

MEDIA RELEASE

Nortel Employees' Leave to Appeal Denied

Friday, June 4, 2010.

TORONTO - *The Court of Appeal of Ontario has denied objecting Nortel disabled employees' leave to appeal a March 31st settlement agreement. The LTD Employees continue their call on Ottawa to pass Bill S-216, to protect all Canadian employees who have company self-"insured" long-term disability plans.*

TORONTO - The Court of Appeal of Ontario has denied objecting Nortel disabled employees' leave to appeal a March 31st settlement agreement that among other denials of rights, prevents them from suing directors, trustees and other third parties for alleged breach of trust.

The trust at issue is Nortel's Health and Welfare Trust, an investment and funding vehicle that holds the Long-Term Disability (LTD) replacement wages and medical expenses. The problem with Nortel's LTD plan and other enduring benefits is that they are self-"insured", which means they are not insured by an insurance company. Unless these self-"insured" plans are funded for all liabilities, they present a financial risk to LTD employees in that the plan can be underfunded upon company insolvency and bankruptcy, due to a lack of cohesive federal and provincial legislation and regulation regarding trusts.

The settlement agreement forces the Nortel employees on (LTD) to give up the legal rights to sue who they feel are the accountable parties for the deeply underfunded nature of the LTD plan in exchange for a guaranteed 9 months of benefits and LTD income, which will support them until the end of the year.

Agreement with the settlement was by default – i.e. if you did not object in person at the March 3 hearing or through personally retained legal counsel, you were considered in agreement with the settlement.

In addition to this financially and physically onerous condition for objection for disabled employees, Nortel also insisted that LTD salary and medical benefits would be cut off on April 1st if the agreement was not approved. One of the employee members on the employee legal team was quoted as saying "the disabled were forced to sign this agreement with a gun to their heads".

Only 90 of the 409 LTD employees had an on-line presence, and an even smaller number were heavily involved in discussing and researching LTD issues on-line. The heavily involved LTD employees had no access to the other LTD employees who were not-online.

Financial information on the trust was finally made available on-line in a lengthy CCAA Court Monitor's Report on February 18th. Buried in a mass of data was the fact that more than \$100 M was missing from the Health and Welfare Trust and Nortel had stopped making required contributions to the trust 2 years prior to its entry into CCAA (insolvency) court. In addition, the LTD "bucket" in the trust contained an "IOU" for a \$37 M loan to Nortel.

About 40 disabled employees retained legal counsel to object to an agreement they found unfair and oppressive. The CCAA judge, Geoffrey Morawetz, refused to grant the opposing LTD employees' law firm time to study this newly revealed information or accept any arguments on fairness or grant an opportunity to pursue class action on the alleged breach of trust. Later, an amended agreement was then forced on the Nortel LTD and former employees in under 4 hours, all on-line, and again, under duress, as they stated, of immediately losing their medical benefits if they did not agree.

The Court of Appeal ruled that the Nortel LTD beneficiaries were not subject to any procedural unfairness and the case has been carefully managed from the beginning.

The Court of Appeal also ruled that the LTD employees were not able to show any substantive unfairness in the settlement.

The objecting LTD employees consider the agreement to be so unfair that there is clearly another agenda in this whole CCAA court process, which they feel is structured to ignore the former and LTD employees in favour of more powerful creditors with well-entrenched and connected lobby groups.

The LTD employees strongly feel that their human rights have been overruled by this court process in which LTD and former employees seem to be a nuisance lacking the powerful protection accorded other company creditors.

It is all legal. This is the biggest problem at the root of this abandonment of LTD and former employees in company bankruptcy, a problem the Nortel LTD employees are trying to change with their lobbying of the government for amendments to the Bankruptcy and Insolvency Acts.

The Nortel disabled employees continue to call on Ottawa to amend these laws, and in particular, approve Bill S-216, to protect all Canadian employees who have company self-"insured" long term disability plans.

[Reply Factum of the Objecting LTD Beneficiaries - Leave to Appeal - May 26, 2010](#)
[Factum of the Objecting LTD Beneficiaries - Leave to Appeal - May 18, 2010](#)

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Read the whole story on the following pages.

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Friday, June 4, 2010.

TORONTO - The Court of Appeal of Ontario has denied objecting Nortel disabled employees' leave to appeal a March 31st settlement agreement that among other denials of rights, prevents them from suing directors, trustees and other third parties for alleged breach of trust.

The trust at issue is Nortel's Health and Welfare Trust, a Canada Revenue Agency-developed investment and funding vehicle that holds the Long-Term Disability (LTD) replacement wages and medical expenses for these disabled beneficiaries. The problem with Nortel's LTD plan and other enduring benefits is that they are self-"insured", which means they are not insured by an insurance company. Unless these self-"insured" plans are funded for all liabilities, they present a financial risk to LTD employees in that the plan can be underfunded upon company bankruptcy due to a lack of cohesive federal and provincial legislation and regulation regarding trusts.

Basically, the settlement agreement forces the Nortel LTD employees to give up the legal rights to sue who they feel are the accountable parties for the deeply underfunded nature of the LTD plan in exchange for a guaranteed 9 months benefits and LTD income, which will support them until the end of the year. Nortel's LTD employees will then be thrown into poverty as of New Year, 2011, as the percentage of claim of their livelihood they will eventually receive will be quite low given Nortel's liabilities versus assets.

The settlement agreement was first announced to Nortel Canadian employees on Feb. 8th, 2010, via press release, after being negotiated by Nortel, CCAA (insolvency) court-appointed legal counsel for former and LTD employees paid for by Nortel, and a few CCAA court-appointed employee representatives who are operating under non-disclosure agreements.

The notice of settlement agreement document sent by normal mail was not received by many LTD employees until February 23rd for a CCAA court appearance in Toronto on March 3 for objecting employees. Many of the LTD CAW employee letters were returned due to incorrect addresses.

Agreement with the settlement was by default – i.e. if you did not object in person at the March 3 hearing or through personally retained legal counsel, you were considered in agreement with the settlement.

In addition to this financially and physically onerous condition for objection for disabled employees, Nortel also insisted that LTD salary and medical benefits would be cut off on April 1st if the agreement was not approved. For many, these medical benefits pay for critical drugs required to sustain life or at the least, improve their quality of life. One of the employee members on the employee legal team was quoted as saying "the disabled were forced to sign this agreement with a gun to their heads".

Only 90 of the 409 LTD employees had an on-line presence, and an even smaller number were heavily involved in discussing and researching LTD issues on-line. The heavily involved LTD employees had no access to the other LTD employees who were not-online. Repeated requests for financial data about the state of the Health and Welfare Trust and the Trustee document, which had been made prior to the sudden unexpected appearance of the settlement agreement, were again repeated for more financial data with which to form a more considered decision of the life-changing agreement before the LTD employees.

Financial information on the trust was finally made available on-line in a lengthy CCAA Court Monitor's Report on February 18th. Buried in a mass of data was the fact that more than \$100 M was missing from the Health and Welfare Trust and Nortel had stopped making required contributions to the trust many years prior to its entry into CCAA (insolvency) court. In addition, the LTD "bucket" in the trust contained an "IOU" for a \$37 M loan to Nortel.

About 40 disabled employees retained legal counsel to object to an agreement they found unfair and oppressive.

The CCAA judge, Geoffrey Morawetz, refused to grant the opposing LTD employees' law firm time to study this newly revealed information or accept any arguments on fairness or grant an opportunity to pursue class action on the alleged breach of trust. Two major changes in the agreement, one requested by the note holders creditors group denying the right to exercise the right to a change to the Bankruptcy and Insolvency Acts that would have ensured a total recovery of the LTD livelihood claim, and another one adding the pension plan trustee by name specifically as an entity not to be sued, were quickly added to the agreement without much input from most employees. This amended agreement was then forced on the Nortel LTD and former employees in under 4 hours, all on-line, and again, under duress, as they stated, of immediately losing their medical benefits if they did not agree.

The Court of Appeal ruled that the Nortel LTD beneficiaries were not subject to any procedural unfairness and the case has been carefully managed from the beginning.

The total Nortel LTD employee claim is estimated to be about 2% of Nortel's estate. This is the cost for these 40 disabled employees to retain their financial livelihoods for the rest of their lives. Effectively then, it is for A SHARE OF THIS 2% that this appeal has been denied, to maintain "legal certainty" for the other unsecured creditors in the court. These other creditors are junk bond holders, who have already made a large profit; credit default swap holders (betters on debt, most of whom are not involved in the actual loans on which they are betting), and the U.K. and U.S. governments' pension protection agencies who are covering their debts assumed in covering their pensioners' losses. U.K. LTD employees are also protected, as their LTD plan is structured as an ill-health pension. Many of these other creditors also have claims in Nortel's U.S. insolvency court, and the U.K. pension regulator can recover money from Nortel's global estate.

Independent financial analysis proves in clear mathematical terms that the disabled are the most severely affected creditor group. The pensioners will recover 70% to 90% of their livelihood claim whereas the disabled will recover only 17% of theirs.

One spouse of an LTD employees said, “It seems that the “legal certainty” of Canadian LTD employees, abandoned to Nortel’s creditor court with only a legally overturned employee contract between them and the poor house, is less important or meaningless compared to these other protected creditors. For a share of 2% of Nortel’s assets, the legal certainty of these protected creditors is deemed to be more important than the legal certainty of an adequate livelihood for long term disabled employees”.

The Court of Appeal also ruled that the LTD employees were not able to show any substantive unfairness in the settlement.

The objecting LTD employees consider the agreement to be so unfair that there is clearly another agenda in this whole CCAA court process, which they feel is structured to ignore the former and LTD employees in favour of more powerful creditors with well-entrenched and connected lobby groups.

The LTD employees strongly feel that their human rights have been overruled by this court process in which LTD and former employees seem to be a nuisance lacking the powerful protection accorded other company creditors.

The denial of the LTD objections to processes and an agreement they feel are oppressive and unfair should also be a wake up call for any Canadian employee who has a company-sponsored self-insured long term benefits plan. These plans are completely unregulated and outside the bounds of even equitable treatment within bankruptcy courts according to these judges’ rulings. According to these rulings, companies can continue to offer self-insured long term disability benefits, into which their employees may also make contributions, and not have to fully fund them or even take the funds out of trust accounts for the disable prior to bankruptcy and suffer no consequences for doing so.

It is all legal. This is the biggest problem at the root of this abandonment of LTD and former employees in company bankruptcy, a problem the Nortel LTD employees are trying to change with their lobbying of the government for amendments to the Bankruptcy and Insolvency Acts.

The Nortel disabled employees continue to call on Ottawa to amend these laws, and in particular, approve Bill S-216, to protect all Canadian employees who have company self-“insured” long-term disability plans.

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