

Disability insurance at risk for 1.1 million

'Safety valve' needed to protect employees with self-insured plans, many say

Last Updated: Tuesday, May 25, 2010 | 7:27 AM ET [Comments](#)[8](#)[Recommend](#)[9](#)

[CBC News](#)



'People have to know — they have to double-check if they have real insurance,' said Josée Marin, shown here last October. (CBC) More than a million Canadians are counting on disability insurance plans that don't guarantee benefits if their employer goes bankrupt.

Advocates say it's time for regulations to protect them.

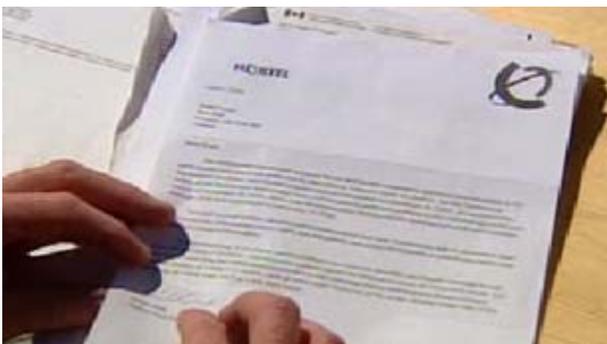
"An insurance that doesn't give any guarantee is not an insurance, so don't fool people," said Josée Marin, who only learned her own insurance fell into that category after her employer, Nortel Networks, filed for bankruptcy protection.

Now she is warning other Canadians they may risk the same fate.

"People have to know — they have to double-check if they have real insurance."

Nortel has a court-approved deal with its employees and other creditors to stop paying disability benefits at the end of the year. The former network technology giant filed for bankruptcy protection in January 2009 and has since sold its major units.

The company's creditors, including disabled former employees, must fight to divide among themselves whatever remains.



Many disabled ex-employees said they were informed only recently that they would lose their benefits as a result of Nortel's anticipated bankruptcy. Marin, who has Crohn's disease and other ailments that leave her too sick to work, said the lives of Nortel's 400 disabled ex-employees are at risk because of their situation.

Nortel's plan was a self-insurance benefit plan relying on the company's own in-house fund, rather than an insurance fund.

According to the Canadian Life and Health Insurance Association, similar "uninsured" plans provided 1.1 million people with disability income protection in 2008 — about one in 10 Canadian employees. Currently, such plans supply wage replacement benefits for 23,000 people with disabilities.

Corporate savings

Hari Nesathurai, a Toronto-based tax lawyer who has set up more than 50 such funds in the past 14 years, said they are popular with large companies because of the cost and tax savings, compared with insured funds.



Disabled ex-employees want the government to make changes to legislation to protect them. They have held rallies on Parliament Hill, such as this one last October, to draw attention to their plight. (CBC) "Most corporations who are in business would rarely miss the opportunity to save costs, especially on something as significant as group benefits," said Nesathurai, senior tax counsel at Navarrete Perinot P.C.

He estimates that most Fortune 500 companies would have such a fund.

Diane Urquhart, an independent financial analyst who advocates for Nortel's disabled employees, said major companies that self-insure their disability funds include GM, Chrysler and CIBC.

Nesathurai said most of the time, such funds work if they're funded properly and the employer is solvent, as they typically require the employer to make up any shortfall.

"However, if the employer is insolvent, as in Nortel's case ... then there's no one to go to get that money," he said. "Unfortunately, when things go wrong, they go very wrong, as in Nortel's case."

Employees unaware

Part of the problem is that it's often unclear to employees that their benefit plan is self-funded.

In the case of Nortel employees, documentation concerning long-term benefits came from Sun Life Financial, leading many to assume their benefits were insured. In fact, Sun Life was only administering the plan, not insuring it.



Jackie Bodie, who has Parkinson's disease, said she fears for her future. 'At this point, I'm just kind of hoping that I don't live long enough to see it,' she said. (CBC) Jackie Bodie, 40, a former hardware design technologist at Nortel's Calgary campus, said she was told by Nortel she would be covered by her disability insurance until age 65.

"I found out last August that, in fact, I'm not covered anymore," recalled Bodie, who was diagnosed with Parkinson's disease in 2003 and forced to stop working two years later.

"The real kicker for me is that they didn't tell me this until my diagnosis, obviously, so now it's too late for me to get insurance anywhere else."

Bodie said her situation is particularly hard because she's only 40. She choked back tears as she voiced her fears about what the future holds.

"At this point, I'm just kind of hoping that I don't live long enough to see it."

Jim Derkson, head of the human rights committee for the Council of Canadians with Disabilities, said the situation is unfair for both employees and other taxpayers, as those who can't get disability benefits may end up on welfare.

'Absolutely, there is legislation needed'

"We need to make our policy-makers aware that we expect those kinds of safeguard systems to be safeguarded," he added.

Many people — from financial experts to politicians — say new laws are required to prevent situations like this.



Industry Minister Tony Clement would not say whether the government plans to support Liberal Senator Art Eggleton's bill to amend the Bankruptcy and Insolvency Act. (Canadian Press) "Absolutely, there is regulation needed," said Nesathurai. He believes Canadian law should force employers to meet certain requirements in order to set up a self-insured plan.

"In an ideal world," he added, "there should be some sort of reinsurance or some sort of safety valve to

allow insurance company to step in" under certain circumstances.

A House of Commons bill and a Senate bill both propose changes to the federal Bankruptcy and Insolvency Act that would bring employees on long-term disability to the top of the list of creditors to be paid if a company goes bankrupt.

Their payments would then be far more likely to continue until age 65, when they would be eligible for retirement benefits.

The Commons bill, brought forward by Wayne Marston, NDP MP for Hamilton East-Stoney Creek, is far down on the list of legislation being debated in this session of Parliament.

But the Senate bill proposed by Liberal Art Eggleton has already entered debate. If it passes in the Senate, it will go to the House for approval.

The NDP and the Bloc Québécois have both told Eggleton they will support his bill.

However, Industry Minister Tony Clement would not say whether the government will also offer its support.

"All I can tell you right now," he said, "is we're looking at the issue and seeing what the most appropriate response is as a society."