

## Former Nortel workers seek justice through Charter challenge

Two former Nortel workers will represent themselves in fairness hearing in Toronto

By Julie Ireton, [CBC News](#) Posted: Jan 24, 2017 5:00 AM ET Last Updated: Jan 24, 2017 5:00 AM ET

Two former Nortel Networks employees, who were on long-term disability when the company collapsed, plan to make a Charter challenge Tuesday in a last-ditch effort to get their fair share.

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Jennifer Holley and Greg McAvoy, both former Canadian workers who were on long-term disability (LTD) when the former tech giant collapsed, will present their arguments at a fairness hearing in bankruptcy court in Toronto.

They do so at a time when former Nortel CEO Frank Dunn is asking for a \$120-million settlement, and the company's last president, Mike Zafirovski wants \$11 million from the Nortel Canada estate, according to a court monitor report from restructuring firm Ernst and Young.

Dunn and Zafirovski may not collect that much, but lawyers have requested that money be set in reserve. Lawyers for Canadian creditors have requested more than \$700 million be set in reserve in the Nortel case.

By contrast, Holley and McAvoy will ask Tuesday in court for \$44 million to be set aside to fulfill the benefits of all workers who were on long-term disability when Nortel stopped operating. Nortel lawyers and the court monitor have been opposed to this reserve.

"I guess what we're talking about here is justice and that's what we want to achieve," said McAvoy.

Holley and McAvoy will represent themselves in court, but are seeking a settlement on behalf of all of the workers with disabilities.

The law firm appointed to represent former Nortel workers, however, won't be arguing with them.

## Settlement plan offers 45 to 49% of money owed

McAvoy and Holley, along with a few hundred other Canadian Nortel workers with terminal and chronic diseases, had their LTD benefits cut off in 2010.

Since that time, McAvoy, who suffers from multiple sclerosis, has had to move into an assisted-care facility. Holley, who lives in the North Frontenac, Ont., community of Ompah, has Crohn's disease and is also unable to work.

As the Nortel settlement plan currently stands, those who were on LTD will receive between 45 and 49 per cent of what Nortel still owes them.

In documents filed with the court, McAvoy and Holley ask that the Nortel settlement plan comply with the Canadian Charter of Rights and Freedoms and be adjusted to the full amount of their claim.

They believe the Nortel settlement plan violates their charter rights as persons with disabilities. "It's a fairness hearing and it's pretty clear this is grossly unfair for the disabled. It violates our Charter rights and it's the only form we have at this stage to show that it isn't fair," said McAvoy from Calgary.

While he and Holley have received pro bono legal advice, they plan to represent themselves in court.

McAvoy said he's giving a voice to other former Nortel workers with disabilities who don't have the strength to speak out.

"Some of them just can't articulate what's been going on," said McAvoy. "They haven't been informed. I feel lucky at least I can try to get the message out to everybody and hopefully help the other people in my group."

## **Delay will only prolong wait for payments, says lawyer**

But the lawyer hired to represent all former Nortel workers and pensioners in Canada said while everyone is sympathetic to the plight of those who were on disability, there is no legal basis for creating a preference for certain former employees over others.

- [Pension decision looming for thousands](#)

Mark Zigler, partner at Koskie Minsky LLP, said any attempts to delay the process will just run up more costs and may delay payments to those who've been waiting for eight years.

"That's the nature of insolvency, the company owes them all money and there's not enough money there," said Zigler.

"It's sad and it's painful that they're not getting full recovery, but that's the nature of insolvency and the laws don't give preference to any particular group."

But that's just the argument that McAvoy and Holley say they are making.

They said it's unfair for U.S. bondholders to receive 100 per cent of their claim while those who were on disability insurance take home half that amount.

McAvoy isn't looking to live large. Right now, he lives off a \$1,100 monthly disability pension. He said as a Nortel manager, he paid into the long-term benefit plan hoping the insurance would be there if he ever needed it.

He also notes lawyers, including Zigler, have done well during the eight-year bankruptcy process. Over that time, documents presented to the court show that professional fees, including those paid to lawyers, amount to \$2.5 billion.

"It's sad that the professional fees have gotten to be as high as they have," said Zigler. "Largely because there was a fight over \$7.5 billion (US). Creditors wanted the money in the U.S., and U.K. creditors wanted more there."

McAvoy said he had hoped that the Canadian government would step in and help his group, but he doubts that will now happen.

- [Nortel workers who lost benefits look for justice](#)

He said if Tuesday's fairness hearing is dismissed he has one more option.

"We're prepared to go and take the government to court for violating our charter rights," said McAvoy "It's quite disappointing we presented this information to the federal government, yet they still haven't moved on it."

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