44 million out of the \$80 million left in the HWT as a settlement for the future life insurance premiums that Nortel promised to pay employees after their retirement. The long term disabled face abject poverty at the end of this year, while the professional pack is taking millions of dollars for themselves and the clients who pay them.

First the US junk bond owners, and now the 23,000 Canadian pensioners, are benefiting from the money of the disabled and survivors, which is not rightfully theirs.

The long term disabled face abject poverty at the end of this year, while the professional pack is taking millions of dollars for themselves and the clients who pay them.

We urge the professional pack to come to its collective senses and stop the abuse of we disabled persons right now! Use the bankruptcy and trustee laws and precedents, equitable considerations and even basic human decency on this case to protect the disabled, not drive us into homelessness.

Disability is an act of accident or nature and we are in this predicament through absolutely no fault of our own. Nortel never told us our long term disability income was self-insured and that management was taking money out of their trust accounts to finance their operations and manipulate their earnings.

The Rights for Nortel Disabled Employees want the Federal and Ontario Government to stop the abuse of the disabled by corporations providing unsafe long term disability benefits. Stop the professional pack in the courtroom from taking excess amount of money from the carcass of

bankrupt companies, while trouncing the legal rights of the disabled. We expect better treatment in the Canadian Courts. Also, please support Bill S-216.

**Peter Burns**

### **Backroom Treatment of Nortel's Disabled**

In Roman times, the disabled were abandoned to die, but sometimes the lucky ones were used for amusement. The Romans did not have a word for a disabled person, instead, they used the word for 'monster'. I learned from Nortel that indignities, name calling, and stealing our independence, is a fact of life for the corporate disabled like Peter Burns - me!

The Roman Emperor Commodus, as an amusement to his guests, liked to have his two naked and disabled hunchbacks covered in mustard, and then they were displayed on a silver platter, at his banquets.

This reminds me of the way we've been treated by Nortel, and by elite and special group of professionals whose job, it seems, is to squeeze out and discredit the needs of the disabled as much as possible.

And here is the interesting outcome. These emperors ignore their obligations to the poorest and sickest and dying, and pay it to themselves first. Then come the champagne parties and caviar to celebrate a job well done while the disabled divest themselves of a sufficient lifestyle.

Is this the Canada you thought you knew?

You've already been informed of the missing 27M\$ assets in the trust and the missing 27M\$ loan to Nortel.

In a recent proposal from Ernst and Young, a further outrageous \$43.84M\$ is to be taken from the remaining \$80 million. This final settlement pays for the pensioners future life insurance premiums and abandons the weak and sick to fend for themselves.

Let me put this together for you.

Until 2005, in order to create a safe disability insurance plan, Nortel managed more than 103M\$ in a the trust sufficient to cover the income needs of the 400 disabled people until they die or retire. That is the way insurance works. The trust account has been steadily drained since then.

The disabled are already coping with inadequate pay because they are paid 50 or 70 percent of their working wage already.

With the new proposal, the disabled would be given 29 M\$ of the owed 103M\$ - that is 30% of our benefits, or about 18% of our wages

And remember, while the executives got huge bonuses we were also told in court, publicly, that there was no money. No money except for the 6 billion\$ in the Nortel global estate. They say that there was no legal obligation for Nortel to act as the insurance company it became.

Common sense would have suggested to me, that the bankruptcy court monitor should vigorously protect the most vulnerable first, and ensure that Nortel's obligations to them, as an insurer, are met.

Instead we have been heckled, and called names - 'rogues' and even 'cabals'.

I want all governments and Canadians to know that this handful of disabled people are far from secretive, or even politically biased. In fact, we work together by consensus and even democracy.

Our honesty and gruelling plight has found us financial analysts like Diane Urquhart, and actuaries like Joann Williams and Jeremy Bell, willing to testify in court on our behalf.

Our anxiety has caught the attention of visionary politicians like Art Eggleton. He, with the support of the Bloc, NDP, Liberals, and Greens, is navigating Bill S-216 for bankruptcies and insolvencies, through the Senate, and already has support of the House. We are now awaiting analysis from the Senate Banking Trading and Commerce committee after the Conservatives gave tentative support to Bill S-216.

We have other visionaries listening too, like Dwight Duncan, the Ontario finance minister, who did the right thing to protect our pensions by providing a \$250 million grant in March 2010 to support our Ontario Pension Benefit Fund Guarantee.

Truly, our only goal is to be paid enough, and to remain independent and alive.

Nortel, and anyone who will listen should know something.

The disabled like me will vigorously, and loudly, oppose any action by Nortel and the pack of professionals in the bankruptcy court room that erodes our ability to live.

The brave centurions of Nortel may wish to cover me in mustard and place me on a silver platter just like the Romans did to their disabled.

But, without a doubt, it would be a smaller indignity than I am experiencing today.

### **Greg McAvoy**

"The professional pack " is getting rich feeding off Nortel's carcass.

My name is Greg McAvoy. I am a Nortel employee on long term disability I am calling in from Calgary to show that this is a national problem affecting disabled employees across the country.

We have stated that the Nortel disabled are being pushed into poverty while a group of lawyers, accountants and other professionals that we are calling " the professional pack " - some of us use other words is getting rich feeding off Nortel's carcass.

We have seen firsthand how this group has worked to deny our rights. You only have to look at the Feb 8 settlement agreement that was forced on us by this group. This agreement denied us the broad legal rights to sue directors and trustees responsible for the money missing from our Health and Welfare Trust. Our own court appointed legal council Koskie Minsky opposed us. We had to hire separate legal counsel at our own expense to object. Both the Ontario Superior Court of Justice and the Appeals Court of Ontario agreed with the pack that common law which governs every trust in the country did not need to apply to our Health and Welfare trust, because Nortel was in bankruptcy. The single person representative for the disabled had signed the settlement agreement paying us just 7 cents on the dollar owed to us, in exchange for the legal release.

They ignored the fact that there was money missing from our trust, a fact disclosed to us just a few days before the court hearing on the settlement agreement. Now we have new evidence that there has been a systematic depletion of our trust starting in 2005 well before Nortel filed for bankruptcy. The precedent

now being set is that any company in Canada can do the same to their disabled employees without any legal consequences or remedy.

A huge problem is that many of the pack members all know each other and many have worked in each other's firms. We have provided a list of the firms and individuals that have been systematically trouncing the disabled. A few of the members include Nortel Director David Richardson formerly of head of restructuring at Ernst and Young, John Doolittle Nortel Management, Derrick Toy of Ogilvie Renault, Murray MacDonald current head of restructuring at Ernst and Young who is the court monitor, Jay Carfagnini and Gale Rubenstein of Goodmans, legal counsel for the court monitor, Mark Ziegler of Koskie Minsky representative counsel for the Nortel pensioners and the disabled and Ron Olsen and Tom Levy of Segal Actuaries. Note we are referring to many of these professionals as part of the bankruptcy ski club since many attended a lavish conference and ski vacation in Kelowna days before the settlement agreement came out on Feb 8 2010.

Major creditors include PIMCO, Fidelity and the US Pension Guarantee Corporation. The US Pension Guarantee Corporation has already taken over the Nortel US employees and provides quite lavish pension backstops. They are now major creditors in our courts trying to retrieve US taxpayers money. They stand to gain when the HWT does not get replenished for the \$86 million misappropriated from it over recent years. Not putting the money back into the HWT means more money in the Nortel estate Bond owners should not be producing investment return by keeping money that management took from the disabled trust accounts. Where is the Canadian government?

For over a year we have been telling Koskie Minsky they were conflicted since they were representing both the pensioners and the disabled who we have very different financial interests. They have recently admitted they were conflicted with respect to the allocation of the HWT which is now before the courts. As a footnote the new legal counsel for the disabled chosen by our one woman legal steering committee is Fiona Campbell of Sacks Goldblatt Mitchell. Ms. Campbell formerly worked at Koskie Minsky.

The disabled were never told our trust account was being drained and this fact was covered up by the bankruptcy professionals for the past 19 months We require both the federal and provincial governments to amend the laws around Health and Welfare Trusts. In addition we are calling for the government to pass Bill S-216 as the ultimate protection for all disabled.