

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. c-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS
TECHNOLOGY CORPORATION**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

AFFIDAVIT OF ARLENE BORENSTEIN (PLANTE)

**I, ARLENE BORENSTEIN (PLANTE), of the City of Ottawa, in the Province
of Ontario, SOLEMNLY SWEAR AS FOLLOWS:**

1. I submit this affidavit on behalf of the Dissenting LTD Beneficiaries¹ for an order appointing Rochon Genova LLP as counsel for all LTD Beneficiaries. For the reasons set out below, I believe that Koskie Minsky LLP is in a position of conflict in continuing to represent both Former Employees and LTD Beneficiaries. Following the approval of the Settlement Agreement, the conflict has now crystallized in that both of these employee groups having directly competing claims of entitlement to the assets of Nortel's HWT, which is subject to a proposed distribution.

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed in Schedule "A" to the notice of motion.

2. In particular, there is a dispute as to whether pensioners are entitled to share in the proposed distribution of the HWT assets in respect of Retiree Life Benefits (defined below). I believe that the LTD Beneficiaries have unique and divergent interests to those of pensioners and, as such, require separate and independent representation.

Background

3. I am an employee of Nortel on long-term disability. I began my employment at Bell-Northern Research, which was at the time owned by Northern Telecom Canada Ltd., on March 26, 1990 in the Information Technology Division as a Software Support Consultant. Eventually, I was diagnosed with fibromyalgia, later with chronic fatigue and pain, arthritis, and possible multiple sclerosis. These illnesses leave me exhausted for the most part.

4. As a result of these conditions, I was on short-term disability on three occasions for various lengths of time during the 1990's, and on long-term disability for almost one year during 1996-1997. I made many attempts to return to work, only to find that after two or three months I could no longer maintain the schedule of a worker. However, I managed to work as a telecommuter (from my home) from February 1997 until September 1999, when my pain became unmanageable and I had to concede that I could no longer sit at a desk for any period of time. At that time, I started on Nortel's Short-Term Disability Plan then progressed to the Long-term Disability Plan in February 2000.

5. Following Nortel's filing for court protection on January 14, 2009, I eventually came to be a member of the group named Canadian Nortel Employees on Long-Term

Disability (“CNELTD”). As a member of this group and as someone with an interest in the outcome of Nortel’s CCAA proceedings in respect of my employee and disability benefits, I have monitored the proceedings related to employment and benefit issues. In particular, I have reviewed the publicly available information regarding the Nortel HWT. As such, I have personal knowledge of the matters to which I hereinafter depose. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

Overview of the CCAA Proceedings and the Representation Orders

6. Nortel applied for and was granted protection from creditors under the CCAA pursuant to an Initial Order dated January 14, 2009.

7. As confirmed by subsequent disclosures, principally through the Thirty Ninth Report of the Monitor dated February 18, 2010 (the “39th Report”) and the schedules thereto, at the time Nortel filed for CCAA protection, the HWT was significantly underfunded. The magnitude of the shortfall was not disclosed until the public release of the 39th Report on February 18, 2010.

8. The Initial Order provided that Nortel was “entitled but not required” to make payments in respect of, among other things, employee benefits, post the CCAA filing. Nortel continued to make employer contributions to pay for pensioner and LTD medical and dental benefits, and LTD life insurance benefits after the Initial Order. LTD income benefits, survivor income benefits and retiree life insurance benefits were paid from the

HWT assets without new employer contributions being made into the HWT. I attach as exhibit "A" a copy of the Initial Order.

9. By order dated May 27, 2009, Koskie Minsky LLP was appointed representative counsel for all Former Employees. I attach as exhibit "B" a copy of the May 27, 2009 representation order.

10. By order dated July 22, 2009, Nelligan O'Brien Payne, LLP and Shibley Righton LLP were appointed representative counsel for Nortel Continuing Employees as a result of a conflict involving Koskie Minsky LLP representing both Former Employees and Continuing Employees. I attach as exhibit "C" a copy of the July 22, 2009 representation order and the endorsement of Justice Morawetz dated July 22, 2009.

11. By order dated July 30, 2009, Koskie Minsky LLP was appointed representative counsel for the LTD Beneficiaries. I attach as exhibit "D" a copy of the July 30, 2009 representation order.

12. As disclosed in the Supplement to the Thirty Ninth Report of the Monitor dated February 23, 2010 and the actuarial reports appended thereto, and as summarized in the table below, LTD Beneficiaries represent only 2% of the persons covered by the Koskie Minsky representation orders. I attach as exhibit "E" a copy of the 39th Report as well the Supplement to the Thirty Ninth Report of the Monitor dated February 23, 2010.

Distribution of Nortel Pensioners, Severed Employees, Survivors and LTD Employees

	Number	%
Retirees	12,501	50%
Survivors	1,214	5%
Deferreds & Actives	9,218	37%
Total Pensioners	22,933	91%
Severed Employees	1,650	7%
Survivors on Income & Transitional Benefits	99	0%
Long Term Disabled Beneficiaries	399	2%
Total	25,081	100%

13. As discussed in this affidavit, I believe that LTD Beneficiaries have interests divergent to those of the Former Employees. Unlike pensioners, LTD Beneficiaries are current employees who continue to accrue service and pensions and are the beneficiaries of wage replacement income self-insurance. As set out below, this distinction was recognized by Koskie Minsky who initially declined to act for LTD Beneficiaries on the basis of "different interests". I believe the conflict between representing Former Employees and LTD Beneficiaries is more pronounced than the conflict previously recognized by the Court involving the representation of both Former Employees and Continuing Employees.

14. Further, and more importantly, Former Employees and LTD Beneficiaries have directly competing claims of entitlement to the assets of the HWT. The division of the approximately \$123 million in stated HWT assets (based on the most recently available financial statements for the year ended December 31, 2008), including the \$37 million loan taken by Nortel, will be the single most important aspect of this CCAA proceeding as it relates to the LTD Beneficiaries, particularly in light of the recently approved

settlement agreement which restricts the ability of LTD Beneficiaries to sue third parties potentially responsible for the funding shortfall in the HWT. Koskie Minsky's representation of multiple groups claiming competing entitlement to finite proceeds from the same fund is necessarily tainted with conflict and is in violation of the Canadian Bar Association's ("CBA") guidelines for conflict of interest involving multiple representations, as well as the Rules of Professional Conduct governing the avoidance of conflict of interest and joint retainers.

15. Although Koskie Minsky has very recently disclosed that the potential beneficiaries of the HWT have sought independent legal advice ("ILA"), given the significance of the HWT distribution, I do not believe that a conflict of this magnitude can be cured by the provision of ILA. What the LTD Beneficiaries require is not a passive independent legal opinion, but advocates of our choosing prepared to vigorously advance our interests through the HWT wind-up process and the next stages of the Proceedings. Specific examples of the conflict relating to the HWT distribution are discussed below.

The Employee Settlement Agreements

16. On February 8, 2010, the Applicants, the Monitor, the Former Employees' Representatives, the LTD Representative, the Representative Counsel and the CAW executed a settlement agreement, principally involving matters related to Nortel's Pension Plans, the HWT and other employment related issues.

17. As it relates to the LTD Beneficiaries, the benefits of the Settlement Agreement are as follows:

- a) Nortel will pay disability income benefits to LTD Beneficiaries from Nortel's funds for 2010, ending on December 31, 2010. Disability income benefits were previously paid from the HWT assets;
- b) Nortel will continue to pay medical, dental and life insurance benefits to LTD Beneficiaries until December 31, 2010 from Nortel's funds.

18. According to the 39th Report, the incremental value of the payments to LTD Beneficiaries and Former Employers under the Settlement Agreement is \$44.2 million. The estimated incremental value of the payments to LTD Beneficiaries is approximately \$11.4 million, or three quarters of the estimated cost of benefits for 2010.

19. The Dissenting LTD Beneficiaries objected to the Settlement Agreement on the basis that the incremental value of the benefits under the agreement were minimal relative to the rights given up in relation to a funding shortfall in excess of \$100 million from the HWT, including a \$37 million loan which appears to have been improperly taken from trust assets. This loan is described in Unaudited, Internal HWT Financial Statements dated March 25, 2009 for the year ending December 31, 2008 (the "2008 HWT Financial Statements") released with the 39th Report as an amount "DUE FROM SPONSORING COMPANY". The 39th Report stated that the "Monitor has been advised by the Applicants that this balance represents amounts due by the Applicants **primarily** related to benefit payments made to beneficiaries of the HWT prior to the Filing Date." (emphasis added)

20. The impropriety of the removal of the \$37 million from trust is reflected in the following excerpt from the affidavit of Nortel's CEO, Mr. Doolittle, dated January 14, 2009 filed in support of the motion for the Initial Order. The statement below is an acknowledgement that Nortel's pension and benefit plans, including the HWT, are formal trusts separate from the company's assets. Mr. Doolittle stated at paragraph 90(c)(iii) of his affidavit:

iii) Benefit Trusts – As discussed above, employee benefits are funded in to accounts administered by a third party and trust accounts. The Applicants do not have any access to funds that are transferred into these accounts.

I attach as exhibit "F" a copy of excerpts from the affidavit of Mr. Doolittle.

21. Despite this trust arrangement, the Monitor's description of the note means that assets appear to have been removed from the HWT for purposes other than providing health and welfare benefits to employees. I have learned that statements made in court in early March 2010, indicate that most of the loan appears to be the borrowing of money from the trust to pay for the pay-as-you-go employee benefits in the past that were otherwise required to be funded by new employer contributions. In any event, the trust assets should not have been removed and were supposed to be protected by the trustees of the HWT and to be used to pay for the **incurred claims** of the LTD Beneficiaries and the Survivor Income Benefit Plan ("SIBP") beneficiaries in each of their funded plans that Nortel has self-insured. The loan proceeds appear to have been for the partial benefit of the LTD Beneficiaries who received their medical, dental and life benefits paid out of the assets of the trust rather than through the required employer contributions. However, based on the mix of pensioners and LTD Beneficiaries receiving pay-as-you-go medical,

dental and life benefits each year, the pensioners would have received a disproportionate benefit from the loan proceeds being taken from the trust at the expense of the LTD and SIBP Beneficiaries.

23. Beyond the release provisions, the Settlement Agreement also provided that any claims related to the funding shortfall in the HWT would rank as ordinary unsecured claims on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel.

24. I verily believe that the LTD Beneficiaries are the most deeply impacted of all employee groups by the release and priority provisions of the Settlement Agreement. This is due to the fact that on a percentage basis, the HWT shortfall is causing a far greater reduction in the LTD Beneficiaries' wage replacement income than the Pension Plan shortfall is causing a reduction in pension income. Further, LTD Beneficiaries suffer a greater impact from the termination of medical benefits due to their higher medical costs associated with their serious injuries and illnesses compared to the Former Employees as a group. As such, LTD Beneficiaries now have a more pronounced interest in the proposed HWT distribution and will be disproportionately and severely impacted by an improper distribution of HWT assets to Former Employees.

25. I have been advised through an August 6, 2010 written communication sent by our representative legal counsel at Koskie Minsky to the Nortel Disabled that "Based on a recent estimate, the pension plan is only about 64% funded on a wind-up basis and 76% funded on a solvency basis (including indexing)". There is no explanation about why the wind-up funded ratio given is different from the solvency ratio, as the solvency ratio is suppose to be calculated for the situation of the pension plan being wound up. Former

Employees who worked in Ontario benefit from Ontario's Pension Benefit Guarantee Fund ("PBGF") under which program, the first \$1,000 of monthly pension for service accrued while employed in Ontario will be topped up and paid in full. The effect of the PBGF is that the average Ontario pensioner will be paid at a rate 89% to 92% before the bankruptcy estate settlement is factored in, assuming the average Ontario pensioner gets the same pension as the average for all Nortel pensioners and using the range of wind-up/solvency funding ratios provided by Koskie Minsky's most recent update. I attach as exhibit "G" a copy of the August 6, 2010 communication received from Koskie Minsky summarizing the Pension Plan shortfall and the effect of the PBGF. I attach as exhibit "H" a table summarizing the estimated pension recovery of pensioners.

26. Although the proposed method of allocation of the HWT assets is not presently known, an email sent from Mark Zigler to Josee Marin suggests that the recovery may be in the 30% range:

On December 31, 2009, the assets in the trust were estimated at roughly \$80 million, while the liabilities were considerably higher. More current estimates of the liabilities are not yet available. As the liabilities in the trust assets, the distribution of assets will replace only a portion of the lost future benefits that were historically paid from the HWT. Our actuary put evidence before the Court last March that an aggregate distribution based on the HWT financial statement then available in the 30% range when considering the benefits which were funded out of the HWT and not on a "pay as you go" basis. We cannot provide any further or more accurate estimates concerning the percentage of recovery that you will receive from the trust assets, as this percentage is dependent on the allocation of trust assets among trust beneficiaries, which is not yet determined and is ultimately subject to Court approval. You will receive notice of such process, and the Court-appointed Representative has demanded that each disabled employee receive an estimate of the amount they will receive through a distribution of assets under the Monitor's proposal.

I attach as exhibit "T" the email from Mark Zigler to Josee Marin.

27. As a result, it is clear to me that LTD Beneficiaries stand to recover a far lower percentage of their actuarial determined liability for income benefits than pensioners will recover for their pensions. According to a report by Nortel's actuaries, the actuarial liability for income replacement benefits is approximately \$105 million. However, the 2008 HWT Financial Statements indicate that the market value of reserved assets for the Long-term Disability Plan is only \$30.6 million. However, if this amount is adjusted to reflect a compromise of the \$37 million removed by Nortel from the HWT, the amount would be reduced to \$21 million. To the extent that the allocation disclosed in the 2008 HWT Financial Statements is relied upon as a basis for distribution, LTD Beneficiaries would only recover 20% of the actuarial determined value of their disability income benefits. Indeed, even if the total value stated to be reserved for Retiree Life Benefits (defined below) were allocated to LTD Beneficiaries, this would still yield a percentage recovery of 53% of their actuarial determined liability for income benefits, which would still be lower than the monthly pension recovery to Former Employees. I attach as exhibit "J" the 2008 HWT Financial Statements. I attach as exhibit "K" a table summarizing the potential percentage recoveries of actuarial liabilities from the HWT distribution of the LTD Beneficiaries and other employee groups.

28. For the reasons discussed herein and in the affidavit of Joann Williams sworn August 6, 2010, I do not believe that the unaudited 2008 HWT Financial Statements properly reflect Nortel's funding obligations under the various trust and benefit plan documents. However, the financial statements do help illustrate that there are likely to be important disputes as to how the HWT assets should be allocated arising from the inherent conflict between LTD Beneficiaries and pensioners related to Retiree Life

Benefits and between LTD Beneficiaries and active employees related to optional life benefits.

29. Another difference between the two employee groups relates to the degree of vulnerability of LTD Beneficiaries. By definition, LTD Beneficiaries are disabled. Many of us have chronic and life threatening conditions and have no prospect of ever being gainfully employed in the future. Without disability income payments, LTD Beneficiaries will have to rely on social assistance that leave us well below the poverty line. I attach as exhibits "L", "M", "N", "O" and "P", copies of affidavits filed by five LTD Beneficiaries (including a prior affidavit sworn by me) in opposition to the Settlement Agreement which illustrates the extreme hardship that LTD Beneficiaries would face as a result of the HWT funding shortfall and settlement approval.

30. It is my understanding that one purpose of the Settlement Agreement was to provide us with "certainty" and to allow us "time to prepare" and to find "alternative sources of income". We are now certain, that on December 31, 2010, all our benefits will cease, and we will be terminated as employees of Nortel. I would like to explain to the court, that no amount of time would allow us to prepare for what will be the result of this agreement for most of our group: poverty. If there existed "alternate sources of income" we would already be taking advantage of them. Most of us have qualified for CPP Disability, which pays an average income of \$812.00/month up to \$1126.00/month. Beyond this CPP Disability, there is nothing else – no other alternative income is available to us. The CPP Disability is meant to replacement about 30% of a person's income. Nortel took into consideration the cost of employer and employee contributions

for disability coverage and continues to offset our disability income by any amount we receive from CPP. This is what will remain after Nortel stops delivering on their promise to us. In my case, a yearly income of \$12,480 before taxes. I am told I am quite representative of the average Nortel employee on LTD in this respect.

31. Despite the different and more vulnerable position of the LTD Beneficiaries, the Settlement Agreement treated the employee groups equally without recognizing the unique prejudice the agreement would cause to the LTD Beneficiaries. As evidenced by their treatment under the Settlement Agreement, I do not believe Koskie Minsky has adequately advanced the interests of the LTD Beneficiaries' unique interests in this matter. Certainly, this is the view strongly held by the thirty-eight Dissenting LTD Beneficiaries who objected to the Settlement Agreement, as well as many others with whom I have had contact but did not formally object.

Nortel's HWT & the Funding Shortfall

32. Although the Settlement Agreement addressed the priority of bankruptcy estate claims and approved broad third party releases with respect to claims arising from funding deficiencies within the HWT for employee benefits, importantly, the agreement did not provide for a distribution of the HWT itself. The Settlement Agreement provides for the settlement parties to work towards a court approved distribution of the HWT corpus to its various beneficiaries in 2010. In a progress report dated June 24, 2010 (see exhibit "V" below) sent to LTD Beneficiaries, Koskie Minsky advised that the HWT distribution is anticipated to occur by the end of December 2010.

33. HWT was established by agreement dated January 1, 1980 between Northern Telecom (Nortel's predecessor) and Montreal Trust Company as trustee. The trust agreement was amended as of June 1, 1994.

34. The trust agreement required Nortel to make employer contributions "in amounts sufficient to pay any claims which may be asserted against the Trust Fund as a result of the administration of the Health and Welfare Plan, and as may otherwise be required from time to time for the purpose of the Health and Welfare Plan, as determined by the Trustee on a sound actuarial basis". I attached as exhibit "Q" a copy of the trust agreement.

35. The HWT has been operated such that certain employee benefits such as disability and survivor income benefits have had employer contributions placed into the trust for the purpose of accumulating trust assets to pay claims, whereas other employee benefits such as medical and dental costs, or life insurance premiums, have been funded by Nortel employer and employee contributions on a pay-as-you-go basis, but paid through the HWT as an administrative matter.

36. The HWT has continued to operate since the inception of the CCAA proceedings.

In this regard, the First Report of the Monitor dated February 5, 2009 states:

The Nortel Networks Health and Welfare Trust ("H&WT"), as more fully described in the Doolittle Affidavit, is not subject to the CCAA proceedings and continues to operate in the ordinary course. The Sun Life Assurance Company of Canada administers various non-pension benefits through the H&WT. The H&WT provides funding for various non-pension benefits on behalf of current and former Canadian employees of the Applicants. The Applicants continue to fund this trust in accordance with past practice. (emphasis added)

I attached as exhibit "R" a copy of the First Report of the Monitor.

37. While the First Report of the Monitor made no mention of the funding shortfall, the documents disclosed as appendices to the 39th Report show that there is a huge funding shortfall in the HWT. The net assets of the HWT as at December 31, 2008 were approximately \$123 million, of which approximately \$37 million has been improperly taken as a loan by Nortel. According to the 39th Report, the market value of the investments held in the HWT as at December 31, 2009 was approximately \$78 million, which would be an amount that excludes the \$37 million loan. However, the actuarial liability for the various employee benefit plans processed through the HWT for LTD Beneficiaries and Former Employees is \$689 million, substantially greater than the HWT assets.

38. Granted, \$383 million of these actuarial liabilities are on account of pay-as-you-go benefits for which no dispute is expected amongst the parties. \$288 million of the actuarial liabilities is being attributed to four benefit plans where the 2008 HWT Financial Statements disclose an allocation of reserve assets – the LTD Income Benefit Plan, Survivor Income Benefit, Retiree Life Benefit and Group Life – Part II, which is an employee paid optional life insurance benefit. It does not make sense to me that there should be any reserve or surplus for retiree life insurance benefits or for a Group Term Life Insurance plan, which is a term of one year, particularly in light of the extreme shortfall in the LTD plan.

There is a Conflict of Interest between Former Employees and LTD Beneficiaries

39. Given the magnitude of the HWT shortfall as described above there is, I believe, a most serious conflict of interest between LTD Beneficiaries and Former Employees. As

the liabilities of the HWT far exceed the assets, the conflict of interest is particularly pronounced with respect to the proposed HWT distribution. I believe that Koskie Minsky's representation of multiple groups claiming competing entitlement to finite proceeds from the same fund is necessarily tainted with conflict and is in violation of the CBA's guidelines for conflict of interest involving multiple representations which provide as follows:

Multiple client representation can involve interests which are either divergent from the outset or will become so at some stage. Whether or not the proceeding or matter is contentious, the fact that the interests are divergent means that you will not be able to commit your loyalty and judgment in favour of each of the interests as is required of you. The reality is that it may be difficult to show that each client received the best possible advice that he or she would have received if the lawyer was acting for that party alone and did not have any responsibility to the other client or clients with the divergent interest. In the end, one or more of the clients may complain.

Therefore, you should not act! If in doubt, consult with a colleague, your firm management or conflicts person/committee, outside counsel, or your Law Society's practice advice hotline.

Questions to help identify a multiple interest conflict:

...

- To maximize the interest of one of the persons involved, will the interests of another person be compromised or negatively affected?
- Will you have to keep secret any information from one of the participants that is material to your representation of the other(s)?
- Is there real potential for the parties to have a falling out in the future?

Examples of multiple interest situations to avoid:

...

- Commercial interests regarding:
 - parties attempting to collect from one fund

I attach as exhibit "S" a copy of the CBA's guidelines.

39. I also believe that the conflict of interest is such that it engages the *Rules of Professional Conduct*. Rule 2.04(1) defines a “conflict of interest” or a “conflicting interest” as an interest that:

- (a) that would be likely to affect adversely a lawyer’s judgment on behalf of, or loyalty to, a client, or
- (b) that a lawyer might be prompted to prefer to the interests of a client or prospective client.

40. Indeed, the potential for conflict was recognized by Koskie Minsky in the initial days of the Proceedings. When LTD Beneficiaries initially inquired in early 2009 about the possibility of obtaining representation from Koskie Minsky, the response was that LTD Beneficiaries had “different interests” and therefore would not be represented. An FAQ on the Nortel Retiree and Former Employees Protection Canada (“NRPC”) website stated:

Will you represent me if I am currently receiving disability payments and my pension continues to accrue?

No. You are an active member of the Pension Plan and still accruing benefits, and may have **different interests** from pensioners and deferred pensioners. (emphasis added)

I attach as exhibit “T” a copy of an FAQ from the NRPC website (previously attached as exhibit “K” to the affidavit of Donald Sproule sworn March 30, 2009 in support of Koskie Minsky’s motion for a representation order for Former Employees).

41. Further, in a presentation given to Nortel pensioners on January 21, 2009, Koskie Minsky stated that members of the “Nortel Networks Limited Managerial and Non-Negotiated Pension Plan” is a “distinct group” which had “different interests” than

current Nortel employees, which include employees on long-term disability. I attach as exhibit "U" a copy of Koskie Minsky's presentation.

The Conflict Regarding Retiree Life Benefits

43. A key issue in the proposed HWT distribution which illustrates the conflict between Former Employees and LTD Beneficiaries, and therefore of Koskie Minsky's representation of both groups, relates to the treatment of life insurance premiums for pensioners ("Retiree Life Benefits"). Although the proposed method of distribution has not yet been disclosed, a progress report dated June 24, 2010 sent to LTD Beneficiaries by Koskie Minsky (the "June 24, 2010 Progress Report") indicates that retirees would be entitled to a distribution from the HWT on account of Retiree Life Benefits.

44. First, Koskie Minsky advised in the June 24, 2010 Progress Report that the distribution will replace only a portion of the lost benefits that were historically paid from the HWT. The report advised that the Representative, with legal and actuarial advice, was:

...working towards a court-ordered distribution that protects disabled employees in accordance with the terms of the trust documents. The liabilities exceed the assets and accordingly, this distribution will replace only a portion of the lost future benefits that were historically paid from the HWT... The balance of the present value of your lost future benefits that are not paid out of the HWT assets will form part of your claim against the Nortel Estate.

I attach as exhibit "V" a copy of the June 24, 2010 Progress Report.

45. Second, the June 24, 2010 Progress Report more directly discloses the intention to distribute money from the HWT to Former Employees on account of Retiree Life Benefits. Page 6 of the Progress Report contains the following statement:

Tax counsel for various parties... are... preparing written submissions, concerning an advance ruling as to the taxability of funds to be distributed to you from the Health and Welfare Trust. The CRA's decision on this issue will affect **individuals who are entitled to a distribution** from the Health and Welfare Trust, particularly with respect to disability and survivor income benefits and **retiree life insurance**. (emphasis added)

46. For the reasons set out below and in the affidavit of Joann Williams dated August 9, 2010, I do not believe that retirees are entitled to a share of the HWT assets on account of Retiree Life Benefits. This issue will be front and centre when determining the fair distribution of the HWT and illustrates the sea of conflict now facing Koskie Minsky.

47. According to the 39th Report, although life insurance premiums for the LTD Beneficiaries ("LTD Life Benefits") were historically paid on a pay-as-you go basis, Retiree Life Benefits were said to have been paid by the HWT from trust assets. The 2008 HWT Financial Statements show that Nortel has allocated approximately \$49.6 million in reserve assets for Retiree Life Benefits. However, no disclosure or explanation has ever been provided as to why Retiree Life Benefits were paid out of the assets of the HWT while LTD Life Benefits were paid by employer contributions made into the HWT annually on a pay-as-you-go flow-through basis.

48. To begin with, the Trust Agreement and amending agreements make mention of only a group life insurance plan, which is an insured benefit and not a self-insured one. The Trust Agreement provides as follows:

WHEREAS:

1. The Corporation has established for the benefit of certain of its employees and the employees of such affiliated or subsidiary Corporations as the Corporation may designate, certain Health and Welfare plans, and such other similar plan or plans as the Corporation may from time to time place in effect, as follows:

- a) a Health Care Plan;
- b) a Management Long Term Disability Plan;
- c) a Union Long Term Disability Plan;
- d) a Management Survivor Income Benefit Plan;
- e) a Management Short Term Disability Plan;
- f) a Group Life Insurance Plan;

49. Item d) "Management Survivor Income Benefit Plan" ("SIB Plan") was an optional employee plan that would provide a lifetime annuity for the beneficiary, if the Nortel employee life insured died. This plan, which is not related to the Nortel Pension Plans, was terminated in July 1994 when Nortel over-hauled its employee benefits and began to use the "Flex-style" arrangement. As a concession to terminating the SIB Plan, Nortel offered its employees the ability to purchase additional group term life insurance ("Optional Group Life"), offered in units of annual salary. This Optional Group Life Plan was an insured benefit and not a self-insured one. I am not aware of any changes to Nortel's employee benefit plans that would have obligated Nortel to pay Retiree Life Benefits, or any other post-employment benefits other than the LTD Beneficiaries' wage replacement income and SIB Plan, from the assets of the HWT.

50. A further basis to question the connection between Retiree Life Benefits and the assets of the HWT can be found in the Mercer's Actuarial Report on Non Pension Post-Retirement Benefits for the year ended December 31, 2008. This report describes the

funding policy of Retiree Life Benefits, among other post-retirement benefits, as follows (at page 34):

Funding Policy

The post-retirement benefits are funded on a pay-as-you-go basis. (Nortel funds on a cash basis as benefits are paid.)

I attach as exhibit “W” a copy of the Mercer’s Actuarial Report on Non Pension Post-Retirement Benefits.

51. In addition, Nortel’s 1998 Annual Report indicates that post employment health care and life insurance benefits are expensed as incurred. This further supports that Nortel did not make employer contributions to fund all the Retiree Life Benefits expected to be paid during retirement in the year of retirement. The 1998 Annual Report states (at page 38):

(n) Post employment benefits

Pension expense, based on management’s assumptions, consists of the actuarially computed costs of the pension benefits in respect of the current year’s service; imputed interest on plan assets and pension obligations; and straight-line amortization of experience gains and losses, assumption changes, and plan amendments over the expected average remaining service life of the employee group. **The costs of post-employment health care and life insurance benefits are expensed as incurred.** (emphasis added)

I attach as exhibit “X” this excerpt from Nortel’s 1998 Annual Report.

52. Further, the stated reserve for Retiree Life Benefits disclosed in the 2008 HWT Financial Statements appears to conflict with the pay-as-you-go funding of retiree life insurance premiums by annual employer contributions made by Nortel. For example, Nortel’s employer contributions of \$3 million for 2007 and \$6 million for 2008 are equal

to the benefits paid for the Retiree Life Plan. Page 8 of the 2008 Mercer's Non Pension Post-Retirement Benefits Report provides data on the "Life Plan" in the following table:

Change in Plan Assets	Fiscal Year Ending 31.12.08	Fiscal Year Ending 31.12.07
Fair value of plan assets at end of prior year	\$0	\$0
Actual return on plan assets	0	0
Employer contributions	5,958	3,165
Employees' contributions	0	0
Benefits paid	(5,958)	(3,165)
Fair value of plan assets at end of year	\$0	\$0

Reconciliation of Funded Status to Accrued Benefit Asset (Liability) under CICA 3461	Fiscal Year Ending 31.12.08	Fiscal Year Ending 31.12.07
Funded status at end of year	(\$105,840)	(\$124,562)
Employer contributions during period from measurement date to fiscal year end	0	808
Unamortized transitional obligation (asset)	0	0
Unamortized past service costs	(3,408)	(4,167)
Unamortized net actuarial loss (gain)	(25,311)	(6,290)
Accrued benefit asset (liability)	(\$134,559)	(\$134,211)

53. Finally, the Clarica Insurance Agreement with Nortel for Administrative Services Only in relation to the HWT, dated January 1, 1999 (the "Clarica ASO"), says that Clarica's base fees include the following services: "annual estimate of disability and survivor reserves". The use of the term reserves for disability and survivors implies recognition by both Nortel and Clarica, the parties to this ASO agreement, that there is a need for funding of the disability and survivors benefits in a manner comparable to how insurance companies treat these types of benefits on an insured basis. I believe this further supports that the beneficiaries of the Long-term Disability Plan and SIBP are entitled to a priority distribution of the assets of the HWT. I attach as exhibit "Y" a copy of the Clarica ASO.

54. Another point of concern with respect to the 2008 HWT Financial Statements and the proposed HWT distribution relates to the fact that the \$49.6 million in reserve assets for Retiree Life Benefits represents 37% of the actuarial liability of Retiree Life Benefits of \$134.6 million. On the other hand, the market value of reserve assets as a percentage of actuarial liability for the Long-term Disability Plan and Survivor Income Benefit Plan is 29% and 74%, respectively. In addition, all of these determinations have not taken into consideration the expected effort by other creditors in the bankruptcy estate to compromise the \$37 million loan. Why is it again that the stated reserves reflect the lowest level of actuarial liability for the LTD Beneficiaries? Once more, I do not understand why it is the disabled that are expected to accept the greatest burden.

55. As a result, there is a real dispute as to whether Retiree Life Benefits should have paid been paid out of the HWT assets post CCAA or at any other time in history and whether retirees are entitled to proceeds from the HWT wind-up. I believe that the \$49.6 million identified as a reserve allocated to Retiree Life Benefits should be re-allocated to reduce the deficit of the actuarial liability owed to LTD Beneficiaries for income and other funded plans in the HWT. The actuarial liabilities for the Retiree Life Benefits should be treated only as creditor claims against Nortel's bankruptcy estate in the same way as the actuarial liabilities for LTD Life Benefits are being proposed to be treated.

56. The priority required to be given to funded plans of the HWT in the proposed HWT wind-up distribution is, I believe, supported by the letter sent by Mr. Zigler of Koskie Minsky to Nortel and the Monitor and on January 6, 2010 regarding a proposed funding arrangement. In the letter, Koskie Minsky is critical of Nortel for, among other

things, depleting the HWT by failing to fund LTD and SIB benefits; no mention is made, however, of an obligation to fund Retiree Life Benefits. I believe this evidences an acceptance by Koskie Minsky that there was a prescribed funding obligation on Nortel to fund LTD and SIB benefits but not Retiree Life Benefits. I attach as exhibit "Z" a copy of this letter dated January 6, 2010.

57. Apart from being justified by the terms of the plan and trust documents, such a result would help make up for the disproportionate LTD income replacement benefit funding shortfall in the HWT and the unique hardship caused by the Settlement Agreement on the LTD Beneficiaries. Given the much lower pension plan shortfall compared to the HWT trust shortfall for LTD wage replacement benefits, I believe it would be unjust if Former Employees also secured additional recovery for Retiree Life Benefits from the HWT at the expense of the LTD Beneficiaries getting a lower recovery for their wage replacement benefits. The unfairness is compounded when one considers that the LTD Beneficiaries are limited to filing claims for LTD Life Benefits against Nortel's bankruptcy estate which is expected to provide just cents-on-the-dollar recovery.

58. In any event, I do not believe that Koskie Minsky should be providing advice on the terms of the trust and various benefit plan documents to multiple potential claimants on these and other questions relating to entitlement to HWT assets. I do not believe that Koskie Minsky can properly and impartially advocate for all beneficiary groups on issues related to the HWT distribution and should therefore not be charged with negotiating the legal basis for allocating trust assets. Koskie Minsky is therefore in a position of real and direct conflict for matters relating to the HWT distribution.

The LTD Beneficiaries are Most Deeply Impacted by the Settlement Agreement

59. The conflict is reinforced and magnified by the fact that Koskie Minsky did not adequately consider the unique and humanitarian interests of the LTD Beneficiaries in negotiating the Settlement Agreement. While the Settlement Agreement was ultimately approved by the court as falling within an acceptable range of reasonableness, it is beyond dispute that, despite having the highest need and the lowest funding ratio, the LTD Beneficiaries were most deeply impacted by the release and priority provisions of the agreement. Beyond this, there are additional specific aspects of the Settlement Agreement which I believe show that Koskie Minsky has not given appropriate consideration to the unique interests of the LTD Beneficiaries and has preferred the interests of the Former Employees.

a) The Poison Pill – Clause C.2

60. A punitive aspect of the settlement that works primarily against LTD Beneficiaries can be found in clause C.2. Where the HWT trust agreement provides that the Applicants will pay the fees or expenses related to the HWT, the Settlement Agreement provides that any fees or expenses incurred in connection with any dispute or litigation among the beneficiaries of the HWT concerning entitlement shall be paid out of the HWT corpus. This “poison pill” clause threatens to discourage even legitimate claims/objections related to any proposed HWT distribution. Indeed, I believe that the Progress Update attempts to discourage any disputes regarding the HWT distribution. The report provides:

...The level of claims recovery from the Nortel estate is unknown at this time and no distribution is anticipated before 2011.

However, ...as a beneficiary of the HWT, you will receive a portion of the assets of the HWT, and we expect that allocation to take place before the end of 2010... **You should be aware, however, that if there is significant litigation among Trust Beneficiaries regarding the allocation of the money in the HWT, this might delay the allocation, as well as decrease the amount of money in the trust, as the costs of the litigation come out of the Trust Assets.** (emphasis added)

b) The Priority Payments for Retiree Life Benefits

61. According to the 39th Report, Retiree Life Benefits, LTD income and survivor income benefits were disclosed as having been paid by the HWT from trust assets. However, pursuant to the Settlement Agreement, LTD income and survivor benefits for 2010 are being funded from Nortel's operations. No explanation was provided as to why Retiree Life Benefits remained funded out of the HWT assets. The estimated cost of the Retiree Life premiums for 2010 was disclosed in the 39th Report as being approximately \$7.9 million. The effect of the settlement is therefore such that the assets of the HWT will be reduced for legitimate beneficiaries. Given the dispute as to whether Retiree Life Benefits were properly paid out of trust assets and whether the pensioners covered by the Retiree Life Benefits are entitled to share in the assets of the HWT distribution, pensioners may have received close to \$8 million in benefits for 2010 that they may not have been entitled to. At a minimum, pensioners appear to have received a priority payment in 2010 to the detriment of all HWT beneficiaries.

62. While the LTD income and Survivor income benefits were treated the same as the retiree life benefits in 2009, with all of them paid out of the HWT assets, if the pensioners

were never entitled to have their life insurance premiums paid out of the assets of the trust, then their 2009 retiree life premiums being paid from the trust are also a matter of conflict with the LTD Beneficiaries.

c) The \$3,000 Termination Payments

63. An additional consideration relates to the fact that LTD Beneficiaries are not entitled to benefit from the employee Termination Fund (as defined in the Settlement Agreement). Pursuant to the Settlement Agreement employees terminated prior to June 30, 2010 are to be paid up to \$3,000 from the Termination Fund as an advance payment in respect of any claims for termination or severance. At the same time, the Settlement Agreement terminates the employment status of LTD Beneficiaries as of December 31, 2010 with the result being that LTD Beneficiaries do not qualify for Termination Payments (as defined in the Settlement Agreement). The fact that the agreement was reached in a way that intentionally precluded LTD Beneficiaries from benefitting from the Termination Fund I believe further illustrates that Koskie Minsky has preferred the interests of Former Employees over the LTD Beneficiaries.

The July 29, 2010 Progress Update – Koskie Minsky Acknowledges it is in a Position of Conflict

64. After providing instructions to my lawyers at Rochon Genova LLP to bring this motion for a representation order, I received a progress update from Koskie Minsky dated July 29, 2010. This update disclosed for the first time that there was a “potential” conflict between the “interested beneficiaries” of the HWT “due to the uncertainty of the

wording in the trust documents” and that each of the two groups represented by Koskie Minsky have sought independent legal advice (“ILA”) with respect to the allocation of the HWT assets. The lawyers providing the ILA are not disclosed. I attach as exhibit “AA” a copy of the progress update dated July 29, 2010.

65. Given the significance of the HWT distribution to LTD Beneficiaries, I do not believe that the provision of ILA is sufficient to cure Koskie Minsky’s conflict of interest. Rather, I believe that the LTD Beneficiaries require separate representation of their choosing who are prepared to advocate on our behalf as to the appropriate distribution of the HWT assets. This mandate should necessarily involve a review of all documents and information relating to the HWT, including audited financial statements, actuarial funding reports, disclosure regarding the \$37 million loan taken by Nortel, as well as all information pertaining to the various long-term disability, life insurance, survivor and medical and dental plans funded by the HWT assets or paid through the HWT for administrative purposes. This is not the type of undertaking that I believe can be properly discharged through the provision of ILA.

Conclusion Regarding Conflict of Interest – Separate Representation is Required

66. For the foregoing reasons, I believe that separate representation is required for the HWT wind-up proceedings and for future steps in the CCAA proceedings governing the Nortel estate to ensure that the legitimate and unique interests of the LTD Beneficiaries are protected and to ensure that their position/arguments are properly and effectively presented in negotiations amongst creditors as well as to the court. Under the current representation arrangement, I believe that the concerns of the LTD Beneficiaries have not

been given the consideration that our constituency deserves and are losing force in the face of a much larger group of Former Employees who have different interests and whose circumstances are not as dire in light of the much larger recovery of pension benefits.

67. I truly see the issue of separate representation as a matter of fairness that is owed to me and all the people in our group, and to all of Nortel's employees on long-term disability. We allowed Nortel to deduct from our pay cheques amounts that were to be deposited in the HWT for the purpose of providing protection and security in case of severe illness. We did this in good faith and trusted those who told us they were protecting our futures. Nortel appears to not have kept their promise, which was to deposit those funds and make employer contributions sufficient to provide an income if illness struck. Using the assets in the trust pre- or post filing, for the payment of anything but LTD or SIB income, and borrowing the 37 million, is no different than taking money from all of us, when they should have instead ensured its safety.

68. I absolutely do not condone any behaviour that would take from any beneficiaries, whether they be the disabled or SIBP beneficiaries any amount that was meant for them. By the same token, I see absolutely no basis in all the information I have received and read to date, that allows me to believe that there was an obligation to set aside reserves for the payment of future premiums for Retiree Life Benefits or Group Term Life Insurance, for any employee group. I believe that whatever amounts are noted to be set aside in the HWT for these benefits should be used to reduce the shortfall of the true funded plans on a proportionate basis. This is what I believe to be most equitable given these circumstances, and can be accomplished with fairness and good conscience.

Rochon Genova LLP

69. Rochon Genova LLP has acted for approximately 40 Dissenting LTD Beneficiaries in opposing the approval of the settlement agreements. Despite being retained days before the initial approval hearing, Rochon Genova was able to assimilate the information related to the HWT shortfall and Settlement Agreement required to advocate on our behalf and present our concerns to the Court. Based on the representation received to date, I believe that Rochon Genova LLP and its retained actuarial and financial experts have the experience, resources and demonstrated commitment to represent the LTD Beneficiaries' unique interests in future steps in the proceedings.

70. I swear this affidavit in support of a motion appointing Rochon Genova LLP as representative counsel for the LTD Beneficiaries, and for no other purpose.

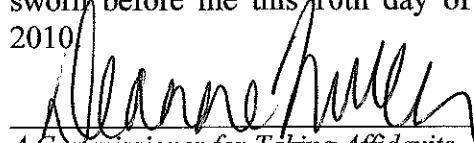
AFFIRMED BEFORE ME at the
City of Ottawa, Province of Ontario
this 18th day of August, 2010.


A COMMISSIONER, ETC.


Arlene Borenstein (Plante)

DEANNE E. FOWLER
BARRISTER AND SOLICITOR

This is Exhibit A referred to in the
Affidavit of Arlene Borenstein (Plante) ,
sworn before me this 10th day of August,
2010.


A Commissioner for Taking Affidavits, etc.

DEANNE E. FOWLER
BARRISTER AND SOLICITOR

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) WEDNESDAY, THE 14TH
MR. JUSTICE MORAWETZ) DAY OF JANUARY, 2010

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL
NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL
CORPORATION AND NORTEL NETWORKS TECHNOLOGY CORPORATION (the
"Applicants")**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

FOURTH AMENDED AND RESTATED INITIAL ORDER

THIS APPLICATION, made by the Applicants, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA") was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of John Doolittle sworn January 14, 2009 (the "Doolittle Affidavit") and the Exhibits thereto, the affidavit of John Doolittle sworn June 22, 2009 (the "June Affidavit") and the Exhibits thereto, the report dated January 14, 2009 of Ernst & Young Inc. ("E&Y"), the proposed monitor, and on hearing the submissions of counsel for the Applicants, counsel for the boards of directors of Nortel Networks Corporation and Nortel Networks Limited, counsel for E&Y, counsel for Export Development Canada ("EDC"), Flextronics

Telecom Systems Ltd., no one else appearing on this Application and on reading the consent of E&Y to act as the Monitor,

SERVICE

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged so that this Application is properly returnable today and hereby dispenses with further service thereof.

APPLICATION

2. THIS COURT ORDERS AND DECLARES that each of the Applicants is a "debtor company" to which the CCAA applies.

PLAN OF ARRANGEMENT

3. THIS COURT ORDERS that each of the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan") between, *inter alia*, such Applicant and one or more classes of its secured and/or unsecured creditors as it deems appropriate.

POSSESSION OF PROPERTY AND OPERATIONS

4. THIS COURT ORDERS that each of the Applicants shall remain in possession and control of its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"). Subject to further Order of this Court, each of the Applicants shall continue to carry on business in a manner consistent with the preservation of its business (the "Business") and Property. Each of the Applicants shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, brokers, accountants, legal counsel, financial advisors and such other persons (collectively "Assistants") currently retained or employed by such Applicant, with liberty to retain such further Assistants as such Applicant deems reasonably necessary or desirable for the Business or to carry out the terms of this Order or for the purposes of the Plan.

5. THIS COURT ORDERS that the Applicants shall be entitled to continue to utilize the central cash management system currently in place as described in the Doolittle Affidavit or replace it with another substantially similar central cash management system (the "Cash Management System") and that any present or future bank or banks providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Applicants of funds transferred, paid, collected or otherwise dealt with in the Cash Management System; shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Applicants, pursuant to the terms of the documentation applicable to the Cash Management System; and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under the Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. THIS COURT ORDERS that each of the Applicants, either on its own behalf or on behalf of another Applicant, shall be entitled but not required to pay the following expenses whether incurred prior to, on or after the date of this Order:

- (a) all outstanding and future wages, salaries and employee benefits (including, but not limited to, employee medical and similar benefit plans, relocation and tax equalization programs, the Incentive Plan (as defined in the Doolittle Affidavit) and employee assistance programs), current service, special and similar pension benefit payments, vacation pay, commissions and employee and director expenses, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) compensation to employees in respect of any payments made to employees prior to the date of this Order by way of the issuance of cheques or electronic transfers, which are subsequently dishonoured due to the commencement of proceedings under the CCAA;

- (c) all outstanding and future amounts owing to or in respect of individuals working as independent contractors in connection with the Business;
- (d) the fees and disbursements of any Assistants retained or employed in accordance with paragraph 4 hereof;
- (e) subject to the consent of the Monitor, amounts owing by one or more of the Applicants in respect of its Customer Programs (as defined in the Doolittle Affidavit);
- (f) subject to consent of the Monitor, amounts owing by one or more of the Applicants to any other Nortel Company (as defined in the Doolittle Affidavit) in order to settle their inter-company accounts and make inter-company loans in the ordinary course of business, including as a result of the Nortel Companies' Transfer Pricing Model (as defined in the Doolittle Affidavit); and
- (g) subject to the consent of the Monitor, amounts owing to the Applicants' carriers and warehousemen.

7. THIS COURT ORDERS that, except as otherwise provided to the contrary herein, each of the Applicants shall be entitled but not required to pay all reasonable expenses incurred by it in carrying on the Business in the ordinary course on and after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors and officers insurance) and maintenance and security services;
- (b) payment for goods or services actually supplied to the Applicants on or after the date of this Order;
- (c) with the written approval of the Monitor, the posting of additional cash collateral into existing cash collateral accounts (collectively, and together with the cash collateral posted as at February 10, 2009, the "LC Cash Collateral") held by either

or both of ABN AMRO Bank N.V., Canada Branch ("ABN") and Royal Bank of Canada ("RBC") as additional and continuing security for existing, renewed and new letters of credit, letters of guarantee, surety bonds, and similar instruments (collectively, "LCs") issued (whether before or after January 14, 2009) for the account of or requested by the Applicants or any of them to third parties pursuant to the existing letter of credit agreements between the Applicants and ABN and RBC and any amendments thereto made with the written approval of the Monitor, and for any foreign exchange losses incurred by ABN and its correspondent banks, if any, under LCs issued in currencies other than Canadian dollars, U.S. dollars, British pounds sterling and Euros, on the following basis:

- (i) the posting of such additional cash collateral is for the purposes of paragraph 10 hereof specifically permitted herein and authorized hereby and shall not and will not constitute a fraudulent preference, fraudulent conveyance, oppressive conduct, settlement or other challengeable, voidable or reviewable transaction under any applicable law;
- (ii) the aggregate of all cash collateral that may be posted (inclusive of the cash collateral posted as at February 10, 2009) in respect of LCs issued in Canadian dollars, U.S. dollars, British pounds sterling and Euros shall not exceed the amount of U.S.\$40 million (converting Canadian dollars at the Bank of Canada's Noon spot exchange rate for any day), provided that the LC Banks shall have no liability in the event that cash collateral is posted in an amount that exceeds such maximum and the validity of their claims with respect to any or all of the LC Cash Collateral shall not be limited, lessened or otherwise impaired in any way as a result of such excess; and
- (iii) cash collateral may be posted in respect of LCs issued by ABN in any other currencies in such amounts as are required by the provisions of the applicable letter of credit agreement, including any amendments thereto made with the written approval of the Monitor as security for ABN's exposure to foreign exchange losses;

- (d) if the same is not guaranteed by EDC, payment of any indebtedness of the Applicants to the LC Banks (as defined in paragraph 10A hereof) when due under the LC Agreements (as defined in paragraph 10A hereof) by way of set-off and transfer of LC Cash Collateral posted as at January 14, 2009 or posted thereafter pursuant to the LC Agreements and subparagraph (c) above;
- (e) without limiting (d), payment of costs and expenses of the LC Banks in connection with the amendment and enforcement of rights under the LC Agreements and any related guarantee bonds issued by EDC if so provided for under an applicable LC Agreement, whether incurred before or after February 10, 2009, including by way of set-off and transfer of LC Cash Collateral;
- (f) the posting of cash collateral in favour of Export Development Canada ("EDC") (collectively, the "EDC Cash Collateral") pursuant to the second amended and restated short-term support agreement between Nortel Networks Limited ("NNL") and EDC dated April 24, 2009, as amended by the amending agreement between NNL and EDC dated June 18, 2009, and the cash collateral agreement between NNL and EDC dated June 18, 2009 and any further amendments to the foregoing made with the written approval of the Monitor (collectively, the "EDC Support Agreements"), on the basis that the EDC Support Agreements are hereby ratified and approved and the posting of such cash collateral is for the purposes of paragraph 10 hereof specifically permitted herein and authorized hereby and shall not and will not constitute a fraudulent preference, fraudulent conveyance, oppressive conduct, settlement or other challengeable, voidable or reviewable transaction under any applicable law;
- (g) payment of any indebtedness of NNL to EDC under the EDC Support Agreements by way of set-off or transfer of EDC Cash Collateral posted as at June 29, 2009 or posted thereafter pursuant to the EDC Support Agreements and subparagraph (f) above; and

- (h) without limiting (g), payment of costs and expenses of EDC provided for under the EDC Support Agreements by way of set-off or transfer of EDC Cash Collateral, to the extent provided for in the EDC Support Agreements.

7A. THIS COURT ORDERS that no provision of this Order shall require EDC to provide its approval for any proposed amendments to any of the LC Agreements pursuant to any agreement between EDC and any of the LC Banks.

8. THIS COURT ORDERS that the each of the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by such Applicant in connection with the sale of goods and services by such Applicant, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province or Territory thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by such Applicant.

9. THIS COURT ORDERS that until such time as an Applicant delivers a notice in writing to repudiate a real property lease in accordance with paragraph 11(c) of this Order (a "Notice of Repudiation"), each Applicant shall pay all amounts constituting rent or payable as rent under

real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated by such Applicant and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, monthly on the first day of each month, in advance (but not in arrears). On the date of the first of such payment, any arrears relating to the period commencing from and including the date of this Order shall also be paid. Upon delivery of a Notice of Repudiation, such Applicant shall pay all Rent due for the notice period stipulated in paragraph 11(c) of this Order, to the extent that Rent for such period has not already been paid.

10. THIS COURT ORDERS that, except as specifically permitted herein, each of the Applicants is hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by such Applicant to any of its creditors as of this date unless such payments have been approved by the Monitor; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of business unless such obligation has been approved by the Monitor.

10A. THIS COURT ORDERS that, notwithstanding paragraph 10 hereof,

- (a) the existing letter of credit agreements between the Applicants and ABN, RBC and Citibank, N.A. acting through its Canadian branch ("Citibank") and any amendments thereto made after January 14, 2009 with the written approval of the Monitor, together with any agreements entered into by the Applicants or any of them with any other lenders with the written approval of the Monitor providing letter of credit facilities or similar facilities to the Applicants or any of them (including those which may be the subject of EDC guarantee bonds issued pursuant to the EDC Support Facility) (collectively, the "LC Agreements"), and the issuance or renewal of LC's pursuant thereto by ABN, RBC, Citibank and any other lenders (collectively, the "LC Banks"), together with any payments made by the Applicants or EDC with respect thereto; and

- (b) the EDC Support Agreements and any amendments thereto made after June 18, 2009 with the written consent of the Monitor, together with any payments made by NNL with respect thereto,

are specifically permitted herein and authorized hereby and shall not and will not constitute fraudulent preferences, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law

10B. THIS COURT ORDERS that, notwithstanding any other provision in this Order, no LC Bank shall be required to issue a letter of credit to the Applicants or any of them and EDC shall not be required to provide any Secured Support to the Applicants or any of them.

RESTRUCTURING

11. THIS COURT ORDERS that each of the Applicants shall, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations and to dispose of redundant or non-material assets not exceeding CDN\$10,000,000 in any one transaction or CDN\$50,000,000 in the aggregate, subject to paragraph (c), if applicable;
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate and to deal with the consequences thereof in the Plan or on further order of the Court;
- (c) in accordance with paragraphs 12 and 13, vacate, abandon or quit the whole but not part of any leased premises and/or repudiate any real property lease and any ancillary agreements relating to any leased premises, on not less than seven (7) days notice in writing to the relevant landlord on such terms as may be agreed upon between the Applicant and such landlord, or failing such agreement, to deal with the consequences thereof in the Plan;
- (d) repudiate such of its arrangements or agreements of any nature whatsoever, including, without limitation, any of its deferred compensation, or bonus plans, change of control plans, stock options or restructured stock unit plans and

shareholder rights plans whether oral or written, as such Applicant may deem appropriate on such terms as may be agreed upon between such Applicant or any one of them and such counter-parties, or failing such agreement, to deal with the consequences thereof in the Plan; and

- (e) pursue all avenues of refinancing and offers for material parts of its Business or Property, in whole or part, subject to prior approval of this Court being obtained before any material refinancing or any sale (except as permitted by subparagraph (a), above);

all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the "Restructuring").

12. THIS COURT ORDERS that each of the Applicants shall provide each of the relevant landlords with notice of such Applicant's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes such Applicant's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and such Applicant, or by further Order of this Court upon application by such Applicant on at least two (2) days notice to such landlord and any such secured creditors. If such Applicant repudiates the lease governing such leased premises in accordance with paragraph 11(c) of this Order, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in paragraph 11(c) of this Order), and the repudiation of the lease shall be without prejudice to such Applicant's claim to the fixtures in dispute.

13. THIS COURT ORDERS that if a Notice of Repudiation is delivered, then (a) during the notice period prior to the effective time of the repudiation, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours' prior written notice, and (b) at the effective time of the repudiation, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in

respect of such lease or leased premises and such landlord shall be entitled to notify the Applicants of the basis on which it is taking possession and to gain possession of and re-lease such leased premises to any third party or parties on such terms as such landlord considers advisable, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY

14. THIS COURT ORDERS that until and including February 13, 2009 or such later date as this Court may order (the "Stay Period"), no proceeding or enforcement process in any court or tribunal (each, a "Proceeding") shall be commenced, or continued against or in respect of any of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the affected Applicant and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the affected Applicant or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

15. THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the affected Applicant and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) exempt the Applicants from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

16. THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

17. THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Applicants or with third parties on behalf of the Applicants, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, employment agency services, insurance, transportation services, utility, leasing or other services to the Business or to any of the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the applicable Applicant and that such Applicant shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by such Applicant, in accordance with normal payment practices of such Applicant, as applicable, or such other practices as may be agreed upon by the supplier or service provider and the affected Applicant and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

18. THIS COURT ORDERS that, notwithstanding anything else contained herein, no creditor of the Applicants shall be under any obligation after the making of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

19. THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.5(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be

liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

DIRECTORS AND OFFICERS

20. THIS COURT ORDERS that each of the Applicants shall indemnify its directors and officers from all claims, costs, charges and expenses relating to the failure of such Applicant, after the date hereof, to make payments of the nature referred to in subparagraphs 6(a), 6(b), 8(a), 8(b) and 8(c) of this Order or for the Applicants' failure to make payments in respect of employer health tax or workers' compensation which they sustain or incur by reason of or in relation to their respective capacities as directors and/or officers except to the extent that, with respect to any officer or director, such officer or director has actively participated in the breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

21. THIS COURT ORDERS that the directors and officers of the Applicants shall be entitled to the benefit of and are hereby granted a charge (the "Directors' Charge") on the Property, which charge shall not exceed an aggregate amount of CDN \$45 million, as security for the indemnities provided in paragraph 20 of this Order as well as for fees and disbursements of their legal counsel. The Directors' Charge shall have the priority set out in paragraphs 42 and 44 herein.

21A. THIS COURT ORDERS that, to the extent that any one or more of proven Claims (as defined below), together with the fees and disbursements of legal counsel to the directors and officers of the Applicants, individually or in the aggregate, exceed the amount of CDN \$45 million, each such proven Claim against such directors and officers shall be reduced *pro rata* so that the aggregate of all such proven Claims, together with the fees and disbursements of legal counsel to such directors and officers, shall not exceed the amount of CDN \$45 million and such excess amounts of all such proven Claims and any other Claims are hereby and shall be forever barred, disallowed, enjoined, released, discharged and extinguished as against the directors and officers of the Applicants. Provided, however, that nothing in this paragraph 21A shall operate to release any director or officer of an Applicant in respect of such excess amount of any such Claim where, in respect of such Claim, such director or officer has actively participated in the

breach of any related fiduciary duties or has been grossly negligent or guilty of wilful misconduct.

In this paragraph 21A, "Claim" shall mean any claim (contingent, liquidated or unliquidated, proven or unproven, known or unknown) or any legal proceeding or action of any nature or kind, in these proceedings or any subsequent receivership or bankruptcy proceedings or in any other proceedings or in any other forum whatsoever, against one or more of the directors or officers of any one or more of the Applicants relating to the failure of any of the Applicants, after the date of this Order, to make payments of the nature referred to in subparagraphs 6(a), 6(b), 8(a), 8(b) and 8(c) of this Order or the Applicants' failure to make payments in respect of employer health tax or workers' compensation, which are or may be directly or indirectly advanced, asserted, re-asserted, refiled or made by any person, governmental or regulatory authority or other entity against one or more of the directors or officers of any one or more of the Applicants, to the extent that such Claim is not covered under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order

22. THIS COURT ORDERS that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) each of the Applicants' directors and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 20 of this Order.

23. THIS COURT ORDERS that each of NNC's and NNL's directors shall be entitled to receive remuneration in cash on a current basis at current compensation levels (less an overall U.S.\$25,000 reduction) notwithstanding the terms of, or elections made under, the Directors' Compensation Plan.

APPOINTMENT OF MONITOR

24. THIS COURT ORDERS that E&Y is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Property and the Applicants' conduct of the

Business with the powers and obligations set out in the CCAA or set forth herein and that each of the Applicants and its officers, directors, and Assistants shall advise the Monitor of all material steps taken by such Applicant pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations.

25. THIS COURT ORDERS that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Applicants' receipts and disbursements;
- (b) provide the consents contemplated herein;
- (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (d) advise the Applicants in their preparation of the Applicants' cash flow statements and any other reporting to the Court or otherwise;
- (e) advise the Applicants in their development of the Plan or Plans and any amendments to such Plan or Plans;
- (f) assist the Applicants, to the extent required by the Applicants, with the Restructuring;
- (g) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan or Plans;
- (h) have full and complete access to the books, records and management, employees and advisors of the Applicants and to the Business and the Property to the extent required to perform its duties arising under this Order;
- (i) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and

performance of its obligations under this Order including, without limitation, one or more entities related to or affiliated with the Monitor;

- (j) consider, and if deemed advisable by the Monitor, prepare a report and assessment on the Plan or Plans;
- (k) assist the Applicants with respect to any insolvency proceedings commenced by or with respect to any other Nortel Company (as defined in the Doolittle Affidavit) in any foreign jurisdiction (collectively, "Foreign Proceedings") and report to this Court, as it deems appropriate, on the Foreign Proceedings with respect to matters relating to the Applicants;
- (l) apply as the foreign representative of the Applicants, for recognition of these proceedings as "Foreign Main Proceedings", pursuant to Chapter 15 of the United States Bankruptcy Code, 11 U.S.C. §101 (the "U.S. Bankruptcy Code") or similar legislation in any other jurisdiction; and
- (m) perform such other duties as are required by this Order or by this Court from time to time.

26. THIS COURT ORDERS that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

27. THIS COURT ORDERS that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations

thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

28. THIS COURT ORDERS that that the Monitor shall provide any creditor of the Applicants with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. THIS COURT ORDERS that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment and the fulfilment of its duties or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. THIS COURT ORDERS that the Monitor, counsel to the Monitor, counsel to the Applicants and counsel to directors shall be paid their reasonable fees and disbursements incurred both before and after the making of the Order, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. Each of the Applicants is hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, counsel for the Applicants and counsel to directors on a weekly basis and, in addition, each of the Applicants is hereby authorized to pay to: (a) the Monitor and its Canadian and U.S. counsel a retainer in the aggregate amount of CDN\$750,000; and (b) counsel to the Applicants a retainer in the amount of CDN\$750,000 (collectively, the "Retainers") to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

31. THIS COURT ORDERS that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. THIS COURT ORDERS that the Monitor, counsel to the Monitor, if any, and the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property, which charge shall not exceed an aggregate amount of \$5,000,000, as security for their professional fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 42 and 44 hereof.

EDC

33. Intentionally Deleted.

INTERCOMPANY LOANS

34. THIS COURT ORDERS to the extent that an Applicant receives a post-filing inter-company loan or other transfer (including goods and services) from a Chapter 11 Entity (as defined in the Doolittle Affidavit) (including as a result of the Applicants' cash management system or otherwise) (each such Applicant, a "Beneficiary Applicant"), and such post-filing inter-company loan or other transfer is made (each an "Advance") by a Chapter 11 Entity (together with NNL for the purposes of paragraph 34A below, a "Protected Entity"), then, subject to the limitations set forth in this paragraph:

- (a) the Protected Entity shall have a proven and valid claim against such Beneficiary Applicant for the amount of such Advance (each, an "Inter-company Reimbursement Claim"), which Inter-company Reimbursement Claim shall bear interest at a rate agreed between the applicable Beneficiary Applicant and Protected Entity from time to time for the period in accordance with past practice; and

- (b) all of the Property of the Beneficiary Applicant, is hereby charged by a mortgage, lien and security interest (such mortgage, lien and security interest, "Inter-company Charge") in favour of each of the Protected Entities as security for payment of the Inter-company Reimbursement Claim (including principal, interest and expenses) by the applicable Beneficiary Applicant to the corresponding Protected Entity.

34A. THIS COURT ORDERS that the Inter-Company Charge shall also secure any Advances made by NNL to Nortel Networks Technology Corporation ("NNTC") on or after January 14, 2009 and that NNL shall be a "Protected Entity" and NNTC shall be a "Beneficiary Applicant" in respect of such Advances.

35. THIS COURT ORDERS that the Inter-company Charge shall also secure the Remaining Revolver Claim (as defined in the Final Canadian Funding and Settlement Agreement dated as of December 22, 2009 among, *inter alia*, the Applicants and NNI) as also evidenced by the Secured Promissory Note dated as of February 16, 2010 in the principal amount of U.S.\$62,700,000 given by NNL to NNI.

36. THIS COURT ORDERS the Inter-company Charge shall be junior, subject and subordinate only to the other Charges (defined below), and any other future charges against such Beneficiary Applicant that, by the Court order creating them, are expressly stated to be senior to the Inter-company Charges entered after notice and a hearing.

37. THIS COURT ORDERS that pending further order of this Court, an Inter-company Charge shall be a "silent" charge and the Protected Entity shall forbear from exercising, and shall not be entitled to exercise, any right or remedy relating to any Inter-company Reimbursement Claim held by such party, including, without limitation, as to seeking relief from the stay granted hereunder, or seeking any sale, foreclosure, realization upon repossession or liquidation of any Property of a Beneficiary Applicant, or taking any position with respect to any disposition of the Property, the business operations, or the reorganization of a Beneficiary Applicant. An Inter-company Charge automatically, and without further action of any person or entity of any kind, shall be released or otherwise terminated to the extent that Property subject to such Inter-company Charge is sold or otherwise disposed of in accordance with the terms of this Order or

further order of this Court after notice and a hearing, with respect to the effect of an Inter-company Charge on any sale of Property by any Beneficiary Applicant.

38. THIS COURT ORDERS that the Beneficiary Applicants may sell Property, in accordance with the terms of this Order or further order of this Court after notice and a hearing, in each case free and clear of any Inter-company Charge, with such Inter-company Charge attaching to the proceeds of sale in the same priority and subject to the same limitations and restrictions as existed in respect of the Property sold.

INTERIM GROUP SUPPLIER PROTOCOL AGREEMENT

39. THIS COURT ORDERS that the Applicants be and are hereby authorized to enter into a group supplier protocol agreement (the "Interim GSPA") substantially in the form attached as Exhibit "C" to the Doolittle Affidavit which agreement shall be effective upon the appointment of the Administrators in the United Kingdom, and the Applicants are hereby authorized to perform each of their obligations, if any, under the Interim GSPA. The obligations of the Applicants under the Interim GSPA shall be secured by the Inter-Company Charge.

NNI LOAN

40. THIS COURT ORDERS that the amended and restated loan agreement entered into between NNL, as borrower, NNTC and the other Applicants as guarantors, and Nortel Networks Inc. ("NNI") as lender (the "NNI Loan Agreement"), substantially in the form attached as Exhibit "B" to the Affidavit of John Doolittle sworn March 27, 2009 providing for a revolving loan facility of up to U.S.\$200 million is hereby approved and each of the Applicants is hereby directed to execute and to comply with its obligations under the NNI Loan Agreement.

41. THIS COURT ORDERS that as security for NNL's and NNTC's obligations under the NNI Loan Agreement, NNI shall be entitled to the benefit of and is hereby granted charges (the "Carling Facility Charges") by each of NNL and NNTC, NNL's wholly owned subsidiary, on all of the fee simple interest of NNTC and leasehold interest of NNL respectively in the Carling Facility (as defined in the Doolittle Affidavit) and that no equal or higher charge shall be granted by the Court order unless consented to by NNI as authorized by the United States Bankruptcy Court for the District of Delaware. The Carling Facility Charges shall have the priority set out in

paragraphs 42 and 44, hereof. For greater certainty, NNI shall not be required to have exhausted its remedies under the Carling Facility Charges prior to realizing on or being entitled to proceeds from the NNI Loan Charge.

41A. THIS COURT ORDERS that in addition to the Carling Facility Charges, NNI shall be entitled to the benefit of and is hereby granted a charge on the Property (the "NNI Loan Charge") as security for the Applicants obligations under the NNI Loan Agreement. The NNI Loan Charge shall have the priority set out in paragraphs 42 and 44 hereof.

41B. THIS COURT ORDERS that pending further order of this Court, NNI shall forbear from exercising, and shall not be entitled to exercise, any right or remedy relating to the Applicants' obligations under the NNI Loan Agreement, including, without limitation, as to seeking relief from the stay granted hereunder, or seeking any sale, foreclosure, realization upon repossession or liquidation of any Property of an Applicant, or taking any position with respect to any disposition of the Property, the business operations, or the reorganization of an Applicant. The NNI Loan Charge automatically, and without further action of any person or entity of any kind, shall be released or otherwise terminated to the extent that Property subject to such NNI Loan Charge is sold or otherwise disposed of in accordance with the terms of this Order or further order of this Court after notice and a hearing, with respect to the effect of an NNI Loan Charge on any sale of Property by any Applicant.

41C. THIS COURT ORDERS that the Applicants may sell Property, in accordance with the terms of this Order or further order of this Court after notice and a hearing, in each case free and clear of the NNI Loan Charge, with the NNI Loan Charge attaching to the proceeds of sale in the same priority and subject to the same limitations and restrictions as existed in respect of the Property sold.

EXCESS FUNDING CHARGE

41D. THIS COURT ORDERS that as security for NNL's obligation to repay to NNI the Contingent Payment (as defined in the Interim Funding Agreement, as defined in the June Affidavit) along with interest, if any, NNI shall be entitled to the benefit of and is hereby granted

a charge on the Property (the "Excess Funding Charge"). The Excess Funding Charge shall have the priority set out in paragraphs 42 and 44 hereof.

SHORTFALL CHARGE

41E. THIS COURT ORDERS that as security for any obligation of NNL to make the Shortfall Payments (as defined in the Interim Funding Agreement, as defined in the June Affidavit), Nortel Networks UK Limited shall be entitled to the benefit of and is hereby granted a charge on the Property (the "Shortfall Charge"). The Shortfall Charge shall have the priority set out in paragraphs 42 and 44 hereof.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

42. THIS COURT ORDERS that the priorities of the Administration Charge, the Goldman Charge, the Carling Facility Charges, the Excess Funding Charge, the Directors' Charge, the NNI Loan Charge, the Inter-company Charge, the Shortfall Charge, the Payments Charge and the Nortel Special Incentive Plan Charge on all Property shall be as follows:

First -

- (a) the Administration Charge;
- (b) the Goldman Charge (as defined in the Nortel-LGE Joint Venture Sale Process Order of this Court made on June 1, 2009), ranking *pari passu* with the Administration Charge but only with respect to the assets which are the subject of the Goldman Charge

Second – the Carling Facility Charges;

Third – the Excess Funding Charge

Fourth – the Directors' Charge;

Fifth – the NNI Loan Charge; and

Sixth -

- (a) the Inter-Company Charge;
- (b) the Shortfall Charge,

which Inter-company Charge and Shortfall Charge shall rank *pari passu* with one another.

Seventh -

- (a) the Payments Charge (as defined in the employee Settlement Approval Order of this Court made on March 31, 2010); and
- (b) the Nortel Special Incentive Plan Charge (as defined in the order approving the Nortel Special Incentive Plan of this Court made on March 8, 2010),

which Payments Charge and Nortel Special Incentive Plan Charge shall rank *pari passu* with one another.

43. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge, the Goldman Charge, the Carling Facility Charges, Excess Funding Charge, the Directors' Charge, the NNI Loan Charge, the Inter-company Charge, the Shortfall Charge, the Payments Charge and the Nortel Special Incentive Plan Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect. Notwithstanding anything herein, the Charges shall not attach to the Retainers.

44. THIS COURT ORDERS that each of the Charges (all as constituted and defined herein), shall subject to this paragraph 44 and to paragraph 46 herein constitute a charge on the Property secured thereunder, and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise (collectively, "Encumbrances") in favour of any Person. For greater certainty,

- (a) the Charges shall attach to the LC Cash Collateral junior in priority to any rights or Encumbrances in favour of LC Banks in respect of LC Cash Collateral and

only to the extent of the rights of the Applicants to the return of any LC Cash Collateral from the LC Banks following the exercise of the rights of the LC Banks as against any such LC Cash Collateral pursuant to the LC Agreements or section 18.1 of the CCAA, and

- (b) the Charges shall attach to the EDC Cash Collateral junior in priority to any rights or Encumbrances in favour of EDC in respect of EDC Cash Collateral and only to the extent of the rights of NNL to the return of any EDC Cash Collateral from EDC following the exercise of the rights of EDC as against any such EDC Cash Collateral pursuant to the EDC Support Agreements or section 18.1 of the CCAA

notwithstanding anything to the contrary contained in this Order.

45. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges charging such Property, unless the Applicants also obtain the prior written consent of the Monitor and the beneficiaries of such Charges, or by further Order of this Court.

46. THIS COURT ORDERS that none of the Charges, the LC Agreements and the EDC Support Agreements shall be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") thereunder, the rights of the LC Banks under LC Agreements and the rights of EDC under the EDC Support shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) the creation of the Charges, the entering into of the LC Agreements and the issuance or renewal of LC's thereunder and the entering into of the EDC Support Agreements and the provision of Secured Support, as defined and contemplated thereunder, shall not create or be deemed to constitute a breach by any of the Applicants of any Agreement to which it is a party;
- (b) none of the Chargees, the LC Banks and EDC shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from, the creation of the Charges, the entering into of the LC Agreements or the issuance or renewal of LC's thereunder or the entering into of the EDC Support Agreements and the provision of Secured Support; and
- (c) the payments made by the Applicants pursuant to this Order and the granting of the Charges and the entering into of the LC Agreements and the EDC Support Agreements do not and will not constitute fraudulent preferences, fraudulent conveyances, oppressive conduct, settlements or other challengeable, voidable or reviewable transactions under any applicable law.

47. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants' interest in such real property leases.

FLEXTRONICS AMENDING AGREEMENT

48. THIS COURT ORDERS that the Flextronics Amending Agreement in the form attached as Exhibit "B" to the Doolittle Affidavit be and is hereby approved and NNL is hereby authorized and directed to comply with its obligations thereunder.

CROSS-BORDER PROTOCOL

49. THIS COURT ORDERS that the cross-border protocol, as amended, in the form attached as Schedule "A" hereto be and is hereby approved and shall become effective upon its approval by the United States Bankruptcy Court for the District of Delaware and the parties to these proceedings and any other Person shall be governed by it and shall comply with the same.

FOREIGN PROCEEDINGS

50. THIS COURT ORDERS that the Monitor is hereby authorized and directed to apply for recognition of these proceedings as "Foreign Main Proceedings" in the United States pursuant to Chapter 15 of the U.S. Bankruptcy Code.

51. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, the United Kingdom or elsewhere, to give effect to this Order and to assist the Applicants, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

52. THIS COURT ORDERS that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SERVICE AND NOTICE

53. THIS COURT ORDERS that the Monitor shall, within ten (10) business days of the date of entry of this Order, send notice of this Order and the commencement of the within proceedings to the Applicants' known creditors, other than employees and creditors to which the Applicants owe less than \$5,000, at their addresses as they appear on the Applicants' records, and shall promptly send a copy of this Order (a) to all parties filing a Notice of Appearance in respect of this Application, and (b) to any other interested Person requesting a copy of this Order, and the Monitor is relieved of its obligation under Section 11(5) of the CCAA to provide similar notice, other than to supervise this process. The Monitor, on behalf of the Applicants, shall, in its discretion, be entitled to engage a third party mailing service in order to assist or complete the mailing. Any such service provider shall be considered an "Assistant" hereunder.

54. THIS COURT ORDERS that the Applicants and the Monitor be at liberty to serve this Order, any other materials and orders in these proceedings, and any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

55. THIS COURT ORDERS that the Applicants, the Monitor, and any party who has filed a Notice of Appearance may serve any court materials in these proceedings by e-mailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, in accordance with the E-filing protocol of the Commercial List to the extent practicable, and the Monitor may post a copy of any or all such materials on its website at <http://www.ey.com/ca/nortel>.

GENERAL

56. THIS COURT ORDERS that any of the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

57. THIS COURT ORDERS that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

58. THIS COURT ORDERS that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

59. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard Time on the date of this Order.

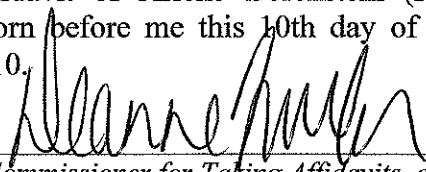
A handwritten signature in black ink, appearing to read "J. H. Davis", is written over a horizontal line.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO..

APR 14 2010

PER / PAR: A handwritten mark, possibly initials, is written next to the "PER / PAR:" label.

This is Exhibit B referred to in the
Affidavit of Arlene Borenstein (Plante) ,
sworn before me this 10th day of August,
2010.



A Commissioner for Taking Affidavits, etc.

DEANNE E. FOWLER
BARRISTER AND SOLICITOR

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE) WEDNESDAY, THE 27TH DAY OF
MORAWETZ)
) MAY, 2009



**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED
AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION (the "Applicants")**

**APPLICATION UNDER THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36 AS AMENDED**

ORDER

THIS MOTION, made by Donald Sproule, David Archibald and Michael Campbell (collectively, the "Representatives") on behalf of former employees, including pensioners, of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International and/or Nortel Networks Technology Corporation (collectively "Nortel") or any person claiming an interest under or on behalf of such former employees or pensioners and surviving spouses in receipt of a Nortel pension, or group or class of them (collectively the "Former Employees") was heard Monday, April 20, 2009, on the Commercial List at the courthouse at 330 University Avenue, Toronto, Ontario, Reasons for Decision having been reserved to May 27, 2009,

ON READING the Motion Record of the Representatives and on hearing the submissions of counsel for the Representatives, Nortel, the Monitor and other parties,

1. **THIS COURT ORDERS** that further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion was properly returnable April 20, 2009.

2. **THIS COURT ORDERS** that, subject to paragraphs 8-9 hereof, Donald Sproule, David Archibald and Michael Campbell are hereby appointed as representatives of all Former Employees in the proceedings under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA"), the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings"), including, without limitation, for the purpose of settling or compromising claims by the Former Employees in the Proceedings.

3. **THIS COURT ORDERS** that, subject to paragraphs 8-9 hereof, Koskie Minsky LLP is hereby appointed as counsel for all Former Employees in the Proceedings for any issues affecting the Former Employees in the Proceedings.

4. **THIS COURT ORDERS** that Nortel shall provide to the Representatives and their counsel, without charge:

- (a) the names, last known addresses and last known e-mail addresses (if any) of all the Former Employees, whom they represent, as well as applicable data regarding their entitlements, subject to a confidentiality agreement and to only be used for the purposes of the Proceedings; and
- (b) upon request of the Representatives and their counsel, such documents and data, as may be relevant to matters relating to the issues in the Proceedings, including documents and data, pertaining to the various pension, benefit, supplementary pension, termination allowance plans, severance and termination payments and other arrangements for group health, life insurance, retirement and severance payments, including up to date financial information regarding the funding and investments of any of these arrangements.

5. **THIS COURT ORDERS** that all reasonable legal, actuarial and financial expert and advisory fees and all other incidental fees and disbursements, as may have been or shall be

incurred by the Representatives and their counsel, shall be paid by Nortel on a bi-weekly basis, forthwith upon the rendering of accounts to Nortel. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

6. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Former Employees by advertisement in the national edition of the Globe and Mail, La Presse, the Ottawa Citizen and the Calgary Herald under such terms and conditions as to be agreed upon by the Representatives, the Applicants and the Monitor.

7. **THIS COURT ORDERS** that the Representatives, or their counsel on their behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

8. **THIS COURT ORDERS** that, subject to paragraph 9 hereof, any individual Former Employee who does not wish to be bound by this Order and all other related Orders which may subsequently be made in these proceedings shall, within 30 days of publication of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and in the form attached as Schedule "A" hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in these Proceedings.

9. **THIS COURT ORDERS** that notwithstanding paragraph 8 hereof any Former Employee already represented by Lewis Gottheil, counsel to the National Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW-Canada") ("CAW Counsel") are not bound by this Order and CAW Counsel shall deliver to Koskie Minsky LLP, the Monitor and Nortel a listing of each Former Employee so represented within 30 days of the issuance of this Order.

10. **THIS COURT ORDERS** that Former Employees bound by this Order specifically exclude any former chief executive officer or chairman of the board of directors, any non-employee member of the board of directors, or such former employees or officers that are

subject to investigation and charges by the Ontario Securities Commission or the United States Securities and Exchange Commission, and that the Representatives have no obligation to represent such persons.

11. **THIS COURT ORDERS** that the Representatives and Koskie Minsky LLP shall have no liability as a result of their respective appointment or the fulfilment of their duties in carrying out the provisions of this Order from and after January 14, 2009 save and except for any gross negligence or unlawful misconduct on their part.

12. **THIS COURT ORDERS** that the Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

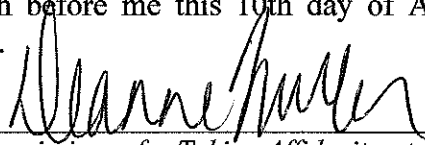


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LE / DANS LE REGISTRE NO.:

JUN 30 2009

PER / PAR: TV

This is Exhibit C referred to in the
Affidavit of Arlene Borenstein (Plante) ,
sworn before me this 10th day of August,
2010.



A Commissioner for Taking Affidavits, etc.

DEANNE E. FOWLER
BARRISTER AND SOLICITOR

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.
JUSTICE MORAWETZ

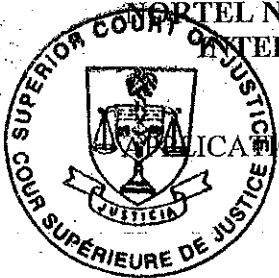
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WEDNESDAY, THE 22ND DAY OF
JULY, 2009

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, C. c-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION and NORTEL NETWORKS
TECHNOLOGY CORPORATION**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**



ORDER

THIS MOTION, made by Kent Felske and Dany Sylvain (collectively, the "Representatives") on behalf of all Canadian non-unionized employees of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International and/or Nortel Networks Technology Corporation (collectively, "Nortel") was heard Thursday, July 9, 2009 on the Commercial List at 330 University Avenue, Toronto, Ontario.

ON READING the motion record of the Representatives, the motion record of Nortel, and on hearing submissions of counsel for the Representatives, Nortel, the Monitor and other parties,

1. **THIS COURT ORDERS** that time for service of the notice of motion and the motion record is abridged, service of notice of motion material and the motion record is validated, all such that this motion is properly returnable on July 9, 2009.
2. **THIS COURT ORDERS** that Kent Felske and Dany Sylvain be and hereby are appointed as the representatives of all Canadian non-unionized employees of Nortel whose employment with Nortel is continuing (the "Continuing Employees") while it is continuing in the

proceedings under the *Companies' Creditors Arrangement Act* ("CCAA"), the *Bankruptcy and Insolvency Act* (Canada) (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (collectively, the "Proceedings").

3. **THIS COURT ORDERS** that Nelligan O'Brien Payne, LLP and Shibley Righton LLP be and hereby are appointed as counsel (the "Continuing Employee Counsel") for the Continuing Employees to provide advice and representation with respect to Continuing Employees' employment-related claims and potential claims in the Proceedings, including issues arising with respect to pension plans and the health and welfare trust (such appointment to be referred to herein as the "Mandate"). For greater certainty, the Mandate does not include negotiations or requests with potential purchasers of assets of Nortel but the Continuing Employee Counsel shall from time to time be able to seek responses from the Monitor with respect to issues arising out of such negotiations and concluded arrangements on a need to know basis, including the recent Ericsson asset purchase agreement.

4. **THIS COURT ORDERS** that, subject to the prior written consent of the Monitor, Nortel shall provide to the Representatives and to the Continuing Employee Counsel, without charge upon request by the Representatives and their Counsel, such documents and data, as may be relevant to matters relating to the claims in the Proceedings, including documents and data pertaining to the entitlements of Continuing Employees, the terms and conditions of their employment including pension benefit, bonus, termination and severance entitlements and any agreements and documents related to the transfer or prospective transfer of employees from Nortel to new employers.

5. **THIS COURT ORDERS** that all reasonable legal fees and all other incidental fees and disbursements incurred in carrying out the Mandate, as may have been or shall be incurred by the Representatives and the Continuing Employee Counsel, shall be paid by Nortel on a bi-weekly basis, forthwith upon the rendering of accounts to Nortel and that, in the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

6. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Continuing Employees by the Monitor, together with the information attached in Schedule "A", by electronic transmission of a copy hereof as soon as practicable after the granting of this Order,

together with the specific contact information provided by the Representatives and the Continuing Employee Counsel.

7. **THIS COURT ORDERS** that the Representatives or their Continuing Employee Counsel on their behalf be and hereby are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

8. **THIS COURT ORDERS** that any individual Continuing Employee who does not wish to be bound by this order and all other related orders which may subsequently be made in these proceedings shall by September 18, 2009 notify the Monitor in writing by facsimile, mail or delivery, and in the form attached as Schedule "B" hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in the Proceedings.

9. **THIS COURT ORDERS** that the Continuing Employees bound by this Order do not include any employees who are subject to investigation and charges by the Ontario Securities Commission or the United States Securities and Exchange Commission, and that the Representatives have no obligation to represent such persons.

10. **THIS COURT ORDERS** that the Representatives, Nelligan O'Brien Payne LLP and Shibley Righton LLP as Continuing Employee Counsel shall have no liability as a result of their appointment or the fulfilment of their duties in carrying out the provisions of this Order from and after January 14, 2009 save and except for any gross negligence or unlawful misconduct on their part.

11. **THIS COURT ORDERS** that the Representatives shall be at liberty and are authorized at any time to apply to this Honourable Court for advice and directions in the discharge or variation of their powers and duties.

A handwritten signature in black ink, appearing to be "A. J. [unclear]", is written over a horizontal line.

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LE / DANS LE REGISTRE NO.:

AUG 04 2009

PER / PAR: TV

SCHEDULE "A"

In an endorsement issued on July 22, 2009 by the Ontario Superior Court of Justice in Nortel's outstanding CCAA proceedings (the "Proceedings"), Nelligan O'Brien Payne and Shibley Righton were jointly appointed as counsel for Canadian non-unionized employees of Nortel whose employment with Nortel is continuing (the "Continuing Employees"). A copy of the Representation Order for the Continuing Employees dated July 22, 2009 is attached.

Justice Morawetz stated that the Continuing Employees at Nortel have an interest in the Proceedings and it is advisable that they have legal representation to provide general advice on employee issues that affect them. The Commercial Court also appointed Kent Felske and Dany Sylvain as representatives of the Continuing Employees.

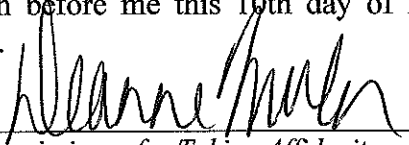
Former employees of Nortel and employees whose employment is terminated in the future continue to be represented by Koskie Minsky.

Nortel will be responsible for the reasonable legal fees incurred by the court-appointed counsel in carrying out their prescribed mandate.

If you do not wish to be bound by this order, you may opt-out of the group in accordance with paragraph 8 of the Order.

Continuing Employees may in confidence directly contact Nelligan O'Brien Payne at – NCCE@nelligan.ca (use your personal email) or by telephone to Ms. Christine Seed (613) 231-8280 or 1-888-565-9912.

This is Exhibit D referred to in the
Affidavit of Arlene Borenstein (Plante) ,
sworn before me this 10th day of August,
2010.



A Commissioner for Taking Affidavits, etc.

DEANNE E. FOWLER
BARRISTER AND SOLICITOR

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE) THURSDAY, THE 30TH DAY OF
)
MORAWETZ) JULY, 2009



**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION AND NORTEL NETWORKS TECHNOLOGY
CORPORATION (the "Applicants")**

**APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36 AS AMENDED**

**ORDER
(Representation Order for Disabled Employees)**

THIS MOTION, made by the Applicants (collectively, "Nortel") for an order appointing representative counsel for those employees of Nortel who are currently not working due to an injury, illness or medical condition in respect of which they are receiving or entitled to receive disability income benefits by or through Nortel, and who may assert an existing or future claim for payment, reimbursement or coverage arising in connection with their employment with Nortel or termination thereof, a pension or benefit plan sponsored by Nortel, including in relation to medical, dental, long-term or short-term disability benefits, life insurance or any other benefit, obligation or payment to which such person (or others who may be entitled to claim under or through such person) may be entitled from or through Nortel (referred to individually as an "LTD Beneficiary" and collectively, as the "LTD Beneficiaries") save and except those LTD Beneficiaries who are currently employed and whose benefit or other payments, as described above, arise directly or inferentially out of a

collective agreement between the Applicants, or any of them, and the CAW-Canada was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record of the Applicants and on hearing the submissions of counsel for the Representative, the CAW-Canada, Nortel, the Monitor and other parties,

1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion and the Motion Record is hereby abridged so that this Motion is properly returnable today and hereby dispenses of further service thereof.

2. **THIS COURT ORDERS** that further service of the Notice of Motion and Motion Record on any party not already served is hereby dispensed with, such that this motion was properly returnable July 9, 2009.

3. **THIS COURT ORDERS** that, subject to paragraph 9 hereof, Sue Kennedy is hereby appointed as representative of all LTD Beneficiaries in the proceedings under the *Companies' Creditors Arrangement Act (Canada)* ("CCAA"), the *Bankruptcy and Insolvency Act (Canada)* (the "BIA") or in any other proceeding which has been or may be brought before this Honourable Court (the "Proceedings"), including, without limitation, for the purpose of settling or compromising claims by the LTD Beneficiaries in the Proceedings.

4. **THIS COURT ORDERS** that, subject to paragraph 9 hereof, Koskie Minsky LLP is hereby appointed as counsel for all LTD Beneficiaries in the Proceedings for any issues affecting the LTD Beneficiaries in the Proceedings.

5. **THIS COURT ORDERS** that Nortel shall provide to the Representatives and their counsel, without charge:

- (a) the names, last known addresses and last known e-mail addresses (if any) of all the Former Employees, whom they represent, as well as applicable data regarding their entitlements, subject to a confidentiality agreement and to only be used for the purposes of the Proceedings; and
- (b) upon request of the Representatives and their counsel, such documents and data, as may be relevant to matters relating to the issues in the Proceedings,

including documents and data, pertaining to the various long term disability, pension, benefit, supplementary pension, termination allowance plans, severance and termination payments and other arrangements for group health, life insurance, retirement and severance payments, including up to date financial information regarding the funding and investments of any of these arrangements.

6. **THIS COURT ORDERS** that all reasonable legal, actuarial and financial expert and advisory fees and all other incidental fees and disbursements, as may have been or shall be incurred by the Representatives and their counsel, shall be paid by Nortel on a bi-weekly basis, forthwith upon the rendering of accounts to Nortel. In the event of any disagreement regarding such fees, such matters may be remitted to this Court for determination.

7. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the LTD Beneficiaries by regular mail to their last know address under such terms and conditions as to be agreed upon by the Representative, the Applicants and the Monitor.

8. **THIS COURT ORDERS** that the Representative, or her counsel on her behalf, are authorized to take all steps and to do all acts necessary or desirable to carry out the terms of this Order, including dealing with any Court, regulatory body and other government ministry, department or agency, and to take all such steps as are necessary or incidental thereto.

9. **THIS COURT ORDERS** that any individual LTD Beneficiary who does not wish to be bound by this Order and all other related Orders which may subsequently be made in these proceedings shall, within 30 days of mailing of notice of this Order, notify the Monitor, in writing, by facsimile, mail or delivery, and in the form attached as Schedule "A" hereto and shall thereafter not be bound and shall be represented themselves as an independent individual party to the extent they wish to appear in these Proceedings.

10. **THIS COURT ORDERS** that the Representative and Koskie Minsky LLP shall have no liability as a result of their respective appointment or the fulfilment of their duties in carrying out the provisions of this Order from and after January 14, 2009 save and except for any gross negligence or unlawful misconduct on their part.

PER / PAR: *A*