

Submission to the House of Commons Standing Committee of Finance  
Diane A. Urquhart  
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Canada lags the world in protection of its terminated employees, pensioners, survivors and long term disabled employees during the bankruptcy protection or insolvency proceedings of their employers. 40 of 53 countries studied by the OECD have preferred or better status for employee benefits or have public pension benefit guarantee insurance. The impact of preferred status for employee benefits on the cost of credit is nominal and no research studies have been produced to demonstrate otherwise.

Corporations that liquidate with cash on their balance sheets should not be permitted to shift their employee benefit costs onto the public purse as this places a burden on all taxpayers. The social security programs must be preserved for Canadians most in need, who did not have the opportunity to work for employers that offered employee benefits.

The unregulated and non-transparent credit default swap (CDS) market and the proliferation of private equity leveraged acquisitions have made bankruptcies a "for profit" business. These two new forces in the economy encourage business liquidations rather than restructuring of business as ongoing concerns. Distressed debt buyers, the CDS hedged junk bond owners, executives and the bankruptcy financial and legal professionals are generally making profit from the liquidations. It is questionable whether short term oriented liquidations protect jobs.

Government has to ensure the economy is functioning on sound drivers and that business is conducted in a fair manner. Society expects government to intervene when unfair business practices take advantage of Canadians who are unemployed, senior or disabled.

I support Federal bankruptcy law amendments to give preferred status for pension fund deficits and unpaid severance ahead of the unsecured creditors. In addition, I strongly recommend that the long term disabled receive distinct protection and priority over the other creditor groups in Canada's bankruptcy laws.

My level of concern about LTD employees getting priority over the other creditor groups, including pensioners and other employees has risen in recent months.

(a) There is limited to no funding within current Health and Welfare Trusts to pay for LTD wage loss replacement income. Millions of Canadian think they have secure LTD benefits when they do not.

- In my review of Nortel, I was surprised to learn recently that there is over \$100M missing in the Nortel Health and Wealth Trust (HWT), causing a funding ratio of only 17% for the LTD employees' wage loss replacement income and medical claims until age 65.

- This is an alleged Breach of Trust, since Nortel failed to make employer contributions into the HWT and Nortel borrowed \$37 million from the HWT, both of which were in contravention of the trustee agreement. However, the group most deeply affected by these breaches of trust are the disabled.
  - As a consequence of these alleged Breaches of Trust, 400 LTD employees are being needlessly driven into poverty. A single disabled person is expected to have an effective income after medical costs of under \$16,700 per year as shown in Table 1 and 2.
  - Meanwhile, there is projected \$6Billion of cash for disbursement in Nortel's liquidation to creditors around the world. While the Canada Estate has projected cash of only \$134 million at April 24, 2010, it will be getting a future share of the projected \$4Billion cash in the lock box from business sale proceeds.
- (b) It is unfair to put LTD employees into poverty, while Nortel is paying retention bonuses of \$137M and over \$330M of other annual incentive payments post the bankruptcy filing. .
- (c) The disabled are not treated equally from both the social security pension perspective and the regulation of Health and Welfare Trusts versus Pension Funds: disability pensions are lower and less secure than retiree pensions from combined government and employer sources.

The single long term disabled person in Canada has a maximum CPP disability income of just **\$13,521** in 2010. The single retiree gets a combined maximum CPP and OAS pension of **\$17,414** in 2010.

- The Federal Government needs to ensure that employers honour their obligations to pay for LTD wage loss replacement income, medical costs and pension accruals since it just ratified the *UN Convention on Rights for Persons on Disability* on March 11th. Under the *UN Convention*, the Federal Government must ensure within its sphere of responsibility that it promotes equality for persons with disabilities.
- (d) The average age of the Nortel LTD employees is 42 years old and many LTD employees became disabled at younger ages than this.
- These younger disabled employees have had their incomes frozen at 50% of their pre-disabled income (or 70% with an employee paid optional LTD benefit), and this is apt to be well below their earnings potential had they not gotten sick.
  - These younger disabled persons have not been able to accumulate personal savings for retirement from their low disability incomes.
  - Their pension accruals while being sick through age 65 are similarly constrained by the amount of lower pre-disability income compared to retirees whose incomes were growing up to age 65.

(e) The Federal Government needs to amend the Federal bankruptcy laws and not wait for or rely on Provincial initiatives to protect LTD benefits.

- Even if there were to be Federal and Provincial Company Acts, Employment Standards Acts, Health and Welfare Trust Standards Acts to require the establishment of trust accounts, trustee agreements and full funding requirements for all LTD benefits plans in Canada, there would still be a need to amend the Federal bankruptcy laws so as to protect disabled employees, because they are the most vulnerable in Canadian society.

(f) Canadian court procedures, governing bankruptcy situations or otherwise, must accommodate the special needs of the disabled due to their small number and their mental or physical limitations.

- Settlement offers are being made with duress, on the basis of threats to withdraw medical funding within a short period of time.
- Court-appointed representative legal counsel and legal steering committees are operating with conflicts of interest that can harm the legal rights of the disabled.
- Special care is not being undertaken to ensure that the disabled have information supplied to them in a sufficiently clear manner and with adequate accommodation of time so that the disabled and their guardians can make informed decisions.
- Silence from the disabled is being considered approval of a settlement despite their lesser ability to interpret information and make communications and their natural fear of adverse outcomes affecting their life.
- The disabled will always be a minority creditor group in a bankruptcy proceeding and this combined with their vulnerability due to illness is enough reason to give the disabled distinct protection in bankruptcy for their peace of mind.

In conclusion, I urge the Federal Government to play its role of ensuring the economy is functioning on sound drivers and that business is conducted in a fair manner. The unfair business practices enabled by credit default swaps, private equity leveraged acquisitions and archaic bankruptcy laws cannot be permitted to take advantage of Canadian taxpayers, the unemployed, seniors or the most vulnerable among us, the disabled.

Table 1 - Summary Comparison Effective Income Net of M & D Costs Sum of Income from Nortel and Government Social Security Plans Medical and Dental Costs Without Provincial Government Assistance Nortel Bankruptcy Canada Estate Cash Settlement Ratio 15%	Long Term Disabled Employee		Survivor	Retiree	Retiree
	Employer Paid to 50%	Employee Paid Optional Added to 70%	Not in Ontario	Not in Ontario	In Ontario
Working Income Before	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
Effective Income Net of Medical and Dental Costs Before	\$25,000	\$35,000	\$24,204	\$36,204	\$36,204
Effective Income Net of Medical and Dental Costs After	\$13,727	\$16,672	\$19,775	\$29,467	\$33,187
% Reduction Effective Income Net of M & D Costs	-45%	-52%	-18%	-19%	-8%
<b>Multiple of Survivor/Retiree \$50,000 versus LTD Employee \$50,000 @ 50%</b>			1.4	2.1	2.4
Working Income Before	\$70,000	\$70,000	\$70,000	\$70,000	\$70,000
Effective Income Net of Medical and Dental Costs Before	\$35,000	\$49,000	\$31,404	\$48,204	\$48,204
Effective Income Net of Medical and Dental Costs After	\$16,672	\$20,795	\$24,751	\$38,305	\$42,025
% Reduction Effective Income Net of M & D Costs	-52%	-58%	-21%	-21%	-13%
<b>Multiple of Survivor/Retiree \$70,000 versus LTD Employee \$70,000 @ 50%</b>			1.5	2.3	2.5
<b>Multiple of Survivor/Retiree \$50,000 versus LTD Employee \$70,000 @ 50%</b>			1.2	1.8	2.0

Prepared By: Diane A. Urquhart

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Table 2 - Individual With Working Income of \$50,000	Long Term Disabled Employee		Survivor	Retiree	Retiree
	Employer Paid to 50%	Employee Paid Optional Added to 70%	Not in Ontario	Not in Ontario	In Ontario
<b>Working Income Before</b>	\$50,000	\$50,000	\$50,000	\$50,000	\$50,000
<b>% Benefit Relative to Working Income</b>	50%	70%	36%	60%	60%
<b>Health &amp; Welfare Trust / Pension Fund Funding % on Income</b>	17%	17%	69%	69%	92%
<b>Medical and Dental Benefits Funding %</b>	17%	17%	0%	0%	0%
<b>Income and Medical and Dental Funding %</b>	17%	17%	58%	62%	83%
<b>Bankruptcy Cash Settlement Ratio %</b>	15%	15%	15%	15%	15%
<b>H &amp; WT / Pension Fund and Bankruptcy Cash Settlement %</b>	29%	29%	64%	68%	86%
<b>Income All Sources and M &amp; D Benefits Before</b>	\$29,500	\$39,500	\$26,304	\$38,304	\$38,304
<b>Medical and Dental Costs Before</b>	\$4,500	\$4,500	\$2,100	\$2,100	\$2,100
<b>Effective Income Net of Medical and Dental Costs Before</b>	\$25,000	\$35,000	\$24,204	\$36,204	\$36,204
<b>Medical and Dental Benefits Nortel Before</b>	\$4,500	\$4,500	\$2,100	\$2,100	\$2,100
<b>Income All Sources Before</b>	\$25,000	\$35,000	\$24,204	\$36,204	\$36,204
<b>Guaranteed Income Supplement</b>	\$0	\$0	\$0	\$0	\$0
<b>Old Age Security</b>	\$0	\$0	\$6,204	\$6,204	\$6,204
<b>CPP First Payer</b>	\$13,521	\$13,521	\$6,726	\$11,210	\$11,210
<b>Income Nortel Before</b>	\$11,479	\$21,479	\$11,274	\$18,790	\$18,790
<b>Income All Sources and M &amp; D Benefits After</b>	\$18,227	\$21,172	\$21,875	\$31,567	\$35,287
<b>Medical and Dental Costs After</b>	\$4,500	\$4,500	\$2,100	\$2,100	\$2,100
<b>Effective Income Net of Medical and Dental Costs After</b>	\$13,727	\$16,672	\$19,775	\$29,467	\$33,187
<b>Medical and Dental Benefits Nortel After</b>	\$1,325	\$1,325	\$315	\$315	\$315
<b>Income All Sources After</b>	\$16,902	\$19,847	\$21,560	\$31,252	\$34,972
<b>Guaranteed Income Supplement</b>	\$0	\$0	\$327	\$0	\$0
<b>Old Age Security</b>	\$0	\$0	\$6,204	\$6,204	\$6,204
<b>CPP First Payer</b>	\$13,521	\$13,521	\$6,726	\$11,210	\$11,210
<b>Income Nortel After</b>	\$3,381	\$6,326	\$8,303	\$13,839	\$17,559
<b>% Reduction Nortel Income and M &amp; D Benefits</b>	-71%	-71%	-36%	-32%	-14%
<b>% Reduction Effective Income Net of M &amp; D Costs</b>	-45%	-52%	-18%	-19%	-8%