

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM COURT OF APPEAL OF ONTARIO)**

BETWEEN:

JENNIFER HOLLEY

APPLICANT

Acting in Person

AND:

**NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED,
NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS
INTERNATIONAL CORPORATION, NORTEL NETWORKS TECHNOLOGY
CORPORATION, NORTEL NETWORKS INC. AND OTHER U.S. DEBTORS,
ERNST & YOUNG INC. IN ITS CAPACITY AS MONITOR, OFFICIAL
COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC. ET
AL, AD HOC GROUP OF BONDHOLDERS, THE EMEA DEBTORS, CANADIAN
FORMER EMPLOYEES AND DISABLED EMPLOYEES COURT APPOINTED
REPRESENTATIVES, NORTEL CANADIAN CONTINUING EMPLOYEES COURT
APPOINTED REPRESENTATIVES**

RESPONDENTS

AFFIDAVIT

JENNIFER HOLLEY, APPLICANT

(Pursuant to Rules 28(1) and 28(2) of the Rules of the Supreme Court of Canada)

1. I am Jennifer Holley, the Applicant and a Nortel long term disabled (“LTD”) former employee.
2. I am 53 years of age and reside in the Village of Ompah, Ontario.
3. I was previously a software designer with Nortel until I was forced to go on LTD in the year 2000, when I was diagnosed with Crohn’s Disease at 36 years of age. I have also developed depression for which I receive treatment. I have tried to return to work, but my health will not support it. It is unlikely, with my current health, that I will ever be able to return to work either part-time or full-time.
4. I and my fellow Nortel long term disabled former employees got a good education and a

good job with a large corporation that provided long term disability benefits to replace 50% of our pre-disability income. I and most of us responsibly bought additional disability insurance from Nortel with my own money deducted from my paycheque to raise my protection from 50% to 70% of my pre-disability income.

5. Then one day at the young age of 36, I got sick, and my life changed forever in a sequence of developments that I have had absolutely no control over and that has destroyed my faith in the values of Canadian society expressed in the Charter and my trust in the Canadian legal system.
6. At the time of the Representative Order July 30, 2009, I reasonably thought that my Nortel long term disability benefits were fully funded. Prior to 2005 there was no disclosure that Nortel's disability insurance was sponsored by Nortel and that Nortel did not buy disability insurance from a third party insurer. In fact, Nortel's employee benefit handbooks make multiple mentions of approvals required from Sun Life, or its predecessor insurance companies, Mutual Life and Clarica Life, in order to first get and then to continue to get disability income. From the reading of these earlier employee benefit handbooks, I could reasonably expect that Sun Life, or its predecessor insurance companies, Mutual Life and Clarica Life, was the insurer of my long term disability income.
7. Nortel first disclosed that my long term disability benefits were self-insured in its 2005 and subsequent benefit handbooks on or about p. 2:

"Did you know: Most of Nortel's Health & Group Benefits, including short-term disability, long-term disability, medical and dental/vision/hearing care, are self-insured. This means that Nortel plays a role similar to that of an insurance company for its employees. In other words, the Company assumes the risks and pays the claims directly from its net income or retained earnings. The insurance company only provides administrative services such as claims processing."

9. When I read the Monitor's First Report January 14, 2009 saying that "Funding payments to

HWT account are suspended post-filing as it is forecast that the HWT trust has sufficient surplus assets to sustain itself during the Forecast Period,” I reasonably concluded from this Monitor statement combined with the latest disclosure from Nortel that it plays a role similar to that of an insurance company, that the HWT had sufficient assets to not only fund my disability income for the next three months but to sustain my and my fellow LTD disability income up to when we returned to work, died or reached age 65.

10. I firmly believe based on the evidence that did get disclosed by the Monitor at August 26, 2010 and that was assessed by financial expert Diane Urquhart, that Nortel took \$60 million of insurance reserves out of the Health and Welfare Trust (“HWT”), including my employee contributions, during 2005 to 2006 to materially improve its own cash flow. This was unknown to me at the time because I was getting my Nortel disability income at 70% of what I was earning before I got sick, I thought I was insured by a licensed insurer, and there were no public disclosures on the financial position of the HWT.
11. J. Paul Perell decided I had a tenable case of constructive fraud in his February 11, 2014 decision of *Holley v. The Northern Trust Company, Canada*, 2014 ONSC 889, but he summarily dismissed the Nortel HWT fraud class action due to his interpretation of the word “fraud” in the legal release of the Interim Settlement Agreement of March 31, 2010 meaning that “actual fraud” was not barred while “constructive fraud” was barred by the legal release.
12. The Interim Settlement Agreement paid me just 9 months of income and medical and dental benefits in exchange for release of my tenable case of constructive fraud, which no reasonable person would consider an adequate amount relative to my income needs for the balance of my life that would have been paid to me had there not been a constructive fraud

within the HWT.

13. The Respondents to this Application have not refuted the special circumstances I raised in Application Point 31 of the legal system's (a) failure to release the full body of evidence into the court on the alleged wrongdoings within the HWT before the court orders approving the Interim Settlement Agreement with persons with mental or physical disability; and, (b) failure of the legal system to properly assess the legal obligations of Nortel to fund in full the HWT benefits and to not remove HWT funds earmarked for LTD disability income reserves in the name of each of the LTD persons to pay for its own expenses and improve its own cash flow.
 - a) I was amongst the six Nortel LTD who wrote J. Morawetz a letter on November 2, 2009 to request that Ernst & Young publicly release all the material contracts and legal documents pertaining to the Nortel Canadian long term disability benefits plan and the Nortel Health & Welfare Trust (HWT). Ernst & Young LLP through its legal counsel Goodmans LLP wrote us a letter at November 5, 2009 refusing to release the documents we requested and saying "the Monitor exercises its discretion on issues of disclosure in light of a number of competing considerations, including some that are not always readily apparent. Considering all of the relevant factors, the Monitor then determines to whom, how and when disclosure of documents should be made, taking into account the interests of all stakeholders and other facets of the restructuring."
 - b) J. Morawetz refused to permit a two month adjournment at the March 3-5, 2010 hearing on the First Interim Settlement Agreement requested by Rochon Genova LLP who had been retained by dissenting LTD and had only five days to prepare for this hearing. J. Perell's decision concludes that J. Morawetz knew about the constructive fraud when

making his March 31, 2010 order approving the Revised Interim Settlement Agreement. I do not understand how J. Morawetz could have known there was constructive fraud or other wrongdoings at the time of the March 2010 hearings on the First and Revised Interim Settlement Agreements because Ernst & Young had not released the full body of evidence to the courts.

- c) Ernst & Young as Monitor, Koskie Minsky LLP as Court Appointed Legal Counsel for the LTD Group, and Sue Kennedy as Court-Appointed Representative of the LTD Group all told the court verbally and in legal documents for the March 3-5, 2010 hearing, which I have read again in the court transcript and Sue Kennedy Affidavit of February 24, 2010, that “there was no statutory obligation under the terms of the Trust Agreement which required Nortel to fund in full the HWT benefits.” The Ontario Superior Court of Justice and Court of Appeal of Ontario 2010 orders in respect to the Interim Settlement Agreement were without the full body of evidence before them, and with a premise on legal obligations that was inconsistent with J. Perell’s subsequent conclusion there was a tenable case of constructive fraud.
- d) J. Perell also summarily dismissed the Nortel HWT fraud class action because he determined it was filed 6 months too late from his starting date of February 18, 2010 when the Monitor publicly released the 2008 HWT financial statement showing a large deficit in the HWT rather than Rochon Genova LLP’s argued starting date of August 27, 2010 when the Monitor released the full body of evidence, including 1982 to 2010 HWT financial statements and tax filings, historical Mercers actuarial reports, the Sun Life administration agreement and historical employee benefits’ booklets and benefit plan legal documents. While we knew there was a serious deficit in the HWT from the 2008

HWT financial statement at the time of the Interim Settlement Agreement at March 2010, I, financial expert Diane Urquhart and Rochon Genova LLP could not have known and proven the constructive fraud, actual fraud, even breach of trust or any other wrongdoings that had occurred within the HWT as this required discovery of all the historical documents that had been asked for and denied by Ernst & Young and J. Morawetz.

14. When J. Morawetz decided in his HWT Wind-up Order at November 9, 2010 that pensioners' life insurance claimants were beneficiaries of the HWT because of a 1979 CRA Advance Tax Ruling and an initial transfer of \$10 million of Mutual Life pre-paid pensioners' life insurance premiums into the HWT created in 1980, I lost getting 82% of my disability income funded from the HWT. The HWT Wind-Up Order resulted in only a 38% HWT settlement, which is an actuarial reduction of 44% of my disability income due to pensioners getting paid for life insurance that would otherwise have been payable to their successors and not to them. Taking into account the 45% to 49% CCAA settlement ratio, had the pensioners' life insurance claim not been funded from the HWT Wind-Up, the end result of the HWT Wind-Up and the CCAA Final Plan would have put me in the position of 90% to 91% of my disability income being funded on an actuarial basis.
15. The Nortel Canadian insolvency professionals have also reduced my disability income with their disclosed fees to date of Cdn\$698 million, which is 11% of the peak Nortel Canada estate assets. So my disability income has been reduced by this 11% amount also.
16. When legal counsel who represent the Respondents say that I must be treated *pari passu* with the other creditors because this is the bedrock principle of insolvency law in Canada, they have given no consideration to how well they have done in this CCAA proceeding

compared to the LTD, and their role in the denial of evidence disclosure and failure to properly assess the legal obligations of Nortel to fund in full the HWT benefits and to not remove HWT funds earmarked for LTD to improve Nortel's own cash flow (in what became labelled by J. Perell as a tenable case for constructive fraud.)

17. The less than 0.8% that the other creditors keep due to the Representative Court Order, Interim Settlement Agreement Court Orders and Final Plan Sanction Court Orders, if this Application is not granted, is de minimis to the Responding Parties and hugely beneficial to me and my fellow LTD if the Application is granted and the Appeal is successful. I believe for all the reasons I have explained in this affidavit that the other creditors are not losing something that they deserve to have as they were unjustly enriched by the money Nortel unlawfully removed from the HWT and they have taken away from me disability income to a degree that violates my S.7 and S. 15(1) Charter rights without serving any purpose of the CCAA.
18. The legal system gave legal counsel for dissenting LTD just five days to prepare a dissenting case and refused to take even two months to discover evidence and no time to assess in a hearing the alleged wrongdoings that occurred, including the tenable case of constructive fraud that J. Perell determined. The artificial rush for the court to approve the Interim Settlement Agreement, summarily dismiss the HWT fraud class action and to dismiss this Application, when the Nortel CCAA proceeding took place over 8 years, is not fundamental justice for me and my fellow LTD persons.
19. Granting of my Application and success of my appeal means I can meet my basic expenses: food, housing, hydro, insurances, telephone, licenses, taxes, transportation until retirement age. In addition, I can continue to receive regular dental care, continue to buy my


required prescribed medication that is not covered by the Ontario government drug plan, and my companion pets can continue to receive annual shots and veterinary checkups.

- 20. In 2010, I cut all non-essentials from my monthly expenses leaving only essentials. Even with this effort, my income is far less than my basic expenses. I have used any savings I had in order to survive financially since 2010. I now live CPP disability income deposit to deposit, hoping that no emergencies arise that might impact my finances.
- 21. It is true that I am about to get another payment from the Nortel estate, but that won't last long. In a few years, the payment will be gone, as it must be used to cover a monthly deficit since my basic expenses are much higher than my monthly CPP disability income of \$975. My savings are exhausted. I can't even work part-time, to help make ends meet, because of my health. There is no fallback plan. I don't know what I'll do when that payment is gone.
- 22. Success of my appeal would mean I could return to attending to my health without the worry and anxiety associated with not being able to pay for basic expenses and being disabled. This peace of mind is what I thought I had when Nortel told me that part of my employment package included disability insurance; the peace of mind I prepared for by paying, out of my earnings, for additional long-term disability insurance coverage (70% of pre-disability income instead of Nortel's basic 50%)

Sworn (or Affirmed) before me at in Pevea, Ont of Township of North Frontenac

In the Province of Ontario this 29th of May 2017


 (A Commissioner of Oaths)


 (Signature of deponent)

BROOKE HAWLEY
 Deputy Clerk
 Township of North Frontenac
 Commissioner, etc.