

## Fixing BIA and Setting Conditions Under the Investment Canada Act

Pension, long term disability and severance benefits are obligations that a company should pay in bankruptcies, because they are supposed to be protected by other employment and pension benefit laws in Canada. Equitable principles argue for these employment-related claims to be paid before the unsecured bondholders and other commercial creditors. Giving preferred status to the employment-related claims over the unsecured creditors will have only nominal impact on the cost and availability of credit in the debt market as a whole, since so few companies enter bankruptcy and the losses for the debt owners in this terminal phase are already high. Other OECD countries are protecting employment-related claims in bankruptcies without any material impairment of their capital markets. Please reference further research from Diane Urquhart in the link below.

[http://ismymoneysafe.org/video/Interventions to Protect Nortel's Canada Estate for Canadians July 6, 2009.pdf](http://ismymoneysafe.org/video/Interventions%20to%20Protect%20Nortel's%20Canada%20Estate%20for%20Canadians%20July%206,%202009.pdf)

Bankruptcy and Insolvency Act (BIA): We request an amendment of the BIA to provide “Preferred Status” to the claims of pensioners, disabled and severed employees, so that they receive their full, hard earned pensions, disability income and severance.

Investment Canada Act : We also request conditions on the approval of the foreign purchases of Nortel's businesses as authorized under the Investment Canada Act for allocation of sale proceeds to the Nortel Canadian pension, health and long term disability plans and a severance fund. These conditions are to ensure that the Canada estate has adequate cash available to pay these Canadian employment-related claims.

The Canadian government needs to ensure that the Nortel Canada estate gets a cash settlement ratio at least at the average being paid within the Nortel global estate (**the Canada estate should get full remuneration for its ownership of the Nortel intellectual properties developed over many years with the assistance of Canada's Scientific Research and Experimental Development (SR&ED) Tax Incentive Program.**)

To get the desired outcome for the full payment of Canadian pensioners, disabled and terminated employees' claims, the Canadian government now needs to ask for a higher than otherwise allocation to the Canada estate of the cash proceeds from the expected sales of Nortel's businesses to foreign buyers. Additional monies need to be collected to make up for the original cash balance in Canada being too low at the January 14th CCAA filing date, for the disproportionate bearing of Nortel's global costs by the Canada estate and the many prior charges placed against the Canada estate during the restructuring period.

- The Canada estate started with only 15% of the global available cash and there was a - US\$34 million net negative cash position after the US\$295 million inter-company loan from the US NNI on January 14th
- The disproportionate bearing of Nortel's global costs by the Canada estate during the restructuring period from:
  - (a) failure to pay reasonable Transfer Pricing Agreement Payments from the sales operations outside of Canada

- (b) excessive allocation of US\$33 million of restructuring costs during Feb. 1st to Sept. 30th
  - (c) disproportionate bearing of executive and key employees' KEIP & KERP bonuses;
  - (d) disproportionate bearing of Directors' fees
- The unfair bearing of specific prior charges to the Canada estate:
    - (a) US\$90 million Directors indemnification for lawsuits prior charge
    - (b) US\$30 million Export Development Canada prior charge (or its replacement restriction on cash from the Canada estate to cover its loan)
  - The existence of prior charges that could have been avoided by the Canada estate being sent cash rather than the proceeds of loans:
    - (a) the US\$200 million non-arm's length DIP financing prior charges
    - (b) any inter-company loan from US NNI to the Canada estate as a prior charge

Koskie Minsky LLP, the court appointed representative counsel for all employment-related claims, has the legal opinion that it and the Canada court have been limited in what they could do to protect the Canada estate to date.

The nine listed adverse actions taken by Nortel to date raise legitimate concerns about whether the allocation of Nortel's businesses (and facilities) sales proceeds to the Canada estate will be an adequate percentage from these new cash sources. The cash allocation % from the new cash sources need to make up for the unfair treatment of the Canada estate to date. The Canadian government can ensure what the KM LLP and the Canadian court cannot achieve, since the sought BIA amendment and the conditions for approval of foreign purchases of Nortel businesses under the Investment Canada Act will be paramount.

THANK YOU VERY MUCH FOR YOUR TIME AND ATTENTION IN THIS MATTER.

For more information or to speak further on these matters, please contact one of the following leaders of our group at [fixbia@ismymoneysafe.org](mailto:fixbia@ismymoneysafe.org) .

Paul A. Hanrieder [hanriedp@gmail.com](mailto:hanriedp@gmail.com)  
Paul Caldwell [paulcaldwell@cogeco.ca](mailto:paulcaldwell@cogeco.ca)