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Billion-dollar Nortel tab boosts pressure over runaway legal costs

JEFF GRAY - LAW REPORTER

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With the legal bill for disassembling Nortel Networks Corp. heading into billion-dollar territory, lawyers who work on insolvencies are facing increasing pressure to keep their billable hours under control.

Just before the launch this week of the joint Canada-U.S. trial to divide up what's left of Nortel, the Ontario Superior Court judge hearing the Canadian side of the proceedings called the \$1.3-billion bill for legal and other professional fees "completely shocking" in a pretrial hearing.

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Lawyers and spokesmen for the Nortel pensioners who have seen their benefits slashed have also criticized the costs, pointing at lawyers involved in the case who charge rates of \$800 to \$1,000 an hour.

However, concern about the costs lawyers run up in bankruptcies and restructurings has spread far beyond the spotlight now shining on Nortel. Lawyers say judges across the country are becoming increasingly likely to challenge what they see as "overlawyering" or runaway bills on insolvencies.

David Jackson, a Winnipeg lawyer with Taylor

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McCaffrey LLP who chairs the bankruptcy section of the Canadian Bar Association, says increased scrutiny of insolvency fees has been a major topic of discussion at the insolvency bar conferences over the past year.

"There's no question," Mr. Jackson said. "I think it's an issue that has been not just of concern to the courts and the judges but to all the other stakeholders."

He says creditors and court-appointed monitors in insolvencies, which are usually accounting firms, are also paying closer attention to large legal bills.

In two recent rulings in cases far removed from the massive size and complexity of the Nortel trial, judges have gone over bills closely.

In a decision out of London, Ont., from January, a judge declared that \$255,000 in legal fees charged by national law firm Borden Lander Gervais LLP in the receivership of a cattle farm was "nothing short of excessive."

Ontario Superior Court Justice Andrew Goodman knocked the bill down to \$157,500, citing "a lack of proportionality and reasonableness" in the firm's fees and rejecting assertions in affidavits from BLG lawyer Roger Jaipargas that the work was justified.

"In my review of fees ... there appears to be excessive work done by senior counsel on routine matters," the judge ruled. The decision is under appeal. Mr. Jaipargas declined to comment.

In an insolvency ruling released earlier this month, Ontario Superior Court Justice David Brown slashed by more than half the \$73,000 in bills from Ernst & Young Inc. and law firm McCarthy Tétrault LLP.

He ends his ruling by calling for capped fees for routine tasks in such cases and predicts that "we are reaching the end of the era where the fees for professional services, such as the giving of legal or insolvency advice, are calculated and billed on an hourly rate basis."

Last year, e-mails surfaced in U.S. litigation over bills in an insolvency that were charged by giant law firm DLA Piper, and they made for water-cooler conversation in law firms everywhere. In the e-mails, the firm's lawyers appeared to brag about running up the client's bills. In one, a lawyer writes that "random people [are] working full time on random research projects in standard 'churn that bill, baby! mode.'"

Richard McLaren, a law professor at University of Western Ontario, said judges are best positioned to force insolvency lawyers to keep a lid on costs.

"If the judges take the initiative and start being more rigorous, that will push the lawyers to be more vigilant themselves in terms of what's going on in their own firms," he said. "That's important, to really change the behaviour."

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Phillip Crawley, Publisher