

**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
Legal Counsel Listed

**APPLICATION FOR LEAVE TO APPEAL - REVISED
JENNIFER HOLLEY, APPLICANT**

(Pursuant to s. 40 of the *Supreme Court Act* R.S.C. 1985, c. S-26)

Applicant

Jennifer Holley
Nortel CCAA LTD Creditor
2034 River Road
Ompah, ON, K0H 2J0
(613) 479-2653
jholley@xplornet.com

Respondents

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
One First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario, Canada M5X 1G5

Derrick Tay (LSUC#21152A) derrick.tay@gowlingwlg.com
Jennifer Stam (LSUC#46735J) jennifer.stam@gowlingwlg.com
Tel: 416.862.5697
Fax: 416.862.7661
Lawyers for the Canadian Debtors

TORYS LLP
79 Wellington St. W., Suite 3000 Box 270, TD Centre
Toronto, Ontario, Canada, M5K 1N2
Sheila Block (LSUC#14089N) sblock@torys.com
Scott A. Bomhof (LSUC#37006F) sbomhof@torys.com
Andrew Gray (LSUC#46626V) agray@torys.com
Adam M. Slavens (LSUC#54433J) aslavens@torys.com
Jeremy Opolsky (LSUC#60813N) jopolsky@torys.com
Tel: 416.865.0040
Fax: 416.865.7380
Lawyers for Nortel Networks Inc. and the other U.S. Debtors

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario, Canada, M5H 2S7
Benjamin Zarnett (LSUC#17247M) bzarnett@goodmans.ca
Jessica Kimmel (LSUC#32312W) jkimmel@goodmans.ca
Peter Kolla (LSUC#54608K) pkolla@goodmans.ca
Tel: 416.979.2211
Fax: 416.979.1234
Lawyers for the Monitor, Ernst & Young Inc.

CASSELS BROCK & BLACKWELL LLP
Suite 2100, Scotia Plaza 40 King Street West
Toronto, Ontario, Canada, M5H 3C2
Shayne Kukulowicz (LSUC# 30729S) skukulowicz@casselsbrock.com
Michael Wunder (LSUC# 313510) mwunder@casselsbrock.com
Ryan Jacobs (LSUC# 59510J) ijacobs@casselsbrock.com
Geoff Shaw (LSUC #26367) gshaw@casselsbrock.com
Tel: 416.869.5300
Fax: 416.360.8877
Lawyers for the Official Committee of Unsecured Creditors of Nortel Networks Inc., et al.

BENNETT JONES LLP
I First Canadian Place Suite 3400
Toronto, Ontario, Canada, M5X 1A4
S. Richard Orzy (LSUC# 23181I) orzyr@bennettjones.com
Gavin Finlayson (LSUC# 44126D) finlaysong@bennettjones.com

Richard Swan (LSUC# 32076A) swanr@bennettjones.com
Tel: 416.863.1200
Fax: 416.863.1716
Lawyers for the Ad Hoc Group of Bondholders

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street W,
Toronto, Ontario, Canada, M5H 1J8
M. Paul Michell pmichell@counsel-toronto.com
Tel: 416 .598.1744 / Fax: 416.598.3730
Lawyers for Joint Administrators of the EMEA Debtors

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900,
Toronto, Ontario, Canada, M5H 3R3
Mark Zigler (LSUC #19757B) mzigler@kmlaw.ca
Tel: 416.595.2090 / Fax: 416.204.2877
Susan Philpott (LSUC #31371C) sphilpott@kmlaw.ca
Tel: 416.595.2104 / Fax 416.204.2882
Barbara Walancik (LSUC #62620U) bwalancik@kmlaw.ca
Tel: 416.542.6288 / Fax: 416.204.2906
Lawyers for the Canadian Former Employees and Disabled Employees
through their court appointed Representatives

NELLIGAN O'BRIEN PAYNE LLP
Suite 1500, 50 O'Connor Street
Ottawa, Ontario, Canada, K1P 6L2
Janice Payne janice.paynenelligan.ca
Christopher C. Rootham christopher.roothamnelligan.ca
Tel: 613-231-8245
Fax: 613-788-3655
Lawyers for Nortel Canadian Continuing Employees

SHIBLEY RIGHTON LLP
700-250 University Avenue
Toronto, Ontario, Canada, M5H 3E5
Thomas McRae thomas.mcraeshibleyrighton.com
Tel: 416-214-5200
Fax: 416-214-5400
Lawyers for Nortel Canadian Continuing Employees

TABLE OF CONTENTS

	TAB: PAGES
NOTICE OF APPLICATION FOR LEAVE TO APPEAL (FORM 25)	1:1-5
LOWER COURT REASONS AND JUDGMENTS	
A. <u>Reasons of Ontario Superior Court of Justice – Sanction - Jan. 30, 2017</u>	2:6-20
B. <u>Order of Ontario Superior Court of Justice - Sanction - Jan. 24, 2017</u>	3:21-49
C. <u>Reasons of Court of Appeal of Ontario – Sanction - March 13, 2017</u>	4:50-53
D. <u>Order of Court of Appeal of Ontario - Sanction – March 13, 2017</u> Revised	5:54-56
E. <u>Order of Ontario Superior Court of Justice - Waiver and LTD Reserve - May 1, 2017</u>	6:57-63
F. <u>Order of Ontario Superior Court of Justice - Representative Order – July 30, 2009</u>	7:64-69
G. <u>Order of Ontario Superior Court of Justice - Interim Settlement - March 31, 2010</u>	8:70-90
H. <u>Reasons of Court of Appeal of Ontario - Interim Settlement - June 3, 2010</u>	9:91-92
MEMORANDUM OF ARGUMENT	
PART I – STATEMENT OF FACTS	10:93-98
PART II – STATEMENT OF QUESTIONS IN ISSUE	10:98
PART III – STATEMENT OF ARGUMENT	10:98-111
PART IV – SUBMISSION ON COSTS	10:111-112
PART V – ORDERS SOUGHT	10:112
PART VI – TABLE OF AUTHORITIES	10:113
PART VII – STATUTORY PROVISIONS	10:113
DOCUMENTS RELIED UPON	
A. <u>Notice of Constitutional Question Feb. 27, 2017</u>	11:114-120
B. <u>Email to Minister Innovation, Science and Economic Development - Violation of the Charter Nov. 8, 2016</u>	12:121-122
C. <u>Corporate Leader John Doolittle Affidavit February 5, 2009</u>	13:123-127
D. <u>Letter from Goodmans on Their Decision to Not Release Information Nov. 5, 2009</u>	14:128-131
E. <u>Interim Settlement Court Transcripts March 3, 4, 5, 2010</u>	15:132-136
F. <u>Sue Kennedy Affidavit, Feb. 24, 2010</u>	16:137-163

FORM 25

Court File No.

**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
Legal Counsel Listed

**NOTICE OF APPLICATION FOR LEAVE TO APPEAL OF THE APPLICANT
JENNIFER HOLLEY**

**(Application for Leave to Appeal pursuant to Rule 25 of the
Rules of the Supreme Court of Canada, SOR/2002-156)**

TAKE NOTICE that Jennifer Holley hereby applies for leave to appeal to the Court, pursuant to sections 40 and 43 of the *Supreme Court Act*, and rule 25 of the *Rules of the Supreme Court of Canada*, from the order of the Court of Appeal of Ontario in M47511 made on March 13, 2017 and for an order setting aside the Court of Appeal of Ontario' order or any further or other order that the Court may deem appropriate.

AND FURTHER TAKE NOTICE that this application for leave is made on the following grounds:

(a) The application raises two questions of major constitutional importance applicable to a federal statute that is of public importance, ought to be decided by the Supreme Court and are of such significance to warrant a decision by it pursuant to S. 40(1) of the *Supreme Court Act*.

- i. Should the Court of Appeal of Ontario have waived the time limit for the Notice of Constitutional Question, because the constitutional question was serious enough to warrant the trial judge giving reasons on it, and the Supreme Court of Canada has allowed appeals to consider a constitutional question when lower courts had not done so and when there was no material prejudice to the Attorney General of Canada or Attorney General of Ontario?
- ii. Is this a case where a major constitutional question affecting persons with mental or physical disabilities is beyond the possibility of review because the Supreme Court of Canada only sparingly grants leave to appeal when the Court of Appeal of Ontario denies leave to appeal with discretionary reasons and both levels of appeal courts only sparingly permit leaves of appeal of any Federal Companies' Creditors Arrangement Act ("CCAA") orders made by the lower court judge administering the CCAA proceedings?

The major constitutional question to be considered if the leave to appeal is granted is as follows, with two sub-components:

Can judge's orders deleteriously affecting individual Canadians with mental or physical disability authorized under S. 6(1) and S. 11 of the CCAA violate S. 52(1) of the Canadian Charter of Rights and Freedoms ("Charter"), and therefore be of no force or effect?

- i. Do the "economic interests" of an individual with mental or physical disability receive protection under Charter S. 15(1) on Equality Rights expressly covering every individual with mental or physical disabilities, or Charter S. 7 Legal Rights of life, liberty and security of person?
- ii. Are judge's orders that limit S. 15(1) or S. 7 Charter rights for an individual person with mental or physical disabilities, demonstrably justified in order to serve the purpose of the CCAA according to S. 1, under either the Oakes Test or the test of sufficient deleterious impact on an individual to override benefits for the majority of creditors or for Canadian society as a whole?

SIGNED BY



(Toler signature)

May 8, 2017

(Date)

Jennifer Holley

Jennifer Holley
Nortel CCAA LTD Creditor
2034 River Road
Ompah, ON, K0H 2J0
(613) 479-2653
jholley@xplornet.com

ORIGINAL TO:

THE REGISTRAR

The Supreme Court of Canada
301 Wellington St.
Ottawa, ON K1A 0J1
Tel: 613.995.4330
Fax: 613.996.3063
reception@scc-csc.gc.ca

COPIES TO:

GOWLING WLG (CANADA) LLP
Barristers & Solicitors
One First Canadian Place
100 King Street West, Suite 1600
Toronto, Ontario, Canada M5X 1G5
Derrick Tay (LSUC#21152A) derrick.tay@gowlingwlg.com
Jennifer Stam (LSUC#46735J) jennifer.stam@gowlingwlg.com
Tel: 416.862.5697
Fax: 416.862.7661
Lawyers for the Canadian Debtors

TORYS LLP
79 Wellington St. W., Suite 3000 Box 270, TD Centre
Toronto, Ontario, Canada, M5K 1N2
Sheila Block (LSUC#14089N) sblock@torys.com
Scott A. Bomhof (LSUC#37006F) sbomhof@torys.com
Andrew Gray (LSUC#46626V) agray@torys.com
Adam M. Slavens (LSUC#54433J) aslavens@torys.com
Jeremy Opolsky (LSUC#60813N) jopolsky@torys.com
Tel: 416.865.0040
Fax: 416.865.7380
Lawyers for Nortel Networks Inc. and the other U.S. Debtors

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, Ontario, Canada, M5H 2S7
Benjamin Zarnett (LSUC#17247M) bzarnett@goodmans.ca
Jessica Kimmel (LSUC#32312W) jkimmel@goodmans.ca

Peter Kolla (LSUC#54608K) pkolla@goodmans.ca
Tel: 416.979.2211
Fax: 416.979.1234
Lawyers for the Monitor, Ernst & Young Inc.

CASSELS BROCK & BLACKWELL LLP
Suite 2100, Scotia Plaza 40 King Street West
Toronto, Ontario, Canada, M5H 3C2
Shayne Kukulowicz (LSUC# 30729S) skukulowicz@casselsbrock.com
Michael Wunder (LSUC# 313510) mwunder@casselsbrock.com
Ryan Jacobs (LSUC# 59510J) rjacobs@casselsbrock.com
Geoff Shaw (LSUC #26367) gshaw@casselsbrock.com
Tel: 416.869.5300
Fax: 416.360.8877
Lawyers for the Official Committee of Unsecured Creditors of Nortel Networks Inc., et al.

BENNETT JONES LLP
I First Canadian Place Suite 3400
Toronto, Ontario, Canada, M5X 1A4
S. Richard Orzy (LSUC# 23181I) orzyr@bennettjones.com
Gavin Finlayson (LSUC# 44126D) finlaysong@bennettjones.com
Richard Swan (LSUC# 32076A) swanr@bennettjones.com
Tel: 416.863.1200
Fax: 416.863.1716
Lawyers for the Ad Hoc Group of Bondholders

LAX O'SULLIVAN LISUS GOTTLIEB LLP
Suite 2750, 145 King Street W,
Toronto, Ontario, Canada, M5H 1J8
M. Paul Michell pmichell@counsel-toronto.com
Tel: 416 .598.1744 / Fax: 416.598.3730
Lawyers for Joint Administrators of the EMEA Debtors

KOSKIE MINSKY LLP
20 Queen Street West, Suite 900,
Toronto, Ontario, Canada, M5H 3R3
Mark Zigler (LSUC #19757B) mzigler@kmlaw.ca
Tel: 416.595.2090 / Fax: 416.204.2877
Susan Philpott (LSUC #31371C) sphilpott@kmlaw.ca
Tel: 416.595.2104 / Fax 416.204.2882
Barbara Walancik (LSUC #62620U) bwalancik@kmlaw.ca
Tel: 416.542.6288 / Fax: 416.204.2906
Lawyers for the Canadian Former Employees and Disabled Employees
through their court appointed Representatives

NELLIGAN O'BRIEN PAYNE LLP
Suite 1500, 50 O'Connor Street

Ottawa, Ontario, Canada, K1P 6L2
Janice Payne janice.paynenelligan.ca
Christopher C. Rootham christopher.roothamnelligan.ca
Tel: 613-231-8245
Fax: 613-788-3655
Lawyers for Nortel Canadian Continuing Employees

SHIBLEY RIGHTON LLP
700-250 University Avenue
Toronto, Ontario, Canada, M5H 3E5
Thomas McRae thomas.mcraeshibleyrighton.com
Tel: 416-214-5200
Fax: 416-214-5400
Lawyers for Nortel Canadian Continuing Employees

NOTICE TO THE RESPONDENT: A respondent may serve and file a memorandum in response to this application for leave to appeal within 30 days of the date a file number is assigned in this matter. You will receive a copy of the letter to the applicant confirming the file number as soon as it is assigned. If no response is filed within that time, the Registrar will submit this application for leave to appeal to the Court for consideration.

CITATION: Re Nortel Networks Corporation et al, 2017 ONSC 700
COURT FILE NO.: 09-CL-7950
DATE: 20170130

**SUPERIOR COURT OF JUSTICE – ONTARIO
 COMMERCIAL LIST**

**RE: 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**

BEFORE: Newbould J.

COUNSEL: *Benjamin Zarnett, Jay A. Carfagnini, Joseph Pasquariello and Christopher G.
 Armstrong*, for the Monitor

Jennifer Stam, for the Canadian Debtors

R. Paul Steep, for Morneau Shepell and the Canadian Creditors Committee

Mark Ziegler and Barbara Walancik, representative counsel for the Canadian
 former employees and LTD beneficiaries

Barry E. Wadsworth, for active, retired and disabled employees represented by
 Unifor

Max Starnino, for the Pension Benefit Guarantee Fund

Matthew Urback, for the Canadian continuing employees

Scott Bomhof and Adam Slavens, for the U.S Debtors

R. Shayne Kukulowicz and M. Wunder, for the U.S. Unsecured Creditors'
 Committee

Michael E. Barrack and D.J. Miller, for the UKPC

- Page 2 -

Gavin H. Finlayson, for the Ad Hoc Bondholders Group

John Salmas, for Wilmington Trust, National Association, Trustee

Joseph Greg McAvoy, in person

Jennifer Holley, in person

HEARD: January 24, 2017

ENDORSEMENT

[1] On January 24, 2017, a joint hearing of this Court and the U.S. Bankruptcy Court for the District of Delaware was held to deal with motions for the sanctioning of plans of arrangement effecting a settlement by all major parties of the allocation dispute regarding the \$7.3 billion held in escrow since the sale of the Nortel assets. At the conclusion of the hearing, I granted the motion of the Monitor to sanction the Canadian Debtors' Plan of Compromise and Arrangement (the "Plan") and to release the escrowed sale proceeds in accordance with the settlement, for reasons to follow¹. These are my reasons.

Background

[2] The Canadian Nortel Debtors, along with the U.S. Nortel Debtors, EMEA Nortel Debtors, and certain of their respective key stakeholder groups were party to protracted litigation in the Canada and U.S. regarding the allocation of the \$7.3 billion in sale proceeds (the "Sale Proceeds"). Following a 21-day cross-border trial, this Court and the U.S. Bankruptcy Court issued decisions with respect to the allocation of the sale proceeds in May 2015. The decision of this Court later became final when the Ontario Court of Appeal refused leave to appeal. The decision of Judge

¹ Judge Gross also sanctioned the U.S. plan of arrangement and signed at the hearing the necessary orders to effect the plan.

- Page 3 -

Gross in the U.S. Bankruptcy Court was appealed by the U.S. interests to the 3rd Circuit District Court. Mediation was directed by that Court.

[3] Following extensive negotiations, on October 12, 2016, the Canadian Debtors, Monitor, U.S. Debtors, EMEA Debtors, EMEA Non-filed Entities, Joint Administrators, NNSA Conflicts Administrator, French Liquidator, Bondholder Group, the members of the CCC, the UCC, the U.K. Pension Trustee, the PPF, the Joint Liquidators and the NNCC Bondholder Signatories executed the Settlement and Support Agreement. The Settlement and Support Agreement, among other things:

- (a) contains the terms of settlement of the allocation dispute, including the payment of 57.1065% of the Sale Proceeds to the Canadian Debtors (being in excess of \$4.1 billion), plus an additional amount of \$35 million on account of the M&A Cost Reimbursement;
- (b) resolves a number of significant claims against the Canadian Debtors, including the claims of the Crossover Bondholders, the UKPI and the Canadian Pension Claims;
- (c) contemplates the substantive consolidation of the Canadian Debtors into the Canadian Estate;
- (d) provides that the Canadian Estate will retain the value of its remaining assets, which means, among other things, the release to the Canadian Estate of approximately \$237 million from the Canada Only Sales and additional amounts held on account of IP address sales;
- (e) provides for the exchange of comprehensive releases among the Estates and the other parties to the Settlement and Support Agreement; and
- (f) contains the framework for the development and implementation of coordinated plans of arrangement in Canada and the U.S., and a timeline for the approval and implementation thereof.

- Page 4 -

[4] The Plan provides for a comprehensive resolution of these CCAA Proceedings and implementation of the Settlement and Support Agreement and **paves the way for distributions to creditors in a timely manner.** The Plan provides for, among other things, the following:

- (a) substantive consolidation of the Canadian Debtors into the Canadian Estate;
- (b) the payment in full of certain Proven Priority Claims and other payments contemplated by the Plan;
- (c) a compromise of all Affected Unsecured Claims in exchange for a *pro rata* distribution of the cash assets of the Canadian Estate available for distribution to Affected Unsecured Creditors, and the full and final release and discharge of all Affected Claims;
- (d) the subordination of Equity Claims such that Equity Claimants and holders of Equity Interests will not receive a distribution or other recovery under the Plan;
- (e) authorization for the Canadian Debtors and Monitor to direct the Escrow Agents to effect the allocation and distribution of the Sale Proceeds contemplated by the Settlement and Support Agreement and to otherwise implement the Settlement and Support Agreement, including the giving and receiving of the Settlement and Support Agreement Releases;
- (f) release of all amounts held by NNL pursuant to the Canadian Only Sale Proceeds Orders or held as Unavailable Cash to the Canadian Estate;
- (g) **the establishment of certain reserves for the ongoing administration of the Canadian Estate and in respect of Unresolved Claims; and**

- Page 5 -

- (h) the release and discharge of all Affected Claims and Released Claims as against, among others, the Canadian Debtors, the Directors and Officers and the Monitor.

[5] On December 1, 2016, a meeting order was made which authorized the Monitor to call and hold a meeting of Affected Unsecured Creditors to consider and vote on the Plan. The Creditors' Meeting was held on January 17, 2017. The Plan was approved by an overwhelming majority of Affected Unsecured Creditors voting at the meeting in person or by proxy, with 99.97% in number and 99.24% in value voting to approve the Plan.

Analysis

[6] Section 6 of the CCAA provides for a plan to be sanctioned by a court if approved by a vote of creditor as required by that section. It provides, in part:

6. Where a majority in number representing two-thirds in value of the creditors, or class of creditors, as the case may be, present and voting either in person or by proxy at the meeting or meetings thereof respectively held pursuant to sections 4 or 5, or either of those sections, agree to any compromise or arrangement either as proposed or altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court, and if so sanctioned is binding

(a) on all the creditors or the class of creditors, as the case may be, and on any trustee for any such class of creditors, whether secured or unsecured, as the case may be, and on the company; ...

[7] The general requirements for Court approval of a CCAA plan are well established:

- a. there must be strict compliance with all statutory requirements;
- b. all material filed and procedures carried out must be examined to determine if anything has been done or purported to be done which is not authorized by the CCAA; and
- c. the plan must be fair and reasonable.

See *Canadian Airlines Corp, Re*, 2000 ABQB 442 at para. 60, leave to appeal refused 2000 ABCA 238, leave to appeal refused [2001] S.C.C.A. No. 60; *Olympia & York Developments Ltd. (Re)*, (1993), 17 C.B.R. (3d) 1; *Cline Mining Corp., Re*, 2015 ONSC 622 at para. 19.

- Page 6 -

[8] It is clear that there has been compliance with all statutory requirements and that nothing has been done or purported to be done which is not authorized by the CCAA. The meeting of creditors was properly called and held, a sufficient vote of creditors as required by section 6 of the CCAA was obtained and equity interests do not receive any payment under the Plan.

[9] Whether a plan is fair and reasonable is necessarily shaped by the unique circumstances of each case within the context of the CCAA. See *Canadian Airlines* at para. 94. I am satisfied that the Plan in this case is fair and reasonable for the following reasons:

- (i) The Plan was a compromise reached among all of the parties after extensive negotiations led by a very experienced mediator.
- (ii) The Plan received approval from 99.7% of the creditors. This overwhelming number of creditors cannot be ignored as they are the only persons affected by the Plan. There is no equity participation as there is no equity in Nortel. I agree with what Blair J. (as he then was) said in *Olympia & York Developments Ltd. (Re)*;

36 One important measure of whether a plan is fair and reasonable is the parties' approval of the Plan, and the degree to which approval has been given.

37 As other courts have done, I observe that it is not my function to second guess the business people with respect to the "business" aspects of the Plan, descending into the negotiating arena and substituting my own view of what is a fair and reasonable compromise or arrangement for that of the business judgment of the participants. The parties themselves know best what is in their interests in those areas.

- (iii) If the Plan is not sanctioned, the likely result will be further delays from litigation in the U.S. on the appeals from the allocation decision. Delays in payments to persons, whom Mr. Wadsworth aptly described as desperately needing the payments, would be very unfair.
- (iv) Further litigation would add to the costs of the Nortel insolvency, costs which are already enormous, and take away amounts to be paid to the creditors, all of whom have approved the Plan.

- (v) The Plan calls for payment to creditors on a *pari passu* basis, which is the bedrock of Canadian insolvency law.
- (vi) The Plan calls for the substantive consolidation of the Canadian Debtors into a single estate. In this case, the consolidation is fair and reasonable. The Canadian Debtors were highly integrated and intertwined. Many obligations of a Canadian Debtor, including nearly \$4 billion of bond debt, are guaranteed by another Canadian Debtor and the vast majority of claims filed against the Canadian Debtors by quantum have been asserted against two or more of the Canadian Debtors. Substantive consolidation eliminates the possibility of any further litigation regarding the specific dollar amount that could be allocated to each Canadian Debtor.
- (vii) The releases in the Plan in favour of each of the Canadian Debtors, the directors and officers, the Monitor and the Monitor's legal counsel, each of whom have been integrally involved in the CCAA Proceedings, are fair and reasonable, are directly connected to the objectives of the Plan, and assist in bringing finality to these long running proceedings. These releases have been approved by the relevant parties.

Objecting long term disability claimants

[10] There are two LTD objectors being Mr. Greg McAvoy and Ms. Jennifer Holley. They are self-represented persons in this proceeding. They filed thoughtful submissions and made thoughtful oral presentations. They state that the Plan is unfair and unreasonable for the LTD Beneficiaries and have requested that \$44 million be set aside and paid to the LTD Beneficiaries in full satisfaction of amounts owing to them. They raise *Charter* issues.

[11] While I have every sympathy for these objectors, as do all of the parties who appeared and spoke at the hearing, I am afraid that they have no basis to make the request that they are making.

[12] On July 30, 2009 a representation order ("LTD Rep Order") for disabled employees was made. Pursuant to the order an LTD representative, Ms. Susan Kennedy, was appointed as Representative of the LTD Beneficiaries in the CCAA proceedings, including, without limitation,

for the purpose of settling or compromising claims by the LTD Beneficiaries in the CCAA proceedings. Pursuant to the LTD Rep Order, LTD Beneficiaries had the option to opt-out of representation by the LTD Rep within 30 days of mailing of notice of the LTD Rep Order to them in mid-2009. Neither of the LTD Objectors (or any other LTD Beneficiary) elected to opt out of representation by the LTD Rep pursuant to the terms of the LTD Rep Order and thus are bound by it and the actions of the LTD Rep.

[13] In 2010, certain of the Canadian Debtors, the Monitor, the Representatives (including the LTD Rep) and Representative Counsel entered into an Amended and Restated Settlement Agreement dated March 30, 2010 (the "Employee Settlement Agreement") which was approved by this Court in its Settlement Approval Order dated March 31, 2010.

[14] Pursuant to the Employee Settlement Agreement and the Settlement Approval Order:

- (i) the Canadian Debtors agreed to continue paying LTD benefits to LTD Beneficiaries for the remainder of 2010;
- (ii) the Canadian Debtors agreed to establish a CA\$4.3 million fund pursuant to which CA\$3,000 termination payments were made to former employees, including the LTD Objectors;
- (iii) claims of LTD Beneficiaries were agreed to rank as ordinary unsecured claims on a *pari passu* basis with the claims of the ordinary unsecured creditors of the Canadian Debtors;
- (iv) the Representatives (including the LTD Rep) agreed, on behalf of those they represent and on their own behalf, that in respect of any funding deficit in the HWT or any HWT related claims in these CCAA proceedings they would not advance, assert or make any claim that any HWT claims are entitled to any priority or preferential treatment over ordinary unsecured claims and that to the extent allowed against the Canadian Debtors, such HWT claims would rank as ordinary unsecured claims on a *pari passu* basis with the claims of the ordinary unsecured creditors of the Canadian Debtors;

- Page 9 -

- (v) the Representatives (including the LTD Rep) agreed on their own behalf and on behalf of the Pension HWT Claimants (as defined in the Employee Settlement Agreement) that under no circumstances shall any CCAA plan be proposed or approved if, among other things, the Pension HWT Claimants and the other ordinary unsecured creditors of the Canadian Debtors do not receive the same *pari passu* treatment of their allowed ordinary unsecured claims against the Canadian Debtors pursuant to the Plan.

[15] Certain LTD Beneficiaries, including the individual LTD Objectors, unsuccessfully sought leave to appeal the Settlement Approval Order to the Ontario Court of Appeal. The Settlement Approval Order is no longer capable of appeal. Accordingly, the LTD Objectors are bound to the provision that their claims are to rank as unsecured claims that share *pari passu* with other unsecured claims against the Canadian Debtors, that any claim for priority treatment has been released, and that no plan could be proposed or approved if the LTD Beneficiaries and other unsecured creditors did not receive the same *pari passu* treatment of their allowed claims pursuant to such plan.

[16] The LTD Objectors in their brief stated that they exercise their option to opt out of the LTD Rep Order. Unfortunately, they have no right to do so at this late stage.

[17] In making the Settlement Approval Order, Morawetz J. (as he then was) came to the conclusion that the settlement was fair and reasonable. He stated in *Nortel Networks Corp. (Re)* (2010), 66 C.B.R. (5th) 77:

40 The Amended and Restated Settlement Agreement is not perfect but, in my view, under the circumstances, it balances competing interests of all stakeholders and represents a fair and reasonable compromise, and accordingly, it is appropriate to approve same.

[18] That finding is binding of the LTD Objectors. However, they say that the adjustment that they request in order to make changes to the Plan requires a reconsideration of the Employee Settlement Agreement and the Settlement Approval Order. There is simply no legal basis seven years later to reconsider the matter. The grounds for reconsideration of a decision are narrow even

when no order has been signed and taken out. See *Nortel Networks Corp., Re*, 2015 ONSC 4170 at paras. 3 – 6.

[19] In any event, I agree with the finding of Morawetz J. that the settlement was reasonable. The LTD Beneficiaries will receive the same *pari passu* treatment under the Plan as all other creditors. They are all treated equally, with each receiving exactly the same proportion of their entitlements. In insolvency, equal treatment premised on underlying legal entitlements is not unfair or unreasonable. To the contrary, it is a fundamental tenet of insolvency law.

[20] The LTD Objectors say that the Plan as it pertains to them is contrary to sections 7 and 15 of the *Charter*.

[21] It is argued by the LTD Rep that the *Charter* does not apply to the courts, reliance being placed on *Dolphin Delivery Ltd. v. R.W.D.S.U., Local 580*, [1986] 2 S.C.R. 573 at paras. 34 and 36. In that case, the SCC declined to set aside an injunction on the basis that a court order does not constitute governmental action for the purposes of the *Charter* and stated that the judicial branch is not an element of governmental action for the purposes of the *Charter*. It said that the word "government" in section 32 of the *Charter* referred to the legislative, executive, and administrative branches of government.

[22] However, there are other cases in the SCC that say otherwise. In *R. v. Rahey*, [1987] 1 S.C.R. 588, the SCC held that an unreasonable delay by the trial judge in deciding on an application for a directed verdict by the accused at the close of the Crown's case had denied to the accused the section 11(b) right to be tried within a reasonable time, and stayed the proceedings. In *Rahey*, of the four judges who wrote opinions, only La Forest J. averted to the point of the *Charter* applying to a court. He stated:

95 ...it seems obvious to me that the courts, as custodians of the principles enshrined in the *Charter*, must themselves be subject to *Charter* scrutiny in the administration of their duties. In my view, the fact that the delay in this case was caused by the judge himself makes it all the more unacceptable both to the accused and to society in general.

- Page 11 -

[23] In *British Columbia Government Employees' Union v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214, the SCC refused to set aside an injunction ordered by the Chief Justice of British Columbia against picketing outside the court that had been made without notice to the union because although the injunction contravened the section 2(b) right to freedom of expression, it was justified by section 1. Chief Justice Dickson distinguished *Dolphin* as follows:

56 As a preliminary matter, one must consider whether the order issued by McEachern C.J.S.C. is, or is not, subject to *Charter* scrutiny. *RWDSU v. Dolphin Delivery*, [1986] 2 S.C.R. 573, holds that the *Charter* does apply to the common law, although not where the common law is invoked with reference to a purely private dispute. At issue here is the validity of a common law breach of criminal law and ultimately the authority of the court to punish for breaches of that law. The court is acting on its own motion and not at the instance of any private party. The motivation for the court's action is entirely "public" in nature, rather than "private". The criminal law is being applied to vindicate the rule of law and the fundamental freedoms protected by the *Charter*. At the same time, however, this branch of the criminal law, like any other, must comply with the fundamental standards established by the *Charter*.

[24] In dealing with these three decisions, Professor Hogg has stated that while it is impossible to reconcile the definition of "government" in *Dolphin* with the decisions in *Rahey* and *BCGEU*, the cases can be accommodated. See Hogg, Peter W. *Constitutional Law of Canada*, 5th ed. supplemented Thomson: Carswell, 2007 at § 37-22. He states:

The *ratio decidendi* of *Dolphin Delivery* must be that a court order, when issued as a resolution of a dispute between private parties, and when based on the common law, is not governmental action to which the *Charter* applies. And the reason for the decision is that a contrary decision would have the effect of applying the *Charter* to the relationships of private parties that s. 32 intends to exclude from *Charter* coverage. Where, however a court order is issued on the court's own motion for a public purpose (as in *BCGEU*), or in a proceeding to which government is a party (as in any criminal case, such as *Rahey*), or in a purely private proceeding that is governed by statute law, then the *Charter* will apply to the court order.

[25] In this case, the proceedings are being taken under the CCAA and the discretionary power of a court to sanction a plan is contained in section 6 of that statute. While it is not strictly necessary for me to decide whether the *Charter* applies to such an order in light of the view that I take of the

- Page 12 -

section 7 and 15 rights asserted by the LTD Objectors, I accept that any order I make to sanction the Plan may be subject to the *Charter*.

[26] There is another issue, however, regarding the right of the LTD Objectors to raise a *Charter* challenge. They were represented by competent counsel in 2010 on the motion to approve the Employee Settlement Agreement. They did not raise any *Charter* challenge to that agreement before Morawetz J. or in the Court of Appeal on their application to appeal from the Settlement Approval Order made by Morawetz J. So far as the LTD benefits are concerned, the Plan merely contains the provisions for them in the Employee Settlement Agreement. Issue estoppel prevents the LTD Objectors from now raising a *Charter* challenge to those provisions.

[27] Section 7 of the *Charter* provides:

Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

[28] What the LTD Objectors seek is to have the allocation proceeds re-allocated by providing that 100% of the claims of the LTD Beneficiaries will be paid from the Sale Proceeds at the expense of all other claimants. This involves their economic interests which are not protected by section 7 of the *Charter*. In *Siemens v. Manitoba (Attorney General)*, [2003] 1 S.C.R. 6 Justice Major for the Court stated:

45 The appellants also submitted that s. 16 of the VLT Act violates their right under s. 7 of the *Charter* to pursue a lawful occupation. Additionally, they submitted that it restricts their freedom of movement by preventing them from pursuing their chosen profession in a certain location, namely, the Town of Winkler. However, as a brief review of this Court's *Charter* jurisprudence makes clear, the rights asserted by the appellants do not fall within the meaning of s. 7. The right to life, liberty and security of the person encompasses fundamental life choices, not pure economic interests. As La Forest J. explained in *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 66:

... the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.

- Page 13 -

More recently, *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44, concluded that the stigma suffered by Mr. Blencoe while awaiting trial of a human rights complaint against him, which hindered him from pursuing his chosen profession as a politician, did not implicate the rights under s. 7. See Bastarache J., at para. 86:

The prejudice to the respondent in this case ... is essentially confined to his personal hardship. He is not "employable" as a politician, he and his family have moved residences twice, his financial resources are depleted, and he has suffered physically and psychologically. However, the state has not interfered with the respondent and his family's ability to make essential life choices. To accept that the prejudice suffered by the respondent in this case amounts to state interference with his security of the person would be to stretch the meaning of this right.

[29] Professor Hogg in *Constitutional Law of Canada* at §47.9 makes clear that purely economic interests are protected by section 7. He states:

Section 7 protects "life, liberty and security of the person". The omission of property from s. 7 was a striking and deliberate departure from the constitutional texts that provided the models for s. 7. ...

The omission of property rights from s. 7 greatly reduces its scope. It means that s. 7 affords no guarantee of compensation or even of a fair procedure for the taking of property by government. It means that s. 7 affords no guarantee of fair treatment by courts, tribunals or officials with no power over the purely economic interests of individuals or corporations. It also requires, as have noticed in the earlier discussion of "liberty" and "security of the person", that those terms be interpreted as excluding economic liberty and economic security; otherwise property, having been shut out of the front door, would enter by the back.

[30] What is in play in this case are pure economic rights among the creditors of Nortel and the request of the LTD Objectors to be compensated by the other Nortel creditors. There is authority that a plan of compromise or arrangement is simply a contract between the debtor and its creditors. See *Olympia & York Developments Ltd. (Re)* at para. 74.

[31] Section 7 does not assist the LTD Objectors in their request for unequal treatment for unequal treatment.

[32] Section 15 of the *Charter* provides:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[33] In this case, it cannot be said that the LTD Objectors are being deprived of these section 15 rights because of discrimination based on physical disability. They are being treated like all creditors of Nortel. All unsecured creditors, be they bondholders, trade creditors, pensioners or LTD Beneficiaries, will receive the same *pari passu* treatment under the Plan. They are treated equally, with each receiving exactly the same proportion of their entitlements. In insolvency, equal treatment premised on underlying legal entitlements is not unfair or unreasonable. To the contrary, it is the fundamental tenet of insolvency law. **Except for the two LTD Objectors, all other LTD Beneficiaries, in excess of 300 in number, accept this equal treatment.**

[34] LTD Beneficiaries have been treated in the same manner as all similarly situated creditors, without discrimination. Pensioners, their beneficiaries, surviving spouses of deceased employees, Former Employees and LTD Beneficiaries are all unsecured creditors who are experiencing hardship due to lost income and benefits in the Nortel insolvency. **All are disadvantaged to varying degrees, depending on personal circumstances and there is no basis for preferring one group above others.** All have suffered losses in the Nortel insolvency. This was recognized by Justice Morawetz in 2010 when the Monitor applied for an order for distribution of the assets of the HWT (from which benefits were paid to beneficiaries, including the LTD Beneficiaries), on a *pari passu* basis. That was opposed by the LTD Objectors. In his decision of November 9, 2010 accepting the position of the Monitor at *Nortel Networks Corp., Re*, 2010 ONSC 5584, Justice Morawetz said:

110 As I have indicated above, there is no question that the impact of the shortfall in the HWT is significant. This was made clear in the written Record, as well as in the statements made by certain Dissenting LTD Beneficiaries at the hearing. However, the effects of the shortfall are not limited to the Dissenting LTD Beneficiaries and affect all LTD Beneficiaries and Pensioner Life claimants. The

- Page 15 -

relative hardship for each claimant may differ, but, in my view, the allocation of the HWT corpus has to be based on entitlement and not on relative need.²

[35] In the circumstances, I cannot find any breach of section 15 of the *Charter*.

Conclusion

[36] For the foregoing reasons, I have sanctioned the Plan and made an order authorizing and directing the release of the Sale Proceeds from the Escrow Accounts in the manner contemplated by the Settlement and Support Agreement.



Newbould J.

Date: January 30, 2017

² Leave to appeal to the C of A denied 2011 ONCA 10; leave to appeal to the SCC [2011] S.C.C.A. No. 124.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE)	TUESDAY, THE 24 TH DAY OF
)
NEWBOULD)	JANUARY, 2017
)	

**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, NORTEL NETWORKS
TECHNOLOGY CORPORATION, NORTEL COMMUNICATIONS INC.,
ARCHITEL SYSTEMS CORPORATION AND NORTHERN TELECOM CANADA
LIMITED**

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

SANCTION ORDER

THIS MOTION made by Nortel Networks Corporation (“**NNC**”), Nortel Networks Limited (“**NNL**”), Nortel Networks Technology Corporation, Nortel Networks Global Corporation, Nortel Networks International Corporation, Nortel Communications Inc., Architel Systems Corporation and Northern Telecom Canada Limited (collectively, the “**Canadian Debtors**”) jointly with Ernst & Young Inc. in its capacity as monitor of the Canadian Debtors (the “**Monitor**”) for the relief set out in the Notice of Motion dated January 20, 2017, including sanctioning the Plan of Compromise and Arrangement pursuant to the *Companies' Creditors Arrangement Act* concerning, affecting and involving the Canadian Debtors dated November 30, 2016 (as the same may be amended, varied or supplemented from time to time in accordance with the terms thereof, the “**Plan**”) was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017 (the “**Report**”), the Forty Second Report of the Monitor dated March 30, 2010, and the Notice of Intention to Appear and Submission for Anticipated January 24, 2017 Fairness Hearing to Sanction the Nortel CCAA Plan from Greg McAvoy and Jennifer Holley (the “**LTD Objectors**”), and on hearing submissions of counsel for the Monitor and counsel for those other parties present and the LTD Objectors, no one appearing for any other person on the service list or otherwise served with the motion although duly served as appears from the affidavit of Christopher Armstrong sworn January 23, 2017, filed.

SERVICE

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

DEFINED TERMS, CURRENCY AND INTERPRETATION OF THIS ORDER

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Plan.
3. **THIS COURT ORDERS** that, unless otherwise specified, all amounts referred to herein are in U.S. dollars.
4. **THIS COURT ORDERS** that for purposes of this Order the use of words in the singular or plural, or with a particular gender, including a definition, shall not limit the scope or exclude the application of any provision of this Order to such Person (or Persons) or circumstances as the context otherwise permits.
5. **THIS COURT ORDERS** that for purposes of this Order the words “includes” and “including” and similar terms of inclusion shall not, unless expressly modified by the words “only” or “solely”, be construed as terms of limitation, but rather shall mean “includes but is not limited to” and “including but not limited to”, so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive.

6. **THIS COURTS ORDERS** that under this Order any reference to a statute or other enactment of parliament or a legislature or Governmental Entity includes all regulations made thereunder, all amendments to or re-enactments of such statute or regulations in force from time to time, and, if applicable, any statute or regulation that supplements or supersedes such statute or regulation.

NOTICE AND MEETING

7. **THIS COURT ORDERS AND DECLARES** that there has been good and sufficient notice, service and delivery of the Meeting Materials (as defined in the Plan Filing and Meeting Order granted by this Court on December 1, 2016 (the “**Meeting Order**”)) and that the Meeting was duly called, convened, held and conducted, all in conformity with the CCAA and the Orders of this Court made in the CCAA Proceedings, including, without limitation, the Meeting Order.

SANCTION OF THE PLAN

8. **THIS COURT ORDERS AND DECLARES** that:
- (a) the Plan has been approved by the Required Majority of Affected Unsecured Creditors with Voting Claims as required by the Meeting Order and the Plan, and in conformity with the CCAA;
 - (b) the Canadian Debtors have complied with the provisions of the CCAA and the Orders of the Court made in the CCAA Proceedings in all respects;
 - (c) the Court is satisfied that the Canadian Debtors have not done or purported to do anything that is not authorized by the CCAA; and
 - (d) the Canadian Debtors have acted in good faith and with due diligence, and the Plan and the Settlement and Support Agreement incorporated therein are fair and reasonable.
9. **THIS COURT ORDERS** that the Plan is hereby sanctioned and approved pursuant to Section 6 of the CCAA.

10. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, transactions, arrangements, agreements, releases and reorganizations effected thereby are approved, binding and effective, subject to the terms set out in the Plan, upon and with respect to the Canadian Debtors (including the Canadian Estate), all Affected Creditors, the Directors and Officers, any Person with a Released Director/Officer Claim, the Released Parties and all other Persons named or referred to in, or subject to, the Plan. The fact that this Order does not refer to a specific provision of the Plan shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Plan be approved in its entirety.

SUBSTANTIVE CONSOLIDATION OF CANADIAN DEBTORS

11. **THIS COURT ORDERS** that all assets and liabilities of the Canadian Debtors be and are hereby substantively consolidated into the Canadian Estate. Without limiting the generality of the foregoing provision, on the Plan Effective Date:
- (a) NNL shall be the corporate body through which the transactions and other steps involving the Canadian Estate contemplated by the Plan and the wind-down and continuing administration of the Canadian Estate shall be conducted, it being understood that each Other Canadian Debtor shall continue to exist and maintain its independent corporate form;
 - (b) all assets and rights of the Other Canadian Debtors (but excluding the Canadian Intercompany Claims) shall vest absolutely in NNL free and clear of any Claim, Post-Filing Claim or Encumbrance except for the obligations of the Canadian Debtors (including the Canadian Estate) pursuant to or recognized under the Plan;
 - (c) NNL is hereby appointed as attorney in fact of each of the Other Canadian Debtors, authorized to take all steps and actions necessary for and on behalf of the Other Canadian Debtors and to execute any and all documents and make

any and all filings for and on behalf of each of the Other Canadian Debtors as may be necessary or desirable; and

- (d) subject to the qualifications under the Plan regarding Duplicative Claims, all Proven Affected Unsecured Claims (whether now existing or hereafter coming into existence) against the Other Canadian Debtors shall be deemed to be claims against NNL.

12. **THIS COURT ORDERS** that as a result of the substantive consolidation of the Canadian Debtors:

- (a) Each Canadian Registered Pension Plan shall only have one Proven Affected Unsecured Claim against the Canadian Estate in the respective amounts specified in Section 4.4 of the Plan;
- (b) Holders of Crossover Bonds that were issued by one Canadian Debtor and guaranteed by another Canadian Debtor shall only have one Proven Affected Unsecured Claim against the Canadian Estate in the aggregate respective amounts specified on Schedule "B" to the Plan;
- (c) Creditors shall not be permitted to have Duplicative Claims against the Canadian Estate; and
- (d) Creditors holding Proven Affected Unsecured Claims against more than one Canadian Debtor where such Proven Affected Unsecured Claims are based on separate and distinct underlying debts shall have one Proven Affected Unsecured Claim against the Canadian Estate in the aggregate amount of all such separate and distinct Proven Affected Unsecured Claims.

13. **THIS COURT ORDERS** that for purposes of the Plan, the Canadian Intercompany Claims shall be treated as Unaffected Claims and shall not be entitled to any distributions thereunder. Subject to the foregoing sentence and notwithstanding any other provision of the Plan or this Order, nothing in the Plan or this Order shall affect, impair or settle the Canadian Intercompany Claims and the

Canadian Intercompany Claims shall remain in place unaffected by the Plan in all respects following the Plan Effective Date.

SETTLEMENT AND SUPPORT AGREEMENT

14. **THIS COURT ORDERS** that the Settlement and Support Agreement, including the resolution of the Allocation Dispute and the Settlement and Support Agreement Releases described therein, be and is hereby approved in its entirety. The fact that this Order does not describe or include any particular provision of the Settlement and Support Agreement shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Settlement and Support Agreement be approved in its entirety.
15. **THIS COURT ORDERS** that the execution and delivery of the Settlement and Support Agreement by the Canadian Debtors and the Monitor is hereby authorized and approved *nunc pro tunc* and the performance by the Canadian Debtors and the Monitor of their respective obligations thereunder is hereby approved. The Canadian Debtors and the Monitor are hereby authorized to take such steps and execute such additional documents as may be necessary or desirable to effectuate and implement the terms of the Settlement and Support Agreement.
16. **THIS COURTS ORDERS** that, without limiting the generality of paragraphs 14 and 15 hereof, on the Plan Effective Date the Canadian Debtors and Monitor be and are hereby authorized to take such steps as may be necessary to effect the following distributions from the Escrow Accounts, all in accordance with and subject to the terms of the Settlement and Support Agreement, including Section 2 thereof:
 - (a) payments of \$35,000,000 to NNL, and \$20,000,000 to NNI, shall be made from the Iceberg Escrow Account in satisfaction of the M&A Cost Reimbursement;

- (b) payments of \$2,800,000 to NNI, and \$2,200,000 to NNUK, shall be made from the Iceberg Escrow Account in satisfaction of the Iceberg Amendment Fee; and
 - (c) after making the payments described in paragraphs (a) and (b) above, the Sale Proceeds shall be allocated and paid from the Escrow Accounts on and subject to the terms of the Settlement and Support Agreement as follows:
 - (i) Canadian Debtors: 57.1065%, being \$4,142,665,131 as at July 31, 2016;
 - (ii) U.S. Debtors: 24.350%, being \$1,766,417,002 as at July 31, 2016;
 - (iii) EMEA Debtors (excluding NNUK and NNSA): 1.4859%, being \$107,788,879 as at July 31, 2016;
 - (iv) NNUK: 14.0249%, being \$1,017,408,257 as at July 31, 2016, subject to adjustment as contemplated in Section 2(c)(v) of the Settlement and Support Agreement; and
 - (v) NNSA: \$220,000,000.
17. **THIS COURT ORDERS** that, for the avoidance of doubt, all distributions from the Escrow Accounts (including the specific amounts to be distributed to each of the Canadian Debtors, the U.S. Debtors and the EMEA Debtors) shall be strictly in accordance with the Settlement and Support Agreement. To the extent of any conflict between the provisions of the Settlement and Support Agreement, the Plan or this Order as relates to distributions from the Escrow Accounts, the provisions of the Settlement and Support Agreement shall govern in all respects.
18. **THIS COURT ORDERS** that within five (5) Business Days of the Plan Implementation Date the Canadian Estate shall make the following payments by wire transfer of immediately available funds in full satisfaction and discharge of the following:

- (a) \$62,700,000 to NNI in full satisfaction of the Remaining Revolver Claim;
 - (b) \$77,500,000 to NNI in full satisfaction of the payment contemplated by Section 4(e) of the Settlement and Support Agreement, which payment shall not be subject to set-off pursuant to Section 3.13 of the Plan.
19. **THIS COURT ORDERS** that the Settlement and Support Agreement Releases given and received by the Canadian Debtors and the Monitor be and are hereby authorized and approved. The Settlement and Support Agreement Releases shall be binding on and enure to the benefit of the Canadian Debtors (including the Canadian Estate), the Monitor, the other Settlement Parties, the Participating Creditors and their respective employees, officers, directors, agents, advisors, lawyers, successors and assigns and the directors and officers, both former and current, of any Nortel Group entity.

RELEASE OF CANADA ONLY SALE PROCEEDS AND UNAVAILABLE CASH

20. **THIS COURT ORDERS** that on the Plan Effective Date all amounts held by NNL pursuant to the Canada Only Sale Proceeds Orders or held as Unavailable Cash by the Canadian Debtors shall be released to the Canadian Estate without any restriction whatsoever, and shall be used to fund the distributions and reserves contemplated under the Plan.

CERTAIN ACCEPTED CLAIMS

21. **THIS COURT ORDERS** that the following Creditors shall have the following accepted claims against the Canadian Estate pursuant to the Plan:
- (a) The total Proven Affected Unsecured Claim of Morneau Shepell Ltd. as Administrator of the Canadian Registered Pension Plans on account of the Managerial Plan shall be CA\$1,368,644,000, and the total Proven Affected Unsecured Claim on account of the Negotiated Plan shall be CA\$520,835,000;

- (b) The aggregate total of all Proven Affected Unsecured Claims on account of the Crossover Bonds shall be \$3,940,750,260, with the individual Proven Affected Unsecured Claims on account of the Crossover Bonds being as set forth on Schedule "B" to the Plan;
- (c) The Proven Affected Unsecured Claim on account of the NNCC Bonds shall be \$150,951,562;
- (d) UKPI shall have a single Proven Affected Unsecured Claim in the amount of £339,750,000 (being \$494,879,850 when converted to U.S. dollars in accordance with the Plan);
- (e) NNUK shall have a Proven Affected Unsecured Claim under the Plan in the amount of \$97,655,094, the amount of which may increase to \$122,655,094 solely in the circumstances set out in Section 2.2 of the EMEA Claims Settlement Agreement;
- (f) Nortel Networks SpA shall have a Proven Affected Unsecured Claim under the Plan in the amount of \$2,344,906; and
- (g) NNI shall have: (i) a Proven Affected Unsecured Claim under the Plan in the amount of \$2,000,000,000; and (ii) a Proven Priority Claim of \$62,700,000 on account of the Remaining Revolver Claim, which claims of NNI shall not be subject to set-off, off set, deduction, counterclaim, reduction, or challenge as to amount or validity.

NO DOUBLE-RECOVERY

22. **THIS COURT ORDERS** that no Creditor shall receive aggregate distributions from the Canadian Estate and any other Nortel Group entity on account of a Proven Affected Unsecured Claim and any related claim established against another Nortel Group entity (a "**Foreign Related Claim**") in excess of 100% of the amount of such Proven Affected Unsecured Claim. Subject to further Order of the CCAA Court, the Canadian Estate and Monitor are authorized to delay and/or withhold

distributions to Creditors holding Foreign Related Claims pending receipt of documentation acceptable to the Monitor, acting reasonably, to allow it to confirm that a Creditor has not and will not receive amounts on account of its Proven Affected Unsecured Claim and any Foreign Related Claim in excess of 100% of the amount of such Proven Affected Unsecured Claim.

NO POST-FILING DATE INTEREST

23. **THIS COURT ORDERS** that no Post-Filing Date Interest will be included in any Proven Affected Unsecured Claims, Proven Priority Claims or any other Claims provable under the Plan, and no distributions will be made on account of Post-Filing Date Interest. For the avoidance of doubt, all claims for Post-Filing Date Interest shall be released, discharged and barred pursuant to the terms of the Plan and this Order.

PLAN IMPLEMENTATION

24. **THIS COURT ORDERS** that each of the Canadian Estate and the Monitor be and are hereby authorized and directed to perform their obligations and functions under the Plan, including the establishment of the Administrative Reserve and the Unresolved Claims Reserve, and to take all steps and actions and to do all things necessary or appropriate to implement the Plan in accordance with its terms and to enter into, execute, deliver, complete, implement and consummate all of the steps, transactions, distributions, disbursements, payments, deliveries, allocations, instruments and agreements contemplated pursuant to the Plan, and such steps and actions are hereby authorized, ratified and approved. None of the Canadian Debtors (including the Canadian Estate) or the Monitor shall incur any liability as a result of acting in accordance with the terms of the Plan and this Order, other than any liability arising out of the gross negligence or wilful misconduct of such parties.
25. **THIS COURT ORDERS AND DECLARES** that the Plan and all associated steps, compromises, settlements, transactions, arrangements, distributions and releases effected thereby are hereby approved, shall be deemed to be implemented

and shall be binding and effective as of the Plan Effective Date or the Plan Implementation Date, as the case may be, in accordance with the terms of the Plan or at such other time, times or manner as may be set forth in the Plan in the sequence provided therein, and shall enure to the benefit of and be binding and effective upon the Canadian Debtors (including the Canadian Estate), all Affected Creditors, the Released Parties and all other Persons named or referred to in, or subject to, the Plan.

26. **THIS COURT ORDERS** that the Monitor be and is hereby authorized to execute and deliver or serve (as the case may be):

- (a) on the Plan Effective Date, the Plan Certificate relating to the Plan to the U.S. Debtors substantially in the form attached hereto as Schedule "A";
- (b) on the Plan Effective Date, the Plan Effectiveness Certificate to the service list in the CCAA Proceedings (the "**Service List**") substantially in the form attached hereto as Schedule "B"; and
- (c) on the Plan Implementation Date, the Plan Implementation Certificate to the Service List substantially in the form attached hereto as Schedule "C",

all on and subject to the terms contemplated by the Plan. The Monitor is hereby directed to file the Plan Effectiveness Certificate and the Plan Implementation Certificate with the Court as soon as reasonably practicable on or forthwith following the service of such certificate on the Service List and post copies of same on the Monitor's Website.

27. **THIS COURTS ORDERS** that, notwithstanding: (i) the pendency of the CCAA Proceedings; (ii) any applications for a bankruptcy, receivership or other order now or hereafter issued pursuant to the BIA, the CCAA or otherwise in respect of any of the Canadian Debtors and any bankruptcy, receivership or other order issued pursuant to any such applications; and (iii) any assignment in bankruptcy made or deemed to be made in respect of any of the Canadian Debtors, the transactions

contemplated by the Plan and by the Settlement and Support Agreement shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Canadian Debtors or their assets and shall not be void or voidable by creditors of the Canadian Debtors, nor shall the Plan, the Settlement and Support Agreement or the payments and distributions contemplated pursuant thereto constitute nor be deemed to constitute a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA, CCAA or any other applicable federal or provincial legislation, nor shall the Plan or the Settlement and Support Agreement constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

28. **THIS COURT ORDERS AND DECLARES** that no shareholder approval is required in respect of the Canadian Debtors entry into or performance of the Plan, the Settlement and Support Agreement or any transaction, step or action contemplated by any of the foregoing or this Order and any such requirement for shareholder approval be and is hereby dispensed with.

COMPROMISE OF CLAIMS AND EFFECT OF PLAN

29. **THIS COURT ORDERS** that, on the Plan Effective Date, all Affected Claims shall be fully, finally, irrevocably and forever compromised, discharged, released, cancelled and barred with prejudice, and the ability of any Person to proceed against the Released Parties in respect of or relating to any Affected Claims shall be forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims shall permanently be stayed against the Released Parties, subject only to the right of Affected Creditors to seek to prove their claims pursuant to the Claims Orders and to receive distributions pursuant to the Plan in respect of their Affected Claims, in the manner and to the extent provided for in the Plan.
30. **THIS COURT ORDERS** that each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have consented and agreed to all of the

provisions in the Plan, in its entirety, and each Person named or referred to in, or subject to, the Plan shall be and is hereby deemed to have executed and delivered to the Canadian Debtors all consents, releases, assignments and waivers, statutory or otherwise, required to implement and carry out the Plan in its entirety.

31. **THIS COURT ORDERS** that, on the Plan Effective Date, subject to Section 7.2 of the Plan, all Released Claims shall be fully, finally, irrevocably and forever compromised, discharged, released, cancelled and barred with prejudice, and the ability of any Person to proceed against the Canadian Debtors (including the Canadian Estate), the Directors and Officers or any other Released Party in respect of or relating to any Affected Claims shall be forever discharged, extinguished, released and restrained, and all proceedings with respect to, in connection with or relating to such Affected Claims shall permanently be stayed against the Canadian Debtors, the Directors and Officers and any other Released Parties, subject only to the right of Affected Creditors to seek to prove their claims pursuant to the Claims Orders and to receive distributions pursuant to the Plan in respect of their Affected Claims, in the manner and to the extent provided for in the Plan.
32. **THIS COURT ORDERS** that nothing in the Plan shall be interpreted as extending or amending the Claims Orders or gives or shall be interpreted as giving any rights to any Person in respect of Claims or Post-Filing Claims that have been barred or extinguished pursuant to the Claims Orders. Any Affected Claim or Post-Filing Claim for which a Proof of Claim, dispute notice or other document has not been filed by the applicable bar date or other deadline established in accordance with the Claims Order, whether or not the holder of such Affected Claim or Post-Filing Claim has received actual notice of the Claims Order, shall be and is hereby forever barred, extinguished and released with prejudice. Without limiting the foregoing: (i) no Person shall be permitted to supplement, amend or assert any additional Claim or Post-Filing Claim, including a Compensation Claim, pursuant to an existing Proof of Claim, whether as to the nature and substance of any such claim or the amount of such claim and whether pursuant to a document authorized pursuant to a Claims Order, a pleading or other filing made in a claim dispute or otherwise; and

(ii) no Person (but excluding any current, whether active or inactive, employee of the Canadian Debtors) shall be permitted to file a Proof of Claim (whether in respect of a Claim, a Post-Filing Claim, or any other alleged liability of the Canadian Debtors or the Canadian Estate), in each case without the prior leave of this Court. To the extent any Person seeks to do either of the foregoing (i) or (ii), the Monitor shall notify such Person such act is a nullity and the sole recourse of such Person shall be to bring a motion before this Court to seek leave within seven (7) days of receiving such notice from the Monitor.

33. **THIS COURTS ORDERS** on the Plan Effective Date, the Plan shall be binding on all Equity Claimants and all Equity Claims shall be fully, finally, irrevocably and forever compromised, released, discharged and barred without any compensation of any kind whatsoever in accordance with the terms of the Plan.
34. **THIS COURT ORDERS** that notwithstanding paragraph 33 or any other provision of this Order or the Plan, NNC's common shares and NNL's preferred shares shall remain issued and outstanding following the Plan Effective Date.
35. **THIS COURT ORDERS AND DECLARES** that if, following the Plan Effective Date, a Bankruptcy Proceeding occurs in respect of the Canadian Debtors (or any of them or their assets, including the Canadian Estate), the Proven Affected Unsecured Claims compromised and released pursuant to the Plan and this Order shall be deemed to be reinstated in their full amounts solely for purposes of giving effect to any distributions to be made in such a Bankruptcy Proceeding, it being the intention that holders of Proven Affected Unsecured Claims under the Plan shall share rateably with holders of any additional claims (including any Post-Filing Claims) asserted against the Canadian Debtors (or any of them, including the Canadian Estate) in a Bankruptcy Proceeding, provided that any distributions made on account of Proven Affected Unsecured Claims pursuant to the Plan shall also be accounted for in any distributions in a Bankruptcy Proceeding. All Proven Affected Unsecured Claims pursuant to the Plan and the Claims Orders, including the claims set out in paragraph 21 hereof, shall be deemed to constitute proven claims in any

Bankruptcy Proceeding without any need for a Creditor to file an additional proof of claim in any such Bankruptcy Proceeding.

36. **THIS COURT ORDERS** that all Claims and Post-Filing Claims as finally resolved pursuant to the Claims Orders, including the claims set out in paragraph 21 hereof, shall be final and binding for all purposes in a Bankruptcy Proceeding without any ability on the part of any Creditor or any trustee in bankruptcy or receiver to further dispute, re-assert or re-litigate such claims in a Bankruptcy Proceeding.

CERTAIN DISTRIBUTION MATTERS

37. **THIS COURT ORDERS** that no Affected Unsecured Creditor shall be entitled to receive any distribution under the Plan with respect to an Unresolved Affected Unsecured Claim or any portion thereof unless and until, and then only to the extent that, such Claim is finally resolved in the manner set out in the applicable Claims Order and becomes a Proven Affected Unsecured Claim. Notwithstanding the foregoing: (i) NNUK shall be entitled to receive distributions under the Plan on account of the Proven NNUK Claim pending final resolution of the Contingent Additional NNUK Claim; and (ii) Compensation Creditors holding Unresolved Affected Unsecured Claims shall be entitled to receive distributions on account of such Unresolved Affected Unsecured Claims solely to the extent portions thereof have been admitted or proven pursuant to the Compensation Claims Procedure Order.
38. **THIS COURT ORDERS AND DECLARES** that the Canadian Estate shall be authorized, in connection with the making of any payment or distribution, and in connection with the taking of any step or transaction or performance of any function under or in connection with the Plan, to apply to any Governmental Entity for any consent, authorization, certificate or approval in connection therewith.
39. **THIS COURT ORDERS** that the Canadian Estate and any other Person facilitating distributions under the Plan shall be entitled to deduct and withhold

from any distribution or payment to any Person pursuant to the Plan such amounts as may be required to be deducted or withheld with respect to such distribution or payment under the Canadian Tax Act or other Applicable Laws and to remit such amounts to the appropriate Taxing Authority or other Person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate Taxing Authority or other Person, such withheld or deducted amounts shall be treated for all purposes under the Plan as having been paid to such Person as the remainder of the distribution or payment in respect of which such withholding or deduction was made.

40. **THIS COURT ORDERS AND DECLARES** that any distributions, disbursements or payments made under the Plan (including, without limitation, distributions made to or for the benefit of the Affected Creditors and payments made on account of Proven Priority Claims) shall not constitute a “distribution” by any Person for the purposes of section 107 of the *Corporations Tax Act* (Ontario), section 22 of the *Retail Sales Tax Act* (Ontario), section 117 of the *Taxation Act*, 2007 (Ontario), section 34 of the *Income Tax Act* (British Columbia), section 104 of the *Social Service Tax Act* (British Columbia), section 49 of the *Alberta Corporate Tax Act*, section 22 of the *Income Tax Act* (Manitoba), section 73 of *The Tax Administration and Miscellaneous Taxes Act* (Manitoba), section 14 of *An Act respecting the Ministère du Revenu* (Quebec), section 85 of *The Income Tax Act*, 2000 (Saskatchewan), section 48 of *The Revenue and Financial Services Act* (Saskatchewan), section 56 of the *Income Tax Act* (Nova Scotia), section 159 of the *Canadian Tax Act*, section 270 of the *Excise Tax Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Canadian Estate, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under the Plan and is not exercising any discretion in making payments under the Plan and no Person is “distributing” such funds for the purpose of the Tax Statutes, and the Canadian Estate and any other Person, including the Monitor, shall not incur any liability under the Tax Statutes in respect

of distributions, disbursements or payments made by it and the Canadian Estate, the Monitor and any other Person is hereby forever released, remised and discharged from any claims against it under or pursuant to the Tax Statutes or otherwise at law, arising in respect of or as a result of distributions, disbursements or payments made by it in accordance with the Plan and any claims of this nature are hereby forever barred.

CURRENCY MATTERS

41. **THIS COURT ORDERS** that distributions to Creditors holding CAD Claims shall be paid in Canadian dollars, and distributions to all other Creditors holding Proven Affected Unsecured Claims shall be paid in U.S. dollars, and that for purposes of determining the amount of Canadian dollars to be paid by the Canadian Estate on distributions on a CAD Claim, the amount of such distribution in U.S. dollars (i.e. the relevant Pro-Rata Share in U.S. dollars) shall be converted to Canadian dollars at the Applicable FX Rate.
42. **THIS COURT ORDERS** that the Canadian Estate and the Monitor shall be authorized to effect such exchange(s) of currency between Canadian dollars and U.S. dollars as may be necessary to effect the distributions and other payments (including in respect of the continuing administration of the Canadian Estate) contemplated pursuant to the Plan in the currency contemplated for such distributions or payments.

ESTABLISHMENT OF RESERVES

43. **THIS COURT ORDERS** that on the Plan Implementation Date, the Canadian Estate be and is hereby authorized and directed to establish the Administrative Reserve from Available Cash in the amount of \$155 million or such other amount as may be determined by the Monitor and approved by the Court.
44. **THIS COURT ORDERS** that:

- (a) following the Plan Implementation Date and prior to the Initial Distribution Date, the Canadian Estate be and is hereby authorized and directed to establish the Unresolved Claims Reserve, including the individual claim reserve amounts (a “**Claim Reserve Amount**”) specified at Appendix “H” to the One Hundred and Thirty Fifth Report for each Unresolved Affected Unsecured Claim specified therein;
 - (b) the maximum provable amount of any Unresolved Affected Unsecured Claim is hereby capped at the related Claim Reserve Amount and no holder of an Unresolved Affected Unsecured Claim shall be permitted to prove (or seek to prove) such claim for an amount in excess of the related Claim Reserve Amount or be entitled to a distribution pursuant to the Plan (or otherwise) on an Unresolved Affected Unsecured Claim in excess of the Pro-Rata Share applicable to the Claim Reserve Amount for such Unresolved Affected Unsecured Claim;
 - (c) the reserve for the Post-Filing Claim of The Northern Trust Company, Canada is hereby fixed at CA\$1 million, which amount shall constitute the maximum Post-Filing Claim that can be established by The Northern Trust Company, Canada; and
 - (d) the Monitor be at liberty to apply to this Court to address the Unresolved Claims Reserve to the extent any issues regarding reserves in respect of Unresolved Affected Unsecured Claims or Post-Filing Claims are not addressed to the satisfaction of the Monitor in its sole discretion.
45. **THIS COURT ORDERS** that neither the Canadian Estate nor the Monitor shall have any obligation to establish separate accounts or funds, or to otherwise segregate Available Cash, in respect of any of the Administrative Reserve, an Affected Unsecured Creditor Pool, the Unresolved Claims Reserve or any other reserve, cash pool, fund, payment or distribution contemplated under the Plan, provided that the Canadian Estate and the Monitor shall maintain appropriate

records in respect of the calculation and determination of all such reserves and cash pools.

PLAN RELEASES AND INJUNCTIONS

46. **THIS COURT ORDERS** that the releases set forth in Article 7 of the Plan be and are hereby approved and on the Plan Effective Date the Released Parties be and are hereby fully, finally and irrevocably released and discharged from any and all Released Claims and all Released Claims shall be fully, finally, irrevocably and forever waived, discharged, released, cancelled and barred as against the Released Parties, all to the fullest extent permitted by Applicable Law.
47. **THIS COURT ORDERS** that from and after the Plan Effective Date all Persons are permanently and forever barred, estopped, stayed and enjoined, with respect to any and all Released Claims, from: (i) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against the Released Parties; (ii) enforcing, levying, attaching, collecting or otherwise recovering or enforcing by any manner or means, directly or indirectly, any judgment, award, decree or order against the Released Parties or their property; (iii) commencing, conducting, continuing or making in any manner, directly or indirectly, any action, suit, claim, demand or other proceeding of any nature or kind whatsoever (including any proceeding in a judicial, arbitral, administrative or other forum) against any Person who makes a claim or might reasonably be expected to make a claim, in any manner or forum, including by way of contribution or indemnity or other relief, against one or more of the Released Parties; (iv) creating, perfecting, asserting or otherwise enforcing, directly or indirectly, any lien or Encumbrance of any kind against the Released Parties or their property; or (v) taking any actions to interfere with the implementation or consummation of the Plan.

48. **THIS COURT ORDERS** that the releases provided for in Section 7.4 of the Plan be and are hereby authorized and approved.

CCAA CHARGES AND OTHER ENCUMBRANCES

49. **THIS COURT ORDERS** that on the Plan Effective Date each of the Charges (except for the Administration Charge) shall be and is hereby terminated, discharged, expunged and released, subject to, in the case of the Inter-company Charge (but solely to the extent it benefits NNI), payment of the Remaining Revolver Claim. For the avoidance of doubt, upon payment of the Remaining Revolver Claim, the Inter-company Charge shall be and is hereby terminated, discharged, expunged and released.
50. **THIS COURT ORDERS** that from and after the Plan Effective Date the Administration Charge shall continue as a first-ranking super-priority charge on the Property (as defined in the Initial Order) and the Canadian Estate's assets, undertakings and properties of every nature and kind whatsoever and wherever situated (including all proceeds thereof and including the Available Cash), ranking in priority to any other security interests, trusts, liens, charges or other Encumbrances in favour of any Person.
51. **THIS COURTS ORDERS** that on the Plan Effective Date all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system shall be expunged and discharged as against the Canadian Debtors (including the Canadian Estate) and all of the Property (as defined in the Initial Order).
52. **THIS COURT ORDERS** that on the Plan Effective Date all rights of the Directors and Officers pursuant to paragraphs 20 and 21 of the Initial Order be and are hereby released and discharged.

EXTENSION OF CCAA STAY AND ONGOING REPORTING TO THE COURT

53. **THIS COURT ORDERS** that, subject to further order of the Court, the Stay Period (as defined in the Initial Order) shall be and is hereby extended indefinitely. For the avoidance of doubt, the stay provided for in paragraphs 14 and 15 of the Initial Order and the other rights and protections afforded to the Canadian Debtors pursuant to the Initial Order shall extend to the Canadian Estate and the stay in favour of the Directors and Officers provided for in paragraph 19 of the Initial Order shall continue during the Stay Period notwithstanding the sanctioning of the Plan.
54. **THIS COURT ORDERS** that the Monitor shall serve on the Service List in the CCAA Proceedings and file with the Court a report on the progress of the continuing administration and wind-down of the Canadian Estate, including the implementation of the Plan, on no less than an annual basis.
55. **THIS COURT ORDERS AND DECLARES** that any obligation of the Monitor to provide cash flow forecasting or reconciliations and monthly claims reporting (whether pursuant to paragraph 11 of the Claims Resolution Order dated September 16, 2010, or any other agreement or order) shall cease as at the Plan Effective Date, provided that the Monitor shall provide cash flow reporting and claims reporting in the reports contemplated in the foregoing paragraph.
56. **THIS COURT ORDERS** that, for the avoidance of doubt, the Cross-Border Protocol and the Cross-Border Claims Protocol shall each remain in full force and effect in accordance with their respective terms.

CESSATION OF TOLLING

57. **THIS COURT ORDERS AND DECLARES** that the tolling of any Claims, Director/Officer Claims or other claims or rights pursuant to prior orders of this Court shall cease on the Plan Effective Date, without prejudice to the rights of Affected Unsecured Creditors with Proven Affected Unsecured Claims (whether

now existing or hereafter coming into existence) to receive all distributions contemplated by the Plan.

TERMINATION OF HARDSHIP PROCESS

58. **THIS COURTS ORDERS** that on the Plan Effective Date the Hardship Process shall be and is hereby terminated and that all remaining amounts, if any, relating to the Hardship Process shall become Available Cash.

STAKEHOLDER ADVISOR FEE ARRANGEMENTS

59. **THIS COURT ORDERS** that on the Plan Implementation Date the Bondholder Advisor Fee Letter shall be and is hereby terminated and the Canadian Debtors (including the Canadian Estate) shall have no obligation to pay any fees and expenses of the advisors to the Bondholder Group from and after the Plan Implementation Date.
60. **THIS COURT ORDERS** that from and after the Plan Implementation Date, the fees and expenses of Court Appointed Representative Counsel shall no longer be borne by the Canadian Estate and instead shall be borne by the Compensation Creditors on the terms contemplated by Section 10.2(b) of the Plan. Notwithstanding the foregoing, the Canadian Estate shall pay the reasonable fees and expenses of Koskie Minsky LLP and their financial advisor for providing certain services relating to the Plan and distributions thereunder to Compensation Creditors for the twelve (12) month period following the Plan Implementation Date to a maximum of CA\$1.5 million on the terms that have been agreed to in writing between the Canadian Estate, the Monitor, Koskie Minsky LLP and their financial advisor.
61. **THIS COURT ORDERS** that the obligation of the Canadian Debtors to pay the fees and expenses of counsel to the Directors and Officers (whether pursuant to the Initial Order or otherwise) shall terminate on the Plan Implementation Date and the Canadian Debtors (including the Canadian Estate) shall have no obligation to pay

any fees and expenses of counsel to the Directors and Officers from and after the Plan Implementation Date.

THE MONITOR

62. **THIS COURT ORDERS** that from and after the Plan Effective Date the administration and wind-down of the Canadian Estate will continue to be conducted by the Monitor pursuant to the Monitor's Powers Orders and the Plan and the Monitor shall be and is hereby authorized to continue such administration and wind-down, including, without limitation, to undertake the matters contemplated pursuant to Section 10.1 of the Plan.
63. **THIS COURT ORDERS** that, for the avoidance of doubt: (i) the Monitor shall continue to have all of the powers and protections granted to it by the Plan, the CCAA, the Monitor's Powers Orders and any other Order made in the CCAA Proceedings; and (ii) the Canadian Estate shall be an "Applicant" or "Canadian Debtor" for purposes of construing the Monitor's Powers Orders and any other Order made in the CCAA Proceedings.
64. **THIS COURT ORDERS** that, without limiting the provisions of the Monitor's Powers Orders or any other Order granted in the CCAA Proceedings, the Canadian Estate shall remain in possession and control of the Property (as defined in the Initial Order) and the Monitor shall not take possession or be deemed to be in possession and/or control of the Property.
65. **THIS COURT ORDERS AND DECLARES** that: (i) in carrying out the terms of this Order and the Plan, the Monitor shall have all the protections given to it by the CCAA, the Monitor's Powers Orders and any other order of this Court, including the stay of proceedings and other protections pursuant to paragraphs 14 and 15 of the Initial Order, in its favour; (ii) the Monitor shall incur no liability or obligation as a result of carrying out the provisions of this Order and/or the Plan, other than any liability arising out of or in connection with the gross negligence or wilful misconduct of the Monitor; (iii) the Monitor shall be entitled to rely on the books

and records of the Canadian Debtors; and (iv) the Monitor shall not be liable for any claims or damages resulting from any errors or omissions in such books, records or information.

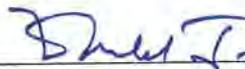
66. **THIS COURT ORDERS** that none of the Monitor or its affiliates, shareholders, affiliate's shareholders (including Ernst & Young LLP, a Canadian limited liability partnership), employees, advisors, lawyers, representatives or agents shall incur any personal liability whatsoever whether on their own part or in respect of any failure on the part of any Canadian Debtor (including the Canadian Estate) to observe, perform or comply with any of its obligations under the Plan or under or in relation to any associated arrangements or negotiations.

MISCELLANEOUS

67. **THIS COURT ORDERS** that the Canadian Debtors (including the Canadian Estate) and the Monitor may apply to this Court from time to time for advice and direction with respect to any matter arising from or under the Plan or this Order.
68. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories of Canada and abroad as against all Persons against whom it may be enforced.
69. **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 Canadian Debtors (including the Canadian Estate), 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 Canadian Debtors (including the Canadian Estate) 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 Canadian Debtors (including

the Canadian Estate) and the Monitor and their respective agents in carrying out the terms of this Order.

70. **THIS COURT ORDERS** that each of the Canadian Debtors (including the Canadian Estate) and the Monitor shall be at liberty and are 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.



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

JAN 24 2017

PER / PAR: 

SCHEDULE "A"
FORM OF MONITOR'S CERTIFICATE RE: PLAN CERTIFICATE

Court File No. 09-CL-7950

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, NORTEL NETWORKS
TECHNOLOGY CORPORATION, NORTEL COMMUNICATIONS INC.,
ARCHITEL SYSTEMS CORPORATION AND NORTHERN TELECOM CANADA
LIMITED**

PLAN CERTIFICATE

TO: NORTEL NETWORKS INC. AND ITS AFFILIATED U.S. DEBTORS

RE: EFFECTIVENESS OF CANADIAN PLAN

Reference is made to the Plan of Compromise and Arrangement pursuant to the *Companies' Creditors Arrangement Act* concerning, affecting and involving the Canadian Debtors dated November 30, 2016 (the "**Canadian Plan**") sanctioned by the Ontario Superior Court of Justice pursuant to a Sanction Order dated January 24, 2017.

Pursuant to Section 9.1 of the Canadian Plan, the Monitor hereby declares the effectiveness of the Canadian Plan in accordance with its terms.

DATED the ____ day of ●, 2017.

**ERNST & YOUNG INC. in its capacity as
Monitor of Nortel Networks Corporation *et al.*
and not in its personal capacity**

Per: _____

Name: Murray McDonald
Title: President

SCHEDULE "B"
FORM OF PLAN EFFECTIVENESS CERTIFICATE

Court File No. 09-CL-7950

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, NORTEL NETWORKS
TECHNOLOGY CORPORATION, NORTEL COMMUNICATIONS INC.,
ARCHITEL SYSTEMS CORPORATION AND NORTHERN TELECOM CANADA
LIMITED**

PLAN EFFECTIVENESS CERTIFICATE

TO: THE SERVICE LIST

RE: EFFECTIVENESS OF CANADIAN PLAN

Reference is made to the Plan of Compromise and Arrangement pursuant to the *Companies' Creditors Arrangement Act* concerning, affecting and involving the Canadian Debtors dated November 30, 2016 (the "**Canadian Plan**") sanctioned by the Ontario Superior Court of Justice pursuant to a Sanction Order dated January 24, 2017.

Capitalized terms used herein and not otherwise defined have the meaning given to them in the Canadian Plan.

Pursuant to Section 9.4 of the Canadian Plan, the Monitor hereby confirms the occurrence of the Plan Effective Date under the Canadian Plan on [date].

DATED the ____ day of ●, 2017.

**ERNST & YOUNG INC. in its capacity as
Monitor of Nortel Networks Corporation *et al.*
and not in its personal capacity**

Per: _____

Name: Murray McDonald
Title: President

SCHEDULE "C"
FORM OF PLAN IMPLEMENTATION CERTIFICATE

Court File No. 09-CL-7950

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, NORTEL NETWORKS
TECHNOLOGY CORPORATION, NORTEL COMMUNICATIONS INC.,
ARCHITEL SYSTEMS CORPORATION AND NORTHERN TELECOM CANADA
LIMITED**

PLAN IMPLEMENTATION CERTIFICATE

TO: THE SERVICE LIST

RE: IMPLEMENTATION OF CANADIAN PLAN

Reference is made to the Plan of Compromise and Arrangement pursuant to the *Companies' Creditors Arrangement Act* concerning, affecting and involving the Canadian Debtors dated November 30, 2016 (the "**Canadian Plan**") sanctioned by the Ontario Superior Court of Justice pursuant to a Sanction Order dated January 24, 2017.

Capitalized terms used herein and not otherwise defined have the meaning given to them in the Canadian Plan.

Pursuant to Section 9.5 of the Canadian Plan, the Monitor hereby confirms the occurrence of the Plan Implementation Date under the Canadian Plan on **[date]**.

DATED the ____ day of ●, 2017.

**ERNST & YOUNG INC. in its capacity as
Monitor of Nortel Networks Corporation *et al.*
and not in its personal capacity**

Per: _____

Name: Murray McDonald

Title: President

**THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C.
 ORDERED
 OF A PLAN OF COMPROMISE OR ARRANGEMENT OF
 CORPORATION et al.**

Court File No. 09-CL-7950

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

Proceeding commenced at Toronto

SANCTION ORDER

GOODMANS LLP

Barristers & Solicitors

Bay Adelaide Centre

333 Bay Street, Suite 3400

Toronto, ON M5H 2S7

Jay A. Carfagnini LSUC#: 22293T

Joseph Pasquariello LSUC#: 38390C

Christopher G. Armstrong LSUC#: 55148B

Tel: 416.979.2211

Fax: 416.979.1234

Lawyers for the Monitor, Ernst & Young Inc.

COURT OF APPEAL FOR ONTARIO

CITATION: Nortel Networks Corporation (Re), 2017 ONCA 210

DATE: 20170313

DOCKET: M47511

Hoy A.C.J.O., Pepall and Brown JJ.A.

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, Nortel Networks Technology Corporation, Nortel Communications Inc., Architel Systems Corporation and Northern Telecom Canada Limited

Application under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended

Jennifer Holley and Joseph Greg McAvoy, the moving parties, acting in person

Benjamin Zarnett, Jessica A. Kimmel and Peter B. Kolla, for the responding party, the Monitor, Ernst & Young Inc.

Derrick C. A. Tay and Jennifer Stam, for the responding parties, the Canadian Debtors

Mark Zigler, Susan L. Philpott and Barbara A. Walancik, for the responding parties, the Canadian Former Employees and Disabled Employees through their court appointed Representatives

Janice B. Payne and Thomas J. McRae, for the responding party, the Nortel Canadian Continuing Employees

Paul Mitchell, for the responding party, the EMEA Debtors (other than Nortel Networks S.A.)

Sheila R. Block, Scott A. Bomhof, Andrew D. Gray, Adam M. Slavens and Jeremy R. Opolsky, for the responding parties, Nortel Networks Inc. and the other U.S. Debtors

R. Shayne Kukulowicz, Michael J. Wunder, Ryan C. Jacobs and Geoff B. Shaw, for the responding party, the Official Committee of Unsecured Creditors of Nortel Networks Inc., et al

S. Richard Orzy, Gavin H. Finlayson and Richard B. Swan, for the responding parties, the Ad Hoc Group of Bondholders

Heard: In Writing

Motion for leave to appeal from the order of Justice Frank J. C. Newbould of the Superior Court of Justice, dated January 24, 2017.

ENDORSEMENT

[1] The self-represented moving parties, Joseph McAvoy and Jennifer Holley (the “Leave Applicants”), seek leave to appeal the Sanction Order of Newbould J. dated January 24, 2017. The Monitor, the Canadian and US Debtors, Nortel Networks Inc., the Official Committee of Unsecured Creditors, the Ad Hoc Committee of Bondholders, the Nortel Continuing Employees, and the Court-Appointed Representatives of the Former and Disabled Employees of Nortel all oppose the motion.

[2] Leave to appeal is granted sparingly in *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (“CCAA”) proceedings and only where there are serious and arguable grounds that are of real and significant interest to

the parties. In addressing whether leave should be granted, the court will consider whether:

- a) the proposed appeal is *prima facie* meritorious or frivolous;
- b) the points on the proposed appeal are of significance to the practice;
- c) the points on the proposed appeal are of significance to the action; and
- d) whether the proposed appeal will unduly hinder the progress of the action.

See, *Nortel Networks Corporation (Re)*, 2016 ONCA 332, 130 O.R. (3d) 481, at para. 34.

[3] We are satisfied that the stringent test for leave is not met in this case. The proposed appeal is not meritorious. As the supervising judge explained in his reasons, the Leave Applicants did not opt-out of the 2009 Representation Order for Disabled Employees (“LTD Rep Order”) and they are bound by the 2010 Employee Settlement Agreement. The supervising judge correctly concluded the Leave Applicants have no right to opt out of the LTD Rep Order at this late stage: at para. 16.

[4] The Leave Applicants are the only long-term disability beneficiaries to oppose the Plan, which has the support of over 99% of Nortel’s unsecured creditors based both on value and on number. This belies the importance of the proposed appeal to the practice or to the action. And, as this court has already

emphasized, further delays in this very protracted litigation are to be avoided: *Nortel Networks Corporation (Re)*, 2016 ONCA 332, 130 O.R. (3d) 481, at paras. 102-103; *Nortel Networks Corporation (Re)*, 2016 ONCA 749, 41 C.B.R. (6th) 174, at para. 11.

[5] Finally, by order dated February 17, 2017, MacPherson J.A. required all materials on this leave motion to be filed by February 24, 2017, on which date the motion would be submitted to the panel for consideration. On February 27, 2017, the Leave Applicants filed a notice of constitutional question challenging the constitutionality of ss. 6(1) and 11 of the CCAA. Counsel for the Monitor submits the notice should not be considered. We agree. The notice was filed far too late in these proceedings and, as noted, the Leave Applicants are bound by the 2010 Employee Settlement Agreement.

[6] The motion for leave to appeal is dismissed.

Alexander ACSD

St Repell TA

Ag - TA

Court of Appeal File No.: M47511
Superior Court of Justice File No.: 09-CL-7950

COURT OF APPEAL FOR ONTARIO

THE HONOURABLE ASSOCIATE CHIEF) MONDAY, THE 13TH DAY
JUSTICE OF ONTARIO)
) OF MARCH, 2017
THE HONOURABLE JUSTICE PEPALL)
)
THE HONOURABLE JUSTICE BROWN)

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, NORTEL NETWORKS TECHNOLOGY
CORPORATION, NORTEL COMMUNICATIONS INC., ARCHITEL SYSTEMS
CORPORATION AND NORTHERN TELECOM CANADA LIMITED

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

ORDER

THIS MOTION made by Joseph McAvoy and Jennifer Holley (the "Leave Applicants")
for an order granting leave to appeal from the Sanction Order and Canadian Escrow Release
Order of the Honourable Justice Newbould dated January 24, 2017 was heard ^{on March 6, 2017} ~~this day~~ in writing
at Osgoode Hall, 130 Queen Street West, Toronto, Ontario.

ON READING the Notice of Motion seeking Leave to Appeal of the Leave Applicants
and the Responding Motion Record of the Monitor and Canadian Debtors, and on reading the
submissions and reply submissions of the Leave Applicants and the submissions of counsel for

- 2 -

the responding parties the Monitor and Canadian Debtors, the Court Appointed Representatives of the Canadian Former Employees and Disabled Employees, the Nortel Canadian Continuing Employees, the Joint Administrators of the EMEA Debtors (other than Nortel Networks S.A.), Nortel Networks Inc. and the other U.S. Debtors, the Official Committee of Unsecured Creditors of Nortel Networks Inc., *et al.* and the Ad Hoc Group of Bondholders, filed:

1. **THIS COURT ORDERS** that the motion for leave to appeal is dismissed.



Registrar / Commissioner
Court of Appeal for Ontario

ENTERED AT / INSCRIPT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO.:

MAY 09 2017

PER / PAR: 

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 *et al.*

Court of Appeal File No.: M47511
Superior Court of Justice File No.: 09-CL-7950

COURT OF APPEAL FOR ONTARIO

ORDER

Goodmans LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Benjamin Zarnett LSUC#: 17247M
Jessica Kimmel LSUC#: 32312W
Peter Kolla LSUC#: 54608K

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Monitor,
Ernst & Young Inc.

Gowling WLG (Canada) LLP
Barristers & Solicitors
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Derrick Tay LSUC#: 21152A
Jennifer Stam LSUC#: 46735J

Tel: 416.862.5697
Fax: 416.862.7661

Lawyers for the Canadian Debtors

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE)	MONDAY, THE 1 ST DAY OF
)
NEWBOULD) MAY, 2017
)

**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, NORTEL NETWORKS
TECHNOLOGY CORPORATION, NORTEL COMMUNICATIONS INC.,
ARCHITEL SYSTEMS CORPORATION AND NORTHERN TELECOM CANADA
LIMITED**

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

**ORDER
(Waiver and Reserve Approval Order)**

THIS MOTION made by Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Technology Corporation, Nortel Networks Global Corporation, Nortel Networks International Corporation, Nortel Communications Inc., Architel Systems Corporation and Northern Telecom Canada Limited (collectively, the “**Canadian Debtors**”) jointly with Ernst & Young Inc. in its capacity as monitor of the Canadian Debtors (the “**Monitor**”) for the relief set out in the Notice of Motion dated April 27, 2017, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the One Hundred and Thirty Eighth Report of the Monitor dated April 26, 2017 (the “**Report**”) and the Notice of Intention to Appear and Submission for Anticipated January 24, 2017 Fairness Hearing to Sanction the Nortel CCAA Plan from Greg

McAvoy and Jennifer Holley (the “**LTD Objectors**”), and on hearing submissions of counsel for the Monitor, counsel for the CCC, counsel for the U.S. Debtors, counsel for the UCC, counsel for the Bondholder Group, counsel for the EMEA Debtors, counsel for the UKPI and counsel for those other parties present and Greg McAvoy and Jennifer Holley (collectively, the “**LTD Objectors**”) appearing on their own behalf, no one appearing for any other person on the service list although duly served as appears from the affidavit of Christopher G. Armstrong sworn April 27, 2017, filed.

AND UPON BEING ADVISED the LTD Objectors consent to this Order.

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for the service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Waiver and Reserve Agreement or the Plan (each as defined below).

APPROVAL OF WAIVER AND RESERVE AGREEMENT RE: FINAL ORDER CONDITION

3. **THIS COURT ORDERS** that the Waiver and Reserve Agreement dated April 26, 2017 (the “**Waiver and Reserve Agreement**”), a copy of which is attached as Schedule “A” hereto, be and is hereby approved.
4. **THIS COURT ORDERS** that, without limiting the generality of the foregoing paragraph 3, pursuant to Section 9.6 of the Plan of Compromise and Arrangement pursuant to the *Companies’ Creditors Arrangement Act* concerning, affecting and involving the Canadian Debtors dated November 30, 2016 and approved by this Court in its Sanction Order dated January 24, 2017 (the “**Plan**”), the waiver by the Monitor contained in Section 4(a) of the Waiver and Reserve Agreement be and is hereby approved and the Monitor be and is hereby authorized to take such steps as

may be necessary to effect and implement the Plan, the Settlement and Support Agreement and the Waiver and Reserve Agreement.

APPEAL RESERVE AND CAP

5. **THIS COURT ORDERS** that the Canadian Estate be and is hereby authorized and directed to establish a reserve in the amount of CA\$44 million (the “**Appeal Reserve**” and the “**Appeal Reserve Amount**”, respectively) in respect of the maximum additional amount that may be determined by the Canadian Court to be due on account of the LTD Obligations beyond *pro rata* distributions on account of the LTD Obligations that are Proven Affected Unsecured Claims under the Plan.
6. **THIS COURT ORDERS** that the Appeal Reserve shall be funded from the payments to be made to the Canadian Estate pursuant to the Settlement and Support Agreement, and shall be held by the Canadian Estate as part of the Administrative Reserve. The sole purpose of the Appeal Reserve shall be to fund any additional payments determined by the Canadian Court to be due to the LTD Beneficiaries beyond *pro rata* distributions on account of the LTD Obligations that are Proven Affected Unsecured Claims under the Plan. In the event: (i) leave to appeal the order of the Ontario Court of Appeal arising from the endorsement of the Ontario Court of Appeal dated March 13, 2017 (Docket: M47511) (the “**OCA Order**”) to the Supreme Court of Canada (“**SCC**”) is not sought on or before May 12, 2017 (or such later date as may be permitted by the SCC); (ii) any such leave to appeal application is dismissed by the SCC; or (iii) any appeal of the OCA Order heard by the SCC is dismissed and the Sanction Order is upheld, the Appeal Reserve shall be immediately terminated and all amounts held in respect thereof shall become Available Cash of the Canadian Estate.
7. **THIS COURT ORDERS** that the establishment of the Appeal Reserve shall not constitute a trust in favour of the LTD Beneficiaries or any other Person and all amounts held in respect of the Appeal Reserve shall remain the exclusive property of the Canadian Estate.

8. **THIS COURT ORDERS** that the maximum additional entitlement that may be established on account of the LTD Obligations against the Canadian Estate beyond *pro rata* distributions on account of the LTD Obligations that are Proven Affected Unsecured Claims under the Plan be and is hereby capped at the Appeal Reserve Amount. None of the LTD Objectors, any other LTD Beneficiary or any other Person shall be permitted to establish (or seek to establish) any additional entitlement, Claim, Post-Filing Claim, or other obligation or liability of the Canadian Estate (whether pursuant to the Plan or otherwise) on account of the LTD Obligations in excess of the Appeal Reserve Amount and any such entitlement, Claim, Post-Filing Claim or other obligation or liability of the Canadian Estate in excess of the Appeal Reserve Amount be and is hereby forever barred, released, extinguished and discharged.
9. **THIS COURT ORDERS** that the releases provided for in Section 7.1 of the Plan shall be applicable to any entitlement, Claim or Post-Filing Claim of the LTD Beneficiaries on account of the LTD Obligations in excess of the Appeal Reserve Amount.
10. **THIS COURT ORDERS** that the rights of all parties in interest in the CCAA Proceedings (including, without limitation, the Canadian Estate, the Monitor, the U.S. Debtors and the EMEA Debtors) to continue to oppose any LTD Appeal and to otherwise challenge any entitlement of the LTD Beneficiaries to any payment or distribution from the Canadian Estate beyond *pro rata* distributions on account of the LTD Obligations that are Proven Affected Unsecured Claims under the Plan be and are hereby reserved. Without limiting the generality of the foregoing, the rights of all parties in interest in the CCAA Proceedings to challenge the calculation of the amount alleged to be owing for payment in full of the LTD Obligations be and are hereby reserved.

MISCELLANEOUS

11. **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 Canadian Debtors (including the Canadian Estate), 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 Canadian Debtors (including the Canadian Estate) 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 Canadian Debtors (including the Canadian Estate) and the Monitor and their respective agents in carrying out the terms of this Order.
12. **THIS COURT ORDERS** that each of the Canadian Debtors (including the Canadian Estate) and the Monitor be at liberty and are 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.



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

MAY 01 2017

PER / PAR: 

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 et al.

Court File No. 09-CL-7950

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto	
ORDER (Waiver and Reserve Approval Order)	
GOODMANS LLP Barristers & Solicitors Bay Adelaide Centre 333 Bay Street, Suite 3400 Toronto, ON M5H 2S7 Jay A. Carfagnini LSUC#: 22293T Joseph Pasquariello LSUC#: 38390C Christopher G. Armstrong LSUC#: 55148B Tel: 416.979.2211 Fax: 416.979.1234 Lawyers for the Monitor, Ernst & Young Inc.	

May 1, 2017

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 et al.

Court File No. 09-CL-7950

May 1, 2017

The relief sought today is reviewed
in light of the intention of Mr. McEwen
and Mr. Hester to seek leave to appeal
the decision of the Ontario Court of Appeal
to the Supreme Court of Canada. The
relief is appropriate in the circumstances
as Mr. Ewen and Mr. Hester agree with the
relief sought by the Monitor and agree
with the form of the order.

This is necessary to seek leave for the
Monitor to be made a party, which is
done at the time of the hearing of
the order and the necessity is evident
from the terms of the order. The
Monitor is a party to the proceedings and
the Supreme Court of Canada should be
able to leave to appeal as quickly as possible.

Ernst & Young

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

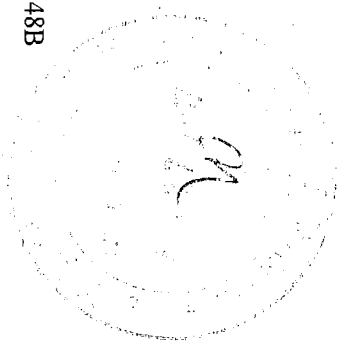
MOTION RECORD
(Waiver and Reserve Agreement)

GOODMANS LLP
Barristers & Solicitors
Bay Adelaide Centre
333 Bay Street, Suite 3400
Toronto, ON M5H 2S7

Jay A. Carfagnini LSUC#: 22293T
jcarfagnini@goodmans.ca
Joseph Pasquariello LSUC#: 38390C
jpasquariello@goodmans.ca
Christopher G. Armstrong LSUC#: 55148B
carmstrong@goodmans.ca

Tel: 416.979.2211
Fax: 416.979.1234

Lawyers for the Monitor, Ernst & Young Inc.



Court File No. 09-CL-7950

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE)	THURSDAY, THE 30 TH 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.

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.



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

JUL 30 2009

PER / PAR: 

SCHEDULE "A"

Court File No.: 09-CL-7950

**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

OPT-OUT LETTER

Ernst & Young Inc.
Ernst & Young Tower
222 Bay Street
P.O. Box 251
Toronto, Ontario M5K 1J7

Attention: Lee K. Close
Tel: 1.866.942.7177
Fax: 416.943.3300

I, _____, am an employee of the Nortel companies, and am
[Insert Name]
currently in receipt of or have applied for disability income benefits.

Under Paragraph 9 of the Representation Order for Disabled Employees, LTD Beneficiaries who do not wish Koskie Minsky LLP to act as their representative counsel may opt out.

I hereby notify the Monitor that I do not wish to be bound by the Order and will be represented as an independent individual party to the extent I wish to appear in these proceedings.

Date

Signature

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

Court File No: 09-CL-7950

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced at Toronto

ORDER

OGILVY RENAULT LLP
Suite 3800
Royal Bank Plaza, South Tower
200 Bay Street
Toronto, Ontario M5J 2Z4

Derrick Tay LSUC#: 21152A
Tel: (416) 216-4832
Email: dtay@ogilvyrenault.com

Mario Forte LSUC#: 27293F
Tel: (416) 216-4870
Email: mforte@ogilvyrenault.com

Jennifer Stam LSUC #46735J
Tel: (416) 216-2327
Email: jstam@ogilvyrenault.com
Fax: (416) 216-3930

Lawyers for the Applicants

Court File No. 09-CL-7950

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 31 ST DAY
)	
JUSTICE MORAWETZ)	OF MARCH, 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**

SETTLEMENT APPROVAL ORDER

THIS MOTION, made by the Applicants (collectively, "Nortel") for an order approving the amended and restated settlement agreement made as of the 30th day of March, 2010, attached as Schedule "A" to this Order (the "Amended and Restated Settlement Agreement") and for the other relief set out in the Notice of Motion dated March 30, 2010 was heard this day at 393 University Avenue, Toronto, Ontario.

ON READING the affidavit of Elena King sworn March 30, 2010 and the Forty-Second Report of Ernst & Young Inc. dated March 30, 2010 (the "Forty-Second Report") in its capacity as monitor (the "Monitor"), and on hearing submissions of counsel for the Applicants, the Monitor, The Northern Trust Company, Canada, in its capacity as trustee of the HWT and it is capacity as trustee and custodian for the trust funds maintained in respect of the Pension Plans and the master trust for the Pension Plans, the Northern Telecom Limited Pension Trust Fund, the Opposing LTD Employees and the Board of Directors of Nortel Networks Corporation and Nortel Networks Limited and on the consent of CAW, the Former

Employees Representatives, the LTD Representative and Representative Counsel (as those terms are defined in the Amended and Restated Settlement Agreement); the UCC, the Bondholder Committee (as those terms are defined in the Amended and Restated Settlement Agreement) and the Superintendent of Financial Services of Ontario (the "Superintendent") as the administrator of and on behalf of the Pension Benefits Guarantee Fund (the "PBGF") not opposing, no one else appearing although duly served as appears from the affidavit of service of Katie Legree dated March 30, 2010, filed.

1. **THIS COURT ORDERS** that service of the Notice of Motion, the Forty-Second Report and the Motion Record is hereby validated so that this Motion is properly returnable today and further service thereof is hereby dispensed with.

2. **THIS COURT ORDERS** that capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Affidavit of Elena King dated February 18, 2010 or the Amended and Restated Settlement Agreement.

Amended and Restated Settlement Agreement

3. **THIS COURT ORDERS** that the Amended and Restated Settlement Agreement is hereby approved in its entirety, including all schedules attached thereto, and that the Parties thereto (including by representation) are hereby bound by this Order and the Amended and Restated Settlement Agreement and authorized and directed to comply with their obligations thereunder, including, without limitation, to make the payments provided for therein. The Amended and Restated Settlement Agreement supersedes all prior arrangements and understandings among the Parties thereto (including by representation) with respect to such subject matter, including, without limitation, the Settlement Agreement made as of the 8th day of February, 2010.

Pension Plans

4. **THIS COURT ORDERS AND DECLARES** that any Pension Claims made in these proceedings or in any subsequent receivership or bankruptcy proceedings or in any other proceedings or in any other forum whatsoever concerning Nortel, any Nortel Worldwide Entity or the Pension Plans shall, to the extent they are allowed pursuant to any claims

adjudication procedure established in such proceedings, rank as ordinary unsecured claims on a *pari passu* basis with the claims of ordinary unsecured creditors of Nortel, such that no part of any Pension Claims shall be entitled to any preferential treatment or enjoy any priority in any manner over the claims of ordinary unsecured creditors made against Nortel, or rank as a priority claim, as a trust (whether deemed or otherwise) or a lien or charge.

5. **THIS COURT ORDERS AND DECLARES** that no person or entity, including without limitation, (i) the Representatives, (ii) the Superintendent, as administrator of and on behalf of the PBGF, (iii) NNL, as the administrator of the Pension Plans, (iv) all successor administrators of the Pension Plans (whether appointed by the Superintendent or otherwise), and (v) the Pension HWT Claimants, all future members and beneficiaries of the Pension Plans, the trustee and custodian of the Pension Plans, the employees and former employees of Nortel and others who may have or make claims against Nortel or any Nortel Worldwide Entity with respect to employment or post employment or post retirement benefits (collectively, with the Pension HWT Claimants, the "Employee Claimants"), shall directly or indirectly assert, advance, re-assert or re-file any claim or initiate any legal proceedings or actions of any nature or kind in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning Nortel, any Nortel Worldwide Entity (to the extent such claims are provable) or the Pension Plans except as an ordinary unsecured claim ranking on a *pari passu* basis with the claims of ordinary unsecured creditors of Nortel, and shall not assert or advance any claim, directly or indirectly, that the Pension Claims, or any part thereof, ranks as a priority or preferential claim over the claims of ordinary unsecured creditors of Nortel, including, without limitation, that it is the subject of a trust (whether deemed or otherwise) or a lien or charge, or under other legal or equitable theory, and all such priority, trust, lien or charge claims are hereby forever barred, enjoined, released and extinguished as against Nortel, any Nortel Worldwide Entity, the Pension Plans, the trustee and custodian of the Pension Plans, and their respective officers, directors, employees, agents, members, legal counsel, financial advisors and each of the heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing.

6. **THIS COURT ORDERS** that the portion of proofs of claim already or hereafter filed by the Superintendent as the administrator of and on behalf of the PBGF, by Nortel, by any Employee Claimants or by any other person or entity claiming, asserting or advancing priority or preferential treatment of any kind, including, without limitation, trusts (whether deemed or otherwise) liens or charges in respect of any Pension Claims or payments by the PBGF with respect to the Pension Plans be and they hereby are disallowed, but only to the extent that they claim such priority or preferential treatment, without prejudice to the ordinary unsecured claims included in such proofs of claim. For greater certainty, such disallowance shall not otherwise affect the quantum or validity of such claims, which shall rank as ordinary unsecured creditors on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel, in each case, to the extent allowed against Nortel pursuant to any claims adjudication procedure established in these proceedings.

7. **THIS COURT ORDERS** that with respect to claims by the Superintendent on behalf of the PBGF, and any administrator appointed by the Superintendent, paragraphs 4, 5 and 6 shall only apply if: (i) the Pension Payments are made in accordance with the Amended and Restated Settlement Agreement; and (ii) no bankruptcy order is made with respect to Nortel on or before September 30, 2010.

8. **THIS COURT ORDERS** that as long as NNL continues to administer the Pension Plans, there shall be no change whatsoever to the plan terms of the Pension Plans without the approval of the Court, and no change to the current asset mix or investment policies with respect to the Pension Plans other than at the request, and with the consent, of the Representative Counsel and the approval of the Court.

9. **THIS COURT ORDERS** that Nortel shall make all current service payments and special payments to the Pension Plans in respect of defined benefit entitlements thereunder in the same manner as it has been doing over the course of the proceedings under the CCAA, through to March 31, 2010 in accordance with the last actuarial valuation for the Pension Plans filed with the Financial Services Commission of Ontario ("FSCO") in the aggregate amount of \$2,216,254.00 per month. Thereafter and through to September 30, 2010, Nortel shall make only current service payments to the Pension Plans (in accordance with the last

actuarial valuation for the Pension Plans filed with FSCO) in the aggregate amount of \$379,837.00 per month. For greater certainty, Nortel shall not be required to make any special payment contributions to the Pension Plans after March 31, 2010. Nortel shall also make current service contributions in respect of defined contribution entitlements under the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan (Registration No. 0342048) in accordance with the terms thereof, through to September 30, 2010 and shall not be precluded from doing so by the terms of the Amended and Restated Settlement Agreement. Nortel shall not be required to make any payments to the Pension Plans after September 30, 2010, except in respect of any claims in respect of the Pension Plans allowed against Nortel (which claims shall rank on a *pari passu* basis with the unsecured claims of the ordinary unsecured creditors of Nortel) pursuant to any claims adjudication procedure established in these proceedings. Neither Nortel, nor any Nortel Worldwide Entity shall have any liability regarding any contributions, fees, indemnities, charges or costs of any kind in respect of the administration of the Pension Plans that occurs after September 30, 2010. For greater certainty, nothing in this paragraph affects any obligation or liability of Nortel regarding any contributions, fees, indemnities, charges or costs of any kind in respect of the administration of the Pension Plans that occurs before 11:59 p.m. on September 30, 2010.

Health and Welfare Trust

10. **THIS COURT ORDERS AND DECLARES** that any HWT Claims made in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning Nortel, any Nortel Worldwide Entity or the HWT shall, to the extent they are allowed against Nortel pursuant to any claims adjudication procedure established in such proceedings, rank as ordinary unsecured claims on a *pari passu* basis with the claims of ordinary unsecured creditors of Nortel, and no part of any such HWT Claims shall rank as a preferential or priority claim or shall be the subject of a constructive trust or trust of any nature or kind.

11. **THIS COURT ORDERS AND DECLARES** that no person or entity, including without limitation, the trustee of the HWT, the Employee Claimants and the Representatives, shall, directly or indirectly (i) advance, assert, re-assert, re-file or make any HWT Claim in

these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning Nortel, any Nortel Worldwide Entity (to the extent that such claims are provable) or the HWT except as an ordinary unsecured claim ranking on a *pari passu* basis with the claims of ordinary unsecured creditors of Nortel, or (ii) advance, assert, re-assert, re-file or make any claim that any HWT Claims are entitled to any priority or preferential treatment over ordinary unsecured claims, including without limitation that they rank as preferential or priority claims against Nortel or any Nortel Worldwide Entity, or are the subject of a constructive trust or trust of any nature or kind, and all such claims are hereby forever barred, enjoined, released and extinguished as against Nortel, any Nortel Worldwide Entity, the HWT and the trustee of the HWT, and their respective officers, directors, employees, agents, members, legal counsel, financial advisors and each of the heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing.

12. **THIS COURT ORDERS AND DECLARES THAT** nothing in this Order, including, without limiting the generality of the foregoing, the provisions of paragraphs 10 and 11, affects the determination on any basis whatsoever of the entitlement of any beneficiary to a distribution from the corpus of the HWT.

Release and Charge

13. **THIS COURT ORDERS** that the M&D Beneficiaries and former employees entitled to payment from the Termination Fund shall be entitled to the benefit of a charge on Nortel's Property (as defined in the Initial Order) to secure payment of the Medical and Dental Payments, Income Payments, Termination Payments and Pension Payments (the "Payments Charge"), which Payments Charge shall: (i) not exceed an aggregate amount of FIFTY-SEVEN MILLION DOLLARS (\$57,000,000.00); (ii) rank subordinate in priority to the Inter-company Charge and the Shortfall Charge (as both terms are defined in the Initial Order); (iii) apply in these proceedings and in any subsequent bankruptcy or receivership; (iv) be reduced in amount as the Medical and Dental Payments, Income Payments, Termination Payments and Pension Payments are paid by an amount equal to each such payment made; and (v) automatically terminate and be extinguished on the filing with this Honourable Court

by the Monitor of a certificate certifying that the terms of the Amended and Restated Settlement Agreement have been complied with by Nortel.

14. **THIS COURT ORDERS** that the Payments Charge shall constitute a "Charge" pursuant to the Initial Order, and shall be subject to the provisions relating to Charges including, without limitation, paragraphs 42 through 47 thereof and that the creation of the Payments Charge shall not preclude this Court from creating additional charges under the Initial Order that rank in priority to or *pari passu* with the Payments Charge.

15. **THIS COURT ORDERS AND DECLARES** that the Releasees, the trustee and custodian of the Pension Plans, the CAW, the Representatives, and if and only if paragraphs 4, 5 and 6 apply as provided in paragraph 7, the Superintendent in his capacity as administrator of and on behalf of the PBGF, and their respective officers, directors, employees, agents, members, legal counsel and financial advisors and each of the heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing, be and they are hereby released, discharged and remised from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement (whether written or oral), under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) related to (i) the Pension Plans, including without limitation, the administration of the Pension Plans, any obligation to assert or advance in these proceedings, or in any subsequent receivership or bankruptcy proceedings or in any other proceedings or in any other forum whatsoever concerning Nortel, any Nortel Worldwide Entity or the Pension Plans, any claim ranking in preference or priority to claims of unsecured creditors, as a trust (whether deemed or otherwise) or a lien or charge, the funding of the Pension Plans (including any obligation to contribute to the Pension Plans, except as required by paragraph 9 of this Order) and the investment of the Pension Plan assets, and (ii) the HWT, including without limitation, the administration of the HWT, the funding of the HWT, any obligation to contribute to the HWT and the investment of the HWT assets, provided that nothing herein shall release a director of Nortel from any matter referred to in subsection 5.1(2) of the CCAA or with respect to fraud on the part of any Releasee, with respect to that Releasee only.


16. **THIS COURT ORDERS AND DECLARES** that the Nortel Releasees be and they are hereby released, discharged and remised from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement (whether written or oral), under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) that the Pension Claims and the HWT Claims, or any part thereof, rank as a preferential or priority claim over the claims of ordinary unsecured creditors of Nortel, as a trust (whether deemed or otherwise) or a lien or charge, or under any other legal or equitable theory. For greater certainty, notwithstanding the foregoing, nothing in this Order shall release or discharge the Nortel Releasees from any Pension Claims and HWT Claims to the extent such claims are allowed as ordinary unsecured claims (which claims shall rank as on a *pari passu* basis with the unsecured claims of the ordinary unsecured creditors of Nortel) against the Nortel Releasees pursuant to any claims adjudication procedure established in these proceedings.

17. **THIS COURT ORDERS** that the Employee Claimants shall not assert, advance or make any claims of any nature whatsoever against any person or entity whatsoever that could reasonably be expected to result in a claim over (including, without limitation, a claim for contribution or indemnity) being made against any of the Releasees or Nortel Releasees with respect to the subject matter of the release provisions hereof.

CCAA Plan or Subsequent Bankruptcy

18. **THIS COURT ORDERS AND DECLARES** that under no circumstances shall any CCAA Plan of Arrangement in the Nortel proceedings (the "Plan") be proposed or approved by the Court if: (i) the Plan provides for separate classification of any Employee Claimants from ordinary unsecured creditors of Nortel, including, without limitation, bondholders and Nortel Networks Inc.; or (ii) the Employee Claimants and the other ordinary unsecured

creditors do not receive the same *pari passu* treatment of their allowed claims against Nortel pursuant to the Plan.



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

APR 01 2010

PER / PAR: *TV*

SCHEDULE "A"

\5805980.22

AMENDED AND RESTATED SETTLEMENT AGREEMENT

THIS AGREEMENT made as of the 30th day of March, 2010

AMONG :

NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS TECHNOLOGY CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION, NORTEL NETWORKS GLOBAL CORPORATION

(collectively, "**Nortel**" and individually a "**Nortel Entity**")

- and -

ERNST & YOUNG INC., solely in its capacity as monitor in the CCAA proceedings of Nortel and not in its personal capacity

(the "**Monitor**")

- and -

DONALD SPROULE, DAVID ARCHIBALD and MICHAEL CAMPBELL, court appointed representatives of the Nortel Former Employees (as hereinafter defined)

(the "**Former Employees Representatives**")

- and -

SUE KENNEDY, court appointed representative of the Represented LTD Beneficiaries (as hereinafter defined)

(the "**LTD Representative**")

- and -

KOSKIE MINSKY LLP, court appointed counsel to the Former Employees of Nortel and the Represented LTD Beneficiaries

("Representative Counsel")

- 2 -

- and -

**NATIONAL AUTOMOBILE, AEROSPACE,
TRANSPORTATION AND GENERAL WORKERS
UNION OF CANADA** (CAW-Canada) and its Locals 27,
1525, 1530, 1837, 1839, 1905 and/or 1915 and George
Borosh et al.

("CAW")

A. RECITALS

WHEREAS Nortel filed for and obtained protection under the *Companies' Creditors Arrangement Act* ("CCAA") by order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 14, 2009, as amended and restated (the "**Initial Order**");

AND WHEREAS by Order of the Court dated May 27, 2009, the Former Employees Representatives were appointed representatives of all former employees, including pensioners, of 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, other than (a) those represented by counsel to the CAW, and (b) those who elected pursuant to the requirements of such Order not to be bound by such Order (the individuals in respect of whom the Former Employees Representatives were appointed pursuant to such Order, are referred to herein as the "**Nortel Former Employees**");

AND WHEREAS certain employees and former employees of Nortel are represented by counsel to the CAW;

AND WHEREAS by Order of the Court dated July 30, 2009, the LTD Representative was appointed representative of 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, other than (a) those individuals who are currently employed and whose benefit or other payments, as described above, arise directly or inferentially out of a collective agreement between any Nortel Entity and the CAW, and (b) those individuals who elected pursuant to the requirements of such Order not to be bound by such Order (the individuals in respect of whom the LTD Representative was appointed pursuant to such Order are referred to herein as the "**Represented LTD Beneficiaries**");

- 3 -

AND WHEREAS Representative Counsel was appointed as counsel to the Nortel Former Employees and the Represented LTD Beneficiaries by Court orders dated May 27, 2009 and dated July 30, 2009, respectively, for the purpose of, among other things, settling or compromising the claims of the individuals they represent;

AND WHEREAS the parties to this Settlement Agreement (the "**Parties**") have reached an agreement for the benefit of Nortel and all of its stakeholders, as well as the Official Committee of Unsecured Creditors of Nortel Networks Inc. and certain of its affiliates in the chapter 11 proceedings before the U.S. Bankruptcy Court for the District of Delaware (the "**UCC**") and the Informal Nortel Noteholder Group (the "**Bondholder Committee**") regarding certain issues related to, among other things, Nortel's Pension Plans, HWT (both as defined below) and certain employment related issues (collectively, the "**Settlement**"); and

NOW THEREFORE for value received (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

B. BENEFITS AND EMPLOYEES

1. For the remainder of 2010, Nortel shall continue in accordance with current practice to pay medical and dental benefits and life insurance benefits to Nortel pensioners and their beneficiaries and survivors, whether or not represented by Representative Counsel, and for greater certainty, including without limitation all of the individuals referenced in paragraphs (a) and (b) of the second recital above (collectively, the "**Pensioners**") and the Nortel employees receiving or who become entitled during 2010 to receive long term disability benefits, whether or not represented by Representative Counsel, and for greater certainty, including without limitation all of the individuals referenced in paragraphs (a) and (b) of the fourth recital above (collectively, the "**LTD Beneficiaries**") in accordance with the current benefit plan terms and conditions. The Pensioners and the LTD Beneficiaries shall be referred to collectively as the "**M&D Beneficiaries**". Medical and dental benefits to be paid to the M&D Beneficiaries shall be funded solely from Nortel's funds on a "pay as you go basis" in respect of benefits for the coverage period ending December 31, 2010 (the "**Medical and Dental Payments**"), provided that no Medical and Dental Payments claims submitted after February 28, 2011 shall be accepted, honoured or paid. Life insurance benefits to the M&D Beneficiaries shall continue unchanged until December 31, 2010 and shall be funded in the same manner as for 2009 (the "**Life Insurance Benefits**"). For greater certainty, no Medical and Dental Payments or Life Insurance Benefits shall be paid by Nortel for any benefit coverage period following December 31, 2010.
2. Nortel shall pay income benefits to the LTD Beneficiaries and to those people receiving or who become entitled during 2010 to receive survivor income benefits and survivor transition benefits under Nortel benefit plans (as such plans exist at the date of this Settlement Agreement) solely from Nortel funds on a "pay as you

- 4 -

go basis" for benefits in respect of the coverage period from January 1, 2010 to December 31, 2010 (the "**Income Payments**"). For greater certainty, no Income Payments shall be paid by Nortel for the benefit coverage period following December 31, 2010.

3. Upon the satisfaction of all of the conditions in paragraph I.1 of this Settlement Agreement, Nortel shall create a pool of \$4.3 million (inclusive of Representative Counsel's costs in respect of the motion for leave to appeal referred to in paragraph B.4 below to a maximum of \$100,000.00, based on documented and reasonable fees and disbursements) (the "**Termination Fund**") to be set aside for employees and former employees of Nortel whose employment has been terminated or is terminated prior to or on June 30, 2010 to whom amounts are or may become owing for termination or severance payments, who have not been offered employment with a purchaser of Nortel's assets and who have not received or are not entitled to receive (i) gross cumulative Annual Incentive Plan payments from and after October 1, 2009 of \$3,000.00 or more; or (ii) a Key Employee Incentive Plan or Key Employee Retention Plan payment in 2009; or (iii) payment from any Court approved equivalent 2010 plan. Each such individual shall be paid a maximum of \$3,000.00 (subject to applicable withholding taxes) from the Termination Fund (the "**Termination Payments**"). Any Termination Payments paid to such individuals shall be credited against allowed claims of such individuals and such claims shall be correspondingly reduced. To the extent that funds are unused in respect of terminations prior to or on June 30, 2010, or payment of Representative Counsel's costs referred to above, the Termination Fund may be used to make payments on account of terminations after June 30, 2010. If such unused funds are to be used for another purpose, such purpose shall be approved by the Court, on such basis as is agreed to between Representative Counsel and the Monitor.
4. Upon the issuance of an order by the Court approving this Settlement Agreement in its entirety, including all schedules thereto, and upon the expiry of all appeals and rights of appeal in respect thereof (the "**Final Approval Order**"), Representative Counsel shall promptly withdraw their application for leave to appeal the decision of the Court of Appeal, dated November 26, 2009, to the Supreme Court of Canada (the "**Leave Application**") on a with prejudice basis. No claim for costs in respect of the Leave Application shall be made by or against Nortel, or any creditor participants (including the UCC and the Bondholder Committee).
5. The employment of the LTD Beneficiaries shall terminate on December 31, 2010. However, such termination shall not affect in any manner any rights the LTD Beneficiaries or anyone claiming through them may have, either under a collective agreement, at common law or pursuant to any statute in relation to ordinary unsecured claims against Nortel arising out of their employment or termination thereof, including but not limited to claims for future lost long term

- 5 -

disability or income continuation benefits, pension benefits or pension benefit accruals, and medical, dental and life insurance benefits, nor should affect in any manner their ability to participate in any program of benefits for which they are eligible that is established as a successor to the plans in which they currently participate. For greater certainty, such claims, to the extent they are allowed as claims against Nortel pursuant to any claims adjudication procedure established in these proceedings, shall rank as ordinary unsecured claims on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel. Nothing in this paragraph will affect the rights of the LTD Beneficiaries to make claims in respect of the HWT (as defined below).

C. HEALTH AND WELFARE TRUST

1. Resolution: The Parties will work towards a Court approved distribution of the Health and Welfare Trust ("**HWT**") corpus in 2010 to its beneficiaries entitled thereto and the resolution of any issues necessarily incident thereto. For greater certainty, nothing in this Settlement Agreement affects the determination on any basis whatsoever of the entitlement of any beneficiary to a distribution from the corpus of the HWT. Any fees or expenses incurred in connection with any dispute or litigation among the beneficiaries of the HWT concerning entitlement (including without limitation all legal, actuarial and other fees and expenses of the trustee of the HWT and other service providers of the HWT) shall not be paid by Nortel, but shall be paid by the HWT corpus. For greater certainty, such fees or expenses shall not include those of the Monitor and incurred by Nortel in connection with any motion for termination of the HWT or for directions with respect to the HWT, which shall be paid by Nortel.
2. Ranking: The CAW, Representative Counsel, the LTD Representative and the Former Employee Representatives (the "**Representatives**") agree, on behalf of those they represent and on their own behalf, that in respect of any funding deficit in the HWT or any HWT related claims (the "**HWT Claims**"), in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning Nortel, any of the entities listed in Schedule "A" (collectively the "**Nortel Worldwide Entities**" and individually, a "**Nortel Worldwide Entity**") or the HWT, they shall not advance, assert or make any claim that any HWT Claims are entitled to any priority or preferential treatment over ordinary unsecured claims, including without limitation that they rank as priority claims against Nortel or any Nortel Worldwide Entity, or are the subject of a constructive trust or trust of any nature or kind in respect of the property and assets of Nortel or any Nortel Worldwide Entity, nor shall they take any action or support any party, person or entity, directly or indirectly, who advances, asserts or makes such claims, and such claims, to the extent allowed against Nortel pursuant to any claims adjudication procedure established in these proceedings, shall rank as ordinary unsecured

- 6 -

claims on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel.

D. REGISTERED PENSION PLANS

1. Administration: Nortel shall continue to administer the Nortel Networks Negotiated Pension Plan (Registration No. 08587766) and the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan (Registration No. 0342048) (collectively, the "**Pension Plans**") until 11:59 p.m. on September 30, 2010. For greater certainty, Nortel Networks Limited shall remain the administrator (as defined in the *Pension Benefits Act*) of the Pension Plans until 11:59 p.m. on September 30, 2010. Neither Nortel nor the Monitor will take any steps to initiate a wind up, in whole or in part, of the Pension Plans with an effective date prior to September 30, 2010 at 11:59 p.m. Nortel shall cease to administer the Pension Plans on September 30, 2010 at 11:59 p.m. and thereafter shall have no further responsibility or liability for administration thereof (including any windup). So long as Nortel continues to administer the Pension Plans, there shall be no change whatsoever to the plan terms of the Pension Plans without the approval of the Court, and no change to the current asset mix or investment policies with respect to the Pension Plans other than at the request, and with the consent, of the Representative Counsel and the approval of the Court.
2. Payments: Nortel shall continue to make contributions to the Pension Plans in the same manner as it has been doing over the course of the proceedings, under the CCAA, through to March 31, 2010, and for greater certainty, shall continue to make all current service payments and special payments related to the Pension Plans through that date in accordance with the last actuarial valuation for the Pension Plans filed with the Financial Services Commission of Ontario in the aggregate amount of \$2,216,254.00 per month (the "**March Pension Payments**"). Thereafter and through to September 30, 2010, Nortel shall make only current service payments to the Pension Plans in the aggregate amount of \$379,837.00 per month (the "**September Pension Payments**"). For greater certainty, Nortel shall not make any special payment contributions to the Pension Plans after March 31, 2010. The March Pension Payments and the September Pension Payments shall be referred to collectively as the "**Pension Payments**". Nortel shall not make any payments or contributions whatsoever to the Pension Plans after September 30, 2010, except in respect of any claims in respect of the Pension Plans allowed against Nortel (which claims shall rank on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel) pursuant to any claims adjudication procedure established in these proceedings. Neither Nortel, nor any Nortel Worldwide Entity shall have any obligation or liability regarding any contributions, fees, indemnities, charges or costs of any kind in respect of the administration of the Pension Plans after September 30, 2010. For greater certainty, nothing in this paragraph affects any obligation or liability of Nortel regarding any contributions, fees, indemnities, charges or costs of any kind in

- 7 -

respect of the administration of the Pension Plans before 11:59 p.m. on September 30, 2010.

3. Transition: With the assistance of the Monitor, Nortel shall use reasonable efforts to cause all books, records, data and other information relating to the Pension Plans or beneficial to the administration or winding-up of the Pension Plans in the possession or control of Nortel to be consolidated in Toronto, Ontario, Canada by no later than March 31, 2010. The Monitor and Nortel shall take all reasonable steps, at the sole cost and expense of Nortel, to complete the orderly transfer of the records of administration of the Pension Plans to a new administrator appointed by the Superintendent of Financial Services (the "**Superintendent**"), on September 30, 2010 (the "**New Administrator**"). Any non-compliance or allegation of non-compliance by Nortel or the Monitor under this paragraph D.3 shall have no effect on the enforceability or effectiveness of any other provision of this Agreement.

E. RANKING OF PENSION CLAIMS

1. The Representatives agree on behalf of the members of the Pension Plans their and beneficiaries and surviving spouses who are entitled to benefits from the Pension Plans and whom they represent and on their own behalf (collectively, the "**Pension Claimants**") that in respect of any claim for payment of or damages related to any solvency or wind up deficiencies, unfunded liabilities, or unpaid or accrued contributions (including, for greater certainty, any special payments whatsoever), any liability regarding the Pension Benefits Guarantee Fund (the "**PBGF**") or any obligation of or claim arising against any person with respect to the Pension Plans or the administration thereof (the "**Pension Claims**"): (a) no Pension Claims shall enjoy any priority in any manner over the claims of ordinary unsecured creditors made against Nortel; (b) the Pension Claimants hereby waive, and shall not directly or indirectly assert, advance, re-assert or re-file any claims or initiate any legal proceedings or actions of any nature or kind in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning Nortel or any Nortel Worldwide Entity or the Pension Plans, that the Pension Claims or any part thereof rank as a priority claim over the claims of ordinary unsecured creditors, as a trust (whether deemed or otherwise) or a lien or charge (hereinafter referred to as a "**lien**"), or under any other legal or equitable theory; and (c) the Pension Claimants shall not support, directly or indirectly, any application, claim or action by Nortel, in its capacity as administrator of the Pension Plans, the New Administrator, any successor administrator howsoever appointed, the Superintendent, as the administrator of and on behalf of the PBGF, or any other person or entity, to directly or indirectly assert, advance, re-assert or re-file any claims or initiate any legal proceedings or actions of any nature or kind in these proceedings or in any subsequent receivership or bankruptcy proceedings, or in any other proceedings, or in any other forum whatsoever concerning Nortel or any

- 8 -

Nortel Worldwide Entity or the Pension Plans, that the Pension Claims or any part thereof rank as a priority claim over the claims of ordinary unsecured creditors, as a trust (whether deemed or otherwise) or a lien, or under any other legal or equitable theory, and such claims shall be treated as ordinary unsecured claims, and for greater certainty, any such claims, to the extent allowed against Nortel pursuant to any claims adjudication procedure established in these proceedings, shall rank on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel.

2. That portion of any proofs of claim already or hereafter filed by the Superintendent as the administrator of and on behalf of the PBGF, by Nortel or by any person claiming that any payments by the PBGF or that the Pension Claims or any part thereof rank as a priority or preferential claim over the claims of ordinary unsecured creditors of Nortel, as a trust (whether deemed or otherwise) or a lien, or under any other legal or equitable theory shall be disallowed, but only to the extent that they claim such priority or preference, and such disallowance shall not be opposed or appealed, directly or indirectly, by such claimants. For greater certainty, such disallowance shall not otherwise affect the quantum or validity of such claims, which shall rank as ordinary unsecured creditors on a *pari passu* basis with the claims of the ordinary unsecured creditors of Nortel, in each case, to the extent allowed against Nortel pursuant to any claims adjudication procedure established in these proceedings.

F. NON-OPPOSITION

1. The Representatives agree, on their own behalf and on behalf of those they represent, that they shall not oppose, directly or indirectly, any employee incentive program, including any charge therefor, that is determined by the Monitor to be reasonable and necessary for the continued operation of Nortel. They further agree that they shall not oppose, directly or indirectly, the creation of a trust with respect to claims or potential claims against persons who accept directorships of a Nortel Worldwide Entity in order to facilitate the restructuring, provided that: (i) such trust is approved and recommended by the Monitor; (ii) no part of the corpus of the trust may be used to pay bonuses or any other compensation to the directors; and (iii) any corpus of the trust remaining on the termination of the trust reverts to Nortel.

G. RELEASE AND CHARGE

1. The CAW, the LTD Representative and the Former Employees Representatives agree on their own behalf and on behalf of the Pension Claimants and the beneficiaries of the HWT who they represent (collectively, the "**Pension HWT Claimants**") that each of the trustee of the HWT, the Monitor, and all members of Pension Plans' committees, (in their personal capacity), and their respective officers, directors, employees, agents, members, legal counsel, financial advisors,

- 9 -

and each of the heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing and the officers, directors, employees, agents, members, legal counsel, financial advisors of Nortel and the Nortel Worldwide Entities and each of the heirs, executors, administrators, legal representatives, successors and assigns of each of the foregoing (collectively, the "**Releasees**"), are hereby released, discharged and remised from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement (whether written or oral), under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) related to (i) the Pension Plans, including without limitation, the administration of the Pension Plans, any obligation to assert or advance in these proceedings, or in any subsequent receivership or bankruptcy proceedings or in any other proceedings or in any other forum whatsoever concerning Nortel, any Nortel Worldwide Entity or the Pension Plans, any priority claim, as a trust (whether deemed or otherwise) or a lien, the funding of the Pension Plans (including any obligation to contribute to the Pension Plans except as required by this Settlement Agreement) and the investment of the Pension Plan assets; and (ii) the HWT, including without limitation, the administration of the HWT, the funding of the HWT, any obligation to contribute to the HWT and the investment of the HWT assets, provided that nothing herein shall release a director of Nortel from any matter referred to in subsection 5.1(2) of the CCAA or with respect to fraud on the part of any Releasee, with respect to that Releasee only.

2. The CAW, the LTD Representative and the Former Employees Representatives agree on their own behalf and on behalf of the Pension HWT Claimants that Nortel and the Nortel Worldwide Entities and their respective successors and assigns (collectively, the "**Nortel Releasees**") are hereby released, discharged and remised from any and all direct and indirect claims (contingent, liquidated or unliquidated, proven or unproven, known or unknown, in the nature of damages or otherwise, whether or not asserted and whether arising by contract, agreement (whether written or oral), under statute, civil law, common law, or in equity, or otherwise in any jurisdiction) that the Pension Claims and the HWT Claims, or any part thereof, rank as a preferential or priority claim over the claims of ordinary unsecured creditors of Nortel, as a trust (whether deemed or otherwise) or a lien, or under any other legal or equitable theory. For greater certainty, notwithstanding the foregoing, nothing in this Settlement Agreement shall release or discharge the Nortel Releasees from any Pension Claims and HWT Claims to the extent such claims are allowed as ordinary unsecured claims against the Nortel Releasees pursuant to any claims adjudication procedure established in these proceedings.
3. In furtherance of the foregoing and in order to ensure that this constitutes a true settlement of the subject matter hereof, the Pension HWT Claimants agree that they shall not assert, advance or make any claims of any nature whatsoever

- 10 -

against any person or entity whatsoever that could reasonably be expected to result in a claim over (including, without limitation, a claim for contribution or indemnity) being made against any of the Releasees or the Nortel Releasees with respect to the subject matter of the release provisions of this Settlement Agreement.

4. The M&D Beneficiaries and former employees entitled to payment from the Termination Fund shall be entitled to the benefit of a charge on Nortel's Property (as defined in the Initial Order) to secure payment of the Medical and Dental Payments, Income Payments, Termination Payments and Pension Payments (the "**Payments Charge**"), which Payments Charge shall not exceed an aggregate amount of FIFTY-SEVEN MILLION DOLLARS (\$57,000,000.00) and which Payments Charge shall rank subordinate in priority to the Inter-company Charge (as defined in the Initial Order). The Payments Charge shall apply in these proceedings and in any subsequent bankruptcy or receivership. The maximum amount secured by the Payments Charge shall be reduced as the Medical and Dental Payments, Income Payments, Termination Payments and Pension Payments are paid by an amount equal to each such payment made. Once the last payment is made, the Monitor shall file a certificate (the "**Monitor's Certificate**") with the Court certifying that the terms of the Settlement have been complied with by Nortel, and the Payments Charge shall automatically terminate and be extinguished by the filing of the Monitor's Certificate.

H. CCAA PLAN OR SUBSEQUENT BANKRUPTCY

1. The Representatives agree on their own behalf and on behalf of the Pension HWT Claimants that under no circumstances shall any CCAA Plan of Arrangement in the Nortel proceedings (the "**Plan**") be proposed or approved if: (i) the Plan provides for separate classification of any Pension HWT Claimants from ordinary unsecured creditors of Nortel, including, without limitation, bondholders and Nortel Networks Inc.; or (ii) the Pension HWT Claimants and the other ordinary unsecured creditors of Nortel do not receive the same *pari passu* treatment of their allowed ordinary unsecured claims against Nortel pursuant to the Plan.

I. CONDITIONS

1. This Settlement Agreement is conditional upon (i) Nortel obtaining the Final Approval Order substantially in the form attached as Schedule "B" with such changes as the parties may agree to, acting reasonably; (ii) the Superintendent in his capacity as administrator of the PBGF, Nortel and the Monitor executing the letter attached as Schedule "C"; and (iii) the Leave Application having been withdrawn on a without prejudice basis.
2. It is the intention of the Parties that these terms be binding upon, and enure to the benefit of the Pension HWT Claimants, the Releasees and the Nortel Releasees, and that: (i) as beneficiaries hereof, the Releasees and the Nortel Releasees shall

- 11 -

be entitled to rely upon and to seek the enforcement of these terms, which cannot be varied without further order of the Court on full and proper notice to them; and (ii) the ordinary unsecured creditors of Nortel shall be entitled to rely upon and benefit from the provisions and agreements herein and to seek their enforcement, which provisions and agreements cannot be varied without further order of the Court on full and proper notice to them.

J. GENERAL

1. The Monitor shall post the motion record for approval of the Settlement, including the Settlement Agreement and the proposed Final Approval Order on the Monitor's website at www.ey.com/ca/Nortel and on the website of Representative Counsel at www.kmlaw.ca.
2. The Representatives, the Representative Counsel and the CAW shall co-operate with Nortel and the Monitor on all communications related to this settlement, as required.
3. This Settlement Agreement will be governed by and interpreted and enforced in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein. The Parties hereby irrevocably consent and submit to the non-exclusive jurisdiction of the Ontario Superior Court of Justice and waive any objection based on venue or forum non conveniens with respect to any action commenced in connection with this Settlement Agreement.
4. This Settlement Agreement may be executed in any number of counterparts (including by way of facsimile and PDF) and all of such counterparts taken together will be deemed to constitute one and the same instrument.

[Signature pages to follow]

CITATION: Nortel Networks Limited (Re) , 2010 ONCA 402

DATE: 20100603

DOCKET: M38748

COURT OF APPEAL FOR ONTARIO

Winkler C.J.O., Goudge and MacPherson JJ.A.

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

Joel Rochon, John Archibald, and Sakie Tambakos, for the Objecting LTD Beneficiaries

Alan B. Merskey, and Suzanne M. Wood, for the Applicants

Mark Zigler, Susan Philpott, and Andrea McKinnon, for the Former Employees and
Disabled Employees of Nortel

Barry E. Wadsworth, for the CAW-Canada, and George Borosh et al

Lyndon Barnes and Adam Hirsh, for the Boards of Directors of Nortel Networks
Corporation and Nortel Networks Limited

Richard B. Swan, for the Informal Nortel Noteholder Group

Alex MacFarlane, for the Official Committee of Unsecured Creditors

Fred Myers, Gale Rubenstein, and Melaney Wagner for the Monitor, Ernst & Young Inc.

Considered in writing on : May 31, 2010

On leave to appeal from the order of the Honourable Justice Geoffrey P. Morawetz of the Superior Court of Justice, dated March 31, 2010


ENDORSEMENT

[1] Leave to appeal is denied.

[2] The moving parties have not demonstrated that they have been subjected to any procedural unfairness. They have been represented throughout in a case that has been carefully judicially managed from the beginning. Their counsel accepts the settlement. No other LTD beneficiaries assert any unfair process, and the applicants can show none that they have been exposed to.

[3] Nor have they been able to show any substantive unfairness in the settlement. The motion judge exercised his discretion to carefully balance the various interests at stake in approving the settlement. In our view he made no demonstrable error in doing so. The settlement cannot be said to be unreasonable.

[4] The motion is dismissed. No costs are sought by the respondent and none are ordered.

 CJO
Justice P.A.
J. MacPherson J.A.

APPLICANT'S MEMORANDUM OF ARGUMENT

PART I – STATEMENT OF FACTS

1. The Ontario Superior Court of Justice has made an order approving the Waiver and Reserve Agreement of the Nortel Debtors and Canadian Court Monitor dated May 1, 2017, which established a reserve of Cdn\$44 million payable to the Nortel Canadian long term disabled former employees in the event this application for leave to appeal is granted, and if granted, the appeal is successful due to an affirmative answer to the constitutional question raised. If the leave to appeal is not granted, or the appeal is unsuccessful on the merits, then the Cdn\$44 million reserve will be distributed to the Canada estate creditors.
2. There are 12.9 million Canadians covered by disability income protection plans in 2015, of which 937,000 were in plans self-insured by their employer in 2014, according to the latest disclosures by the Canadian Life and Health Insurance Association. This application affects the estimated 937,000 Canadians in self-insured group disability income protection plans. If the leave to appeal is granted and the appeal is successful, these 937,000 Canadians become protected by the Charter and gain peace of mind that their disability income will be there, if they become disabled and if their employer seeks bankruptcy protection.
3. There have been no prior SCC applications for leave to appeal on a CCAA settlement or interim settlement approval order affecting persons with mental or physical disability (not considering the Nortel Health and Welfare Trust settlement order to be a CCAA settlement order). An SCC appeal on the constitutionality of S. 6(1) and S. 11 of the CCAA will advance the aspect of this law pertinent to persons with mental

or physical disability (“disabled persons”).

4. This application is on a question of law, and not on judicial discretionary decisions on facts. The SCC will be clarifying the CCAA’s compliance with the Charter, both of which are Federal statutes that have importance to all Provinces and Territories.
5. The SCC has granted leave to appeal on CCAA settlement approval orders for other creditor groups. Disabled creditors are of similar, if not greater public importance, given their vulnerability and imbalance of power between this minority group and the majority in number or value creditors within a CCAA proceeding.
 - a) Pension fund claims in [Sun Indalex Finance, LLC v. United Steelworkers](#), [2013] 1 SCR 271 (SCC)
 - b) Crown excise tax receivables claims in [Century Services Inc. v. Canada \(Attorney General\)](#), [2010] 3 SCR 379 (SCC)
 - c) Crown environmental protection order claims in [Newfoundland and Labrador v. AbitibiBowater Inc.](#), [2012] 3 SCR 443 (SCC)
 - d) Stopping the sale of estate assets by unions in [Westar Mining Ltd. \(Re\)](#), [1993] 1 SCR 890 (SCC)
6. The public importance of disabled persons having equality rights in Canadian society is shown by this group being expressly mentioned in S. 15(1) of the Charter. Supreme Court cases [Eldridge](#), [Gosselin](#), [Granovsky](#), and [Siemens](#) have accepted the public importance of assessing laws in respect to the issues of identical treatment may frequently produce serious inequality, loss of dignity, exclusion and marginalization in society. The so-called bedrock of insolvency law being equal treatment of unsecured creditors is challenged by this application for leave to appeal

from a disabled person deleteriously impacted by this principle, just as all disabled persons in self-insured group long term disability benefit plans at insolvent companies would be. The Charter has not yet moved clearly in the direction that the Charter protects a deleterious loss of personal economic interests, like loss of disability income from a statutory authorized court action, neither has it foreclosed it. Supreme Court jurisprudence has only ruled against the Charter protecting a person's right to a specific occupation. In this case, the Charter claimant has no occupation and any opportunity to gain one, as they are long term disabled within the definitions set by licensed insurers and the Canada Pension Plan.

7. The [*Irwin Toy*](#) decision shows that the Supreme Court is open to a case to decide whether an economic component fundamental to human life or survival is protected under S. 7. This past position implies that the Supreme Court finds a review of personal economic rights under the Charter to be of public importance, otherwise both personal and commercial rights would have been denied in its *Irwin Toy* decision. *Irwin Toy* specifically says:

What is immediately striking about this section is the inclusion of "security of the person" as opposed to "property". This stands in contrast to the classic liberal formulation, adopted, for example, in the Fifth and Fourteenth Amendments in the American Bill of Rights, which provide that no person shall be deprived "of life, liberty or property, without due process of law". The intentional exclusion of property from [s. 7](#), and the substitution therefor of "security of the person" has, in our estimation, a dual effect. First, it leads to a general inference that economic rights as generally encompassed by the term "property" are not within the perimeters of the [s. 7](#) guarantee. This is not to declare, however, that no right with an economic component can fall within "security of the person". Lower courts have found that the rubric of "economic rights" embraces a broad spectrum of interests, ranging from such rights, included in various international covenants, as rights to social security, equal pay for equal work, adequate food, clothing and shelter, to traditional property -- contract rights. To exclude all of these at this early moment in the history of *Charter* interpretation seems to us to be precipitous. We do not, at this moment, choose to pronounce upon whether those economic rights fundamental to human life or survival are to be treated as though they are of the same ilk as corporate-commercial economic rights. In so stating, we find the second effect of the inclusion of "security of the person" to be that a corporation's economic rights find no constitutional protection in that section.

That is, read as a whole, it appears to us that this section was intended to confer protection on a singularly human level. A plain, common sense reading of the phrase "Everyone has the right to life, liberty and security of the person" serves to underline the human element involved; only human beings can enjoy these rights. "Everyone" then, must be read in light of the rest of the section and defined to exclude corporations and other artificial entities incapable of enjoying life, liberty or security of the person, and include only human beings...

8. The Supreme Court decided in [Baker](#) and [Slaight](#) that its interpretation of Charter S. 7 deprivation of rights to life, liberty and security needs to be consistent with international human rights documents ratified by the Federal Government, such as the [International Covenant on Economic, Social and Cultural Rights](#) (ICESC) and [United Nations Convention on the Rights of Persons with Disabilities](#) (UNRPD.) The signing of these international human rights documents by Canada implies public importance is attached to the treatment of disabled persons within Canada's laws.
9. Special procedures in the court shown within [Rule 7.08\(4\) of the Rules of Civil Procedure for the Ontario Courts](#) and interpreted in [Rivera v. LeBlond](#) show the public importance of special court procedures for settlements with disabled persons. This appeal will not only examine whether loss of economic interests of disabled persons are protected by the Charter, but also whether the CCAA procedures contributing to the loss of economic interests of disabled persons are unconstitutional, such as: (i) a representation order not requiring votes of individual disabled persons on settlements, and (ii) courts not requiring the disclosure of evidence and proper assessment of material facts of alleged wrongdoings before settlements affecting disabled persons are approved.
10. The public importance of disabled persons being protected from failed disability insurance was shown by the change to mandatory long term disability insurance purchased from a licensed insurer for all private companies offering long term

disability benefits in an amendment of the Federal Labour Code effective June 29, 2012 and an amendment of the Ontario Insurance Act effective July 24, 2014.

(Disabled persons in self-insured group long term disability benefit plans at employers that are not registered as Federal or Ontario companies remain unprotected.)

11. Nortel LTD facts provided by financial expert and unmitigated by opposing parties:

- a) 350 long term disabled former employees with 160 dependent children at 2010
- b) 66% to 68% estimated combined HWT and CCAA recovery of the amount owed for Nortel disability income, is applied to Nortel's pre bankruptcy disability income that was already reduced to 50% to 70% of their working income before disability (most employees opted for the higher 70% coverage paid for by employee contributions.) The LTD outcome is Nortel disability income reduced to 33% to 48% of pre-disability income.
- c) medical and dental expenses claims have only 45% to 49% recovery, of an average of Cdn\$7,291 per year for the LTD at 2010.
- d) LTD unable to preserve capital from both the HWT and CCAA settlements, due to the six year delay of the CCAA settlement. The deeply compromised 38% HWT and 45% to 49% CCAA settlements' capital is already used up by 2018 to cover the deficiencies in CPP disability income relative to reasonable basic housing, food and clothing expenses and the high medical and dental expenses during 2011 to 2017. The estimated average annual deficiencies of income over expenses have grown from \$27,015 in 2011 to \$33,223 in 2017. The 2017 average basic living costs are estimated at \$36,220 derived

from adjustments made to the Statistics Canada average household expenditures in Canada.

- e) due to settlement capital depletion by 2018, the LTD receives only CPP disability income, at a maximum of Cdn\$15,763 in 2017.

PART II – STATEMENT OF THE QUESTIONS IN ISSUE

- 12. The sole question is whether the proposed appeal raises constitutional issues of public importance that ought to be decided by the Supreme Court and are of such significance to warrant a decision by it pursuant to S. 40(1) of the *Supreme Court Act*.

PART III – STATEMENT OF ARGUMENT

- 13. The Waiver and Reserve Agreement removes the necessity for the Supreme Court to follow an expedited process for this leave to appeal, or the appeal if granted. The public importance of the constitutional question deserves a thorough and unrushed consideration by the Supreme Court. A normal course leave to appeal, or appeal process if granted, will not have the often cited negative consequences of:

- a) delaying the distribution of the Nortel estate to disabled persons who desperately need the money and to other creditors. All creditors are receiving their cash shortly, net of the LTD reserve at 0.76% of the Canada estate.
- b) causing the Nortel CCAA Final Plan to miss the final deadline of August 31, 2017, after which the Plan becomes null and void.
- c) causing more legal costs in an already too expensive process where Nortel Canadian bankruptcy professionals have been paid Cdn\$698 million and Nortel global bankruptcy professionals Cdn\$2,580 million in fees and disbursements as of the latest disclosures. As noted below, all the parties have submitted detailed

legal arguments on the constitutional question at the Ontario Superior Court of Justice and Court of Appeal of Ontario, and this leave to appeal, and appeal if granted, should have minimal additional legal costs.

d) Jennifer Holley has substantial health issues that make it difficult for her read, consult with pro bono advisors, and reply to respondents' Supreme Court filings on an expedited basis.

14. This application for leave to appeal does not put the Supreme Court in the difficult position of having to approve or disapprove the whole Nortel CCAA Final Plan, when just one disabled person has filed this application for leave to appeal. An LTD appeal reserve has already been established. The Court may sanction a compromise or arrangement, while ordering an amendment under CCAA S. 6(1) (b):

Court may order amendment

(2) If a court sanctions a compromise or arrangement, it may order that the debtor's constating instrument be amended in accordance with the compromise or arrangement to reflect any change that may lawfully be made under federal or provincial law.

15. This application requests that the Supreme Court use its well-established discretion, albeit one that is narrow and should be exercised sparingly, to address the merits of a constitutional issue when proper notice of constitutional question has been given in this Court, even though the issue was not properly raised in the courts below. The criteria this application must meet for the Supreme Court's use of such discretion is provided in

[Guindon v. Canada, \[2015\] 3 SCR 3 \(SCC\):](#)

Per Rothstein, Cromwell, Moldaver and Gascon JJ.: This Court has a well-established discretion, albeit one that is narrow and should be exercised sparingly, to address the merits of a constitutional issue when proper notice of constitutional question has been given in this Court, even though the issue was not properly raised in the courts below. That discretion should be exercised taking into account all of the circumstances, including the state of the record, fairness to all parties, the importance of having the issue resolved by this Court, its suitability for decision and the broader interests of the administration of justice. The burden is on the appellant to persuade the Court that in light of all of the circumstances, it should exercise its discretion. This is a case in which this Court's discretion ought to be exercised. The issue raised is important to the administration of the *Income Tax Act* and it is in the public interest to decide it. All attorneys general were given notice of constitutional question in this Court. Two intervened, the attorneys general of Ontario and

Quebec. No provincial or territorial attorney general suggested that he or she was deprived of the opportunity to adduce evidence or was prejudiced in any other way. No one has suggested that any additional evidence is required, let alone requested permission to supplement the record. The attorneys general of Ontario and of Quebec addressed the merits of the constitutional argument. This Court also has the benefit of fully developed reasons for judgment on the constitutional point in both of the courts below. Finally, there was no deliberate flouting of the notice requirement: G had advanced an arguable, although not ultimately successful, position that notice was not required in the circumstances of this case.

16. The *Guindon* 2015 case supersedes the precedent in [Eaton v. Brant County Board of Education](#), [1997] 1 SCR 241(SCC) for judges not to exercise their power to declare an unconstitutional law, if the s. 109 Courts of Justice Act requirement for the Notice of Constitutional Question has not been filed to give the Attorney Generals of Canada and Ontario the opportunity to support the law's validity.

17. This application has the benefit of a comprehensive record of thorough examination of the constitutional issues within the submission and reply of the applicants and the response of the respondents at the Ontario Superior Court of Justice Fairness Hearing on Jan. 24, 2017. This court made a decision on the constitutional question as shown within points 25 to 35 of the [Reasons of the Ontario Superior Court of Justice dated Jan. 30, 2017](#):

[25] In this case, the proceedings are being taken under the CCAA and the discretionary power of a court to sanction a plan is contained in section 6 of that statute. While it is not strictly necessary for me to decide whether the *Charter* applies to such an order in light of the view that I take of the section 7 and 15 rights asserted by the LTD Objectors, I accept that any order I make to sanction the Plan may be subject to the *Charter*.

[28] What the LTD Objectors seek is to have the allocation proceeds re-allocated by providing that 100% of the claims of the LTD Beneficiaries will be paid from the Sale Proceeds at the expense of all other claimants. This involves their economic interests which are not protected by section 7 of the Charter. In *Siemens v. Manitoba (Attorney General)*, [2003] 1 S.C.R. 6 Justice Major for the Court stated:
45 The appellants also submitted that s. 16 of the VL T Act violates their right under s. 7 of the Charter to pursue a lawful occupation. Additionally, they submitted that it restricts their freedom of movement by preventing them from pursuing their chosen profession in a certain location, namely, the Town of Winkler. However, as a brief review of this Court's Charter jurisprudence makes clear, the rights asserted by the appellants do not fall within the meaning of s. 7. The right to life, liberty and security of the person encompasses fundamental life choices, not pure economic interests. As La Forest J. explained in *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, at para. 66:
... the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence.

More recently, *Blencoe v. British Columbia (Human Rights Commission)*, [2000] 2 S.C.R. 307, 2000 SCC 44, concluded that the stigma suffered by Mr. Blencoe while awaiting trial of a human rights complaint

against him, which hindered him from pursuing his chosen profession as a politician, did not implicate the rights under s. 7. See Bastarache J., at para. 86:

The prejudice to the respondent in this case ... is essentially confined to his personal hardship. He is not employable" as a politician, he and his family have moved residences twice, his financial resources are depleted, and he has suffered physically and psychologically. However, the state has not interfered with the respondent and his family's ability to make essential life choices. To accept that the prejudice suffered by the respondent in this case amounts to state interference with his security of the person would be to stretch the meaning of this right.

[29] Professor Hogg in *Constitutional Law of Canada* at §47.9 makes clear that purely economic interests are protected by section 7. He states:

Section 7 protects "life, liberty and security of the person". The omission of property from s. 7 was a striking and deliberate departure from the constitutional texts that provided the models for s. 7 ... The omission of property rights from s. 7 greatly reduces its scope. It means that s. 7 affords no guarantee of compensation or even of a fair procedure for the taking of property by government. It means that s. 7 affords no guarantee of fair treatment by courts, tribunals or officials with no power over the purely economic interests of individuals or corporations. It also requires, as have noticed in the earlier discussion of "liberty" and "security of the person", that those terms be interpreted as excluding economic liberty and economic security; otherwise property, having been shut out of the front door, would enter by the back.

[30] What is in play in this case are pure economic rights among the creditors of Nortel and the request of the LTD Objectors to be compensated by the other Nortel creditors. There is authority that a plan of compromise or arrangement is simply a contract between the debtor and its creditors.

See *Olympia & York Developments Ltd. (Re)* at para. 74.

[31] Section 7 does not assist the LTD Objectors in their request for unequal treatment for unequal treatment.

[32] Section 15 of the *Charter* provides:

15. (1) Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

[33] In this case, it cannot be said that the LTD Objectors are being deprived of these section 15 rights because of discrimination based on physical disability. They are being treated like all creditors of Nortel. All unsecured creditors, be they bondholders, trade creditors, pensioners or LTD Beneficiaries, will receive the same *pari passu* treatment under the Plan. They are treated equally, with each receiving exactly the same proportion of their entitlements. In insolvency, equal treatment premised on underlying legal entitlements is not unfair or unreasonable. To the contrary, it is the fundamental tenet of insolvency law. Except for the two LTD Objectors, all other LTD Beneficiaries, in excess of 300 in number, accept this equal treatment.

[34] LTD Beneficiaries have been treated in the same manner as all similarly situated creditors, without discrimination. Pensioners, their beneficiaries, surviving spouses of deceased employees, Former Employees and LTD Beneficiaries are all unsecured creditors who are experiencing hardship due to lost income and benefits in the Nortel insolvency. All are disadvantaged to varying degrees, depending on personal circumstances and there is no basis for preferring one group above others. All have suffered losses in the Nortel insolvency. This was recognized by Justice Morawetz in 2010 when the Monitor applied for an order for distribution of the assets of the HWT (from which benefits were paid to beneficiaries, including the LTD Beneficiaries), on a *pari passu* basis. That was opposed by the LTD Objectors. In his decision of November 9, 2010 accepting the position of the Monitor at *Nortel Networks Corp., Re*, 2010 ONSC 5584, Justice Morawetz said:

110 As I have indicated above, there is no question that the impact of the shortfall in the HWT is significant. This was made clear in the written Record, as well as in the statements made by certain Dissenting LTD Beneficiaries at the hearing. However, the effects of the shortfall are not limited to the Dissenting LTD Beneficiaries and affect all LTD Beneficiaries and Pensioner Life claimants. The relative hardship for each claimant may differ, but, in my view, the allocation of the HWT corpus has to be based on entitlement and not on relative need.

[35] In the circumstances, I cannot find any breach of section 15 of the *Charter*.

18. Despite copious arguments and authorities provided and argued by both the appellants and

the respondents on the constitutional question within the application of leave to appeal at the Court of Appeal of Ontario, this Court did not consider the constitutional question on its merit, because the Notice of Constitutional Question filed on Feb. 27, 2017 was too late.

[Reasons of the Court of Appeal of Ontario dated March 13, 2017](#) say:

[5] Finally, by order dated February 17, 2017, MacPherson J.A. required all materials on this leave motion to be filed by February 24, 2017, on which date the motion would be submitted to the panel for consideration. On February 27, 2017, the Leave Applicants filed a notice of constitutional question challenging the constitutionality of ss. 6(1) and 11 of the CCAA. Counsel for the Monitor submits the notice should not be considered. We agree. The notice was filed far too late in these proceedings

19. The Notice of Constitutional Question has been served to the Attorney General of Canada and Attorney General of Ontario in respect to this Application for Leave to Appeal to the Supreme Court. A revised Notice of Constitutional Question will be served once the schedule for review of this application is provided by the Supreme Court.

[Notice of Constitutional Question Feb. 27, 2017](#)

Greg Joseph McAvoy and Jennifer Holley intend to question under S. 52(1) of the *Charter of Rights and Freedoms* the constitutional validity of:

Companies' Creditors Arrangement Act, RSC 1985

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under [sections 4](#) and [5](#), or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

General power of court

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

The question is to be argued on a date to be fixed by the Registrar at the Supreme Court of Canada, 301 Wellington Street, Ottawa, Ontario, K1A 0J1, reception@scc-csc.gc.ca.

20. The Attorney General of Ontario is on the Service List for the Nortel CCAA proceeding.
21. The Attorney General of Canada Minister Jody-Wilson Raybould has been copied on numerous communications with the Federal Minister of Innovation, Science and Economic Development Navdeep Bains, including an [Email to Minister Innovation, Science and](#)

[Economic Development - Violation of the Charter Nov. 8, 2016](#) providing a Report to the Minister and Ministry senior staff entitled, “Compromise of Long Term Disabled Claims in Bankruptcy Violate the Charter of Rights and Freedoms.” The Minister of Innovation, Science and Economic Development and his senior Ministry staff have not communicated their position on whether CCAA equal treatment of all unsecured creditors was unconstitutional in respect to disabled persons. The senior Ministry staff advised Greg McAvoy in February 2017 that the Federal Government’s position on the Notice of Constitutional Question was up to the Attorney General of Canada to decide.

22. The hearing of this appeal on a constitutional question provides fairness to all parties. The responding parties have received the appellant’s position and responded to the constitutional question at the lower courts and will again be participating in an appeal if granted at the Supreme Court. There has been no material prejudice against the Attorney General of Canada and Attorney General of Ontario and both have the opportunity to make submissions at both the leave to appeal stage and appeal if granted.
23. Jennifer Holley is self-represented and both she and Greg McAvoy were not aware of the S. 109 requirement to file a Notice of Constitutional Question at the time of their Submission to the Nortel CCAA Fairness Hearing on Jan. 13, 2017. When J. Frank Newbould gave his reasons for Sanctioning the Nortel CCAA Final Plan on Jan. 30, 2017, he discussed some constitution cases and concluded that he was required to make his CCAA orders compliant with the Charter, but there was no violation of the Charter because of his assessment that the *Siemens* case decided economic interests of disabled persons were not protected by the Charter. Since he gave his decision on the constitutional question despite there being no Notice of Constitutional Question provided to the Attorney Generals, the two appellants

proceeded to the Court of Appeal contesting J. Frank Newbould's decision on the Charter, without again filing a Notice of Constitutional Question for the appeal. When the [Eaton v. Brant County Board of Education, \[1997\] 1 SCR 241\(SCC\)](#) case was presented in the response of legal counsel for the Monitor and Canadian Debtors and upon review of the [Guindon v. Canada, \[2015\] 3 SCR 3 \(SCC\)](#) case, the appellants decided to file the Notice of Constitutional Question with the Attorney Generals to give them notice of their intent to raise the constitutional question in their application for leave to appeal to the Supreme Court.

24. This leave to appeal should be granted despite: (i) the Supreme Court only sparingly grants leave to appeal when the Court of Appeal of Ontario denies leave to appeal with discretionary reasons; and, (ii) both levels of appeal courts only sparingly permit leaves of appeal of any CCAA orders made by the lower court judge administering the CCAA proceedings. The Representative Order dated July 30, 2009 and Interim Settlement Agreement Order dated March 31, 2010 of the Ontario Superior Court of Justice, the denial of leave to appeal of the latter order dated June 30, 2010 by the Court of Appeal of Ontario, the Sanction Order dated Jan. 24, 2017, and denial of leave to appeal of the Sanction Order dated March 13, 2017 by the Court of Appeal of Ontario will all remain court precedents for permitting CCAA orders to potentially violate the Charter rights of disabled persons, without this constitutional question ever being examined and confirmed by the Supreme Court.
25. The Supreme Court does have jurisdiction under S. 40(1) of the *Supreme Court Act* to hear this case because of the precedent it set in [MacDonald v. City of Montreal, \[1986\] 1 SCR 460 \(SCC\)](#) and [R. v. Shea, \[2010\] 2 SCR 17, 2010 SCC 26 \(CanLII\)](#), which superseded the strict ruling on no jurisdiction that was previously determined in:

- [*Ernewein v. Minister of Employment and Immigration*, \[1980\] 1 SCR 639 \(SCC\)](#),
- [*Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police*, \[1981\] 1 S.C.R. 92 \(SCC\)](#)
- [*Canadian Utilities Ltd. and Western Chemicals Ltd. v. Deputy Minister of National Revenue for Customs and Excise* \[1963\], 41 D.L.R. \(2d\) 429 \(SCC\)](#).

[*MacDonald v. City of Montreal*, \[1986\] 1 SCR 460 \(SCC\)](#)

(1) *The Jurisdictional Issue*

Per Beetz, Estey, McIntyre, Lamer and Le Dain JJ.: This Court has jurisdiction to hear this case. It is a jurisdiction which, for obvious reasons of policy and comity, should be exercised most sparingly, in very rare cases such as this one, where there is a risk that a question of major constitutional importance might otherwise be put beyond the possibility of review by this Court.

Per Dickson C.J. and Wilson J.: This Court has jurisdiction pursuant to s. 41(1) of the *Supreme Court Act* to review the Quebec Court of Appeal's decision not to grant leave to appeal from a judgment at trial. While the Court should in general maintain an attitude of deference to the exercise of judicial discretion by intermediate appellate courts, it should not hesitate, in light of the broad language of s. 41(1) and the role of the Court as the ultimate appellate tribunal, to interfere with discretionary decisions on those rare occasions when it perceives legal principles of national, and more particularly, constitutional significance to be at stake. To the extent that the *Ernewein* and *Nicholson* cases are inconsistent with this view, they should not be followed.

[*R. v. Shea*, \[2010\] 2 SCR 17, 2010 SCC 26 \(CanLII\)](#)

[9] A similar evolution may be observed with respect to the Court's jurisdiction to grant leave to appeal when the highest appellate tribunal in the province has refused leave to appeal to it. The Court held in *Ernewein v. Minister of Employment and Immigration*, [1979 CanLII 185 \(SCC\)](#), [1980] 1 S.C.R. 639, that it did not have jurisdiction in such cases. However, in 1986, the Court revisited this question and decided in favour of its jurisdiction. In *MacDonald v. City of Montreal*, [1986 CanLII 65 \(SCC\)](#), [1986] 1 S.C.R. 460, the Court considered its jurisdiction to consider the appellate court's refusal to grant leave to appeal and overturned *Ernewein* and expanded upon its reasoning in *Hill*, *Gardiner* and subsequent cases thereby indicating that "final or other judgment" provides jurisdiction to this Court to hear any issue it deems to be of sufficient importance as long as resort to s. 40 is not excluded by s. 40(3) of the *Supreme Court Act*.

26. The Supreme Court granted application for leave to appeal in [*Westar Mining Ltd. \(Re\)*, \[1993\] 1 SCR 890 \(SCC\)](#), from a decision of a provincial appellant court refusing leave to appeal to that court and to hear the appeal on the merits. In this case the Court of Appeal of Ontario refused to consider the merit of the constitutional question raised by the appellant due to the late filing of the Notice of Constitutional Question. The other reasons for the Court of Appeal of Ontario not granting leave to appeal are the appellants not opting out of the Representative Order dated July 30, 2009 and the Interim Settlement Order dated March 31, 2010 of the Ontario Superior Court of Justice and its denial of leave to appeal of the latter order dated June 3, 2010. Both of these CCAA orders, plus the CCAA Sanction Order, are covered within the PART II – STATEMENT OF THE QUESTIONS IN ISSUE.

[Westar Mining Ltd. \(Re\), \[1993\] 1 SCR 890 \(SCC\)](#)

SOPINKA J. -- The respondent Greenhills Workers' Association moved to quash the applications for leave to appeal brought by the applicants on the ground that this Court had no jurisdiction to grant leave to appeal from the refusal of a provincial appellate court to grant leave to appeal to that court on a matter arising under the *Companies' Creditors Arrangement Act*, R.S.C., 1985, C-36 ("CCAA"). We are all of the view that this Court does have jurisdiction.

Section 15(1) CCAA provides that an appeal from a provincial court of highest resort lies to this Court upon leave being granted by this Court and s. 15(2) further states that this Court has "jurisdiction to hear and to decide according to its ordinary procedure any appeal under subsection (1)". In the absence of any restrictions placed by the CCAA upon the jurisdiction of this Court to grant leave to appeal, the reasoning in *MacDonald v. City of Montreal*, [1986 CanLII 65 \(SCC\)](#), [1986] 1 S.C.R. 460, applies such that this Court has a discretion to grant leave to appeal from a decision of a provincial appellate court refusing leave to appeal to that court and to hear the appeal on the merits.

The motion to quash the applications for leave to appeal is dismissed and the applications for leave to appeal are granted.

27. If the leave to appeal is not granted, there is no other reasonable way or effective way for this constitutional matter to come before the courts. Disabled persons cannot afford a very costly direct constitutional challenge of the CCAA against the Government of Canada that can take more than 10 years to complete. From a practical point of view, it is unreasonable to expect seriously ailing persons to bring a direct systemic challenge against the whole insolvency regime. The material physical and emotional resources of individuals, who are ill, and quite possibly dying, need to be focused on their own circumstances. An appeal is in the broader interest of administration of justice for disabled persons, because they are confronted in CCAA proceedings by the most powerful lawyers representing debtors, banks, bond holders and other large creditors. These lawyers are well-organized within the lobby group known as the Insolvency Institute of Canada that has undue influence on both the government insolvency legislation agenda and on court proceedings interpreting insolvency legislation.
28. Court-appointed legal counsel for disabled persons is well compensated to accept insolvency settlements proposed by powerful debtors without taking legal actions to protect disabled persons rights. Disabled persons are in a group that is always in the minority of creditors

within CCAA proceedings, without the power of majority votes in number or value. The disabled persons' representative order that removes the right of individual disabled persons to vote further dampens the incentive for court-appointed legal counsel to pursue disabled persons legal rights as only one disabled person representative needs to be convinced to approve a settlement on the argument that accepting any settlement provides money desperately needed now and not accepting it causes years of delay for litigation. The disabled persons' representative order removes the risk of meaningful dissent from ill persons who generally find the situation hopeless and do not have the mental and physical strength or funding to mount a challenge of the representative's settlement decisions. The Nortel LTD objectors are an historical exception because they found a pro bono lawyer earlier in the CCAA process and because Greg McAvoy and Jennifer Holley, with the help of pro bono lawyers and financial experts' advice, have mustered the stamina to keep going to ensure they and future disabled claimants in insolvency proceedings have their Charter rights protected in both CCAA court procedures and financial outcomes, with full consideration of the Oakes Test in [R. v. Oakes, \[1986\] 1 SCR 103, \[1986\] \(SCC\)](#) and related Proportionality Test in [R. v. Big M Drug Mart Ltd., \[1985\] 1 SCR 295, 1985 \(SCC\)](#). Or, is a CCAA judge entitled to authorize deleterious impacts on disabled persons, regardless of benefits to others in Canadian society?

29. Supreme Court consideration of the constitutionality of the Representative Order dated July 30, 2009 and Interim Settlement Agreement Order dated March 31, 2010 of the Ontario Superior Court of Justice, and the denial of leave to appeal of the latter order dated June 3, 2010 by the Court of Appeal of Ontario requires it to grant an extension for the deadline to file an application for leave to appeal to the Supreme Court on these earlier lower court

orders. S. 59(1) of *the Supreme Court Act* says the Supreme Court or a judge thereof may under special circumstances extend the time period for filing a leave to appeal to the Supreme Court, to a date after the expiration of the S. 58(1) (a) 60 day time period. The Supreme Court granted a 13 year extension to serve and file an application for leave to appeal from a judgment of the Court of Appeal of Ontario in [*John \(Jack\) Robert White v. Her Majesty the Queen, 2009 \(SCC\)*](#).

30. The special circumstances for an extension of leave to appeal to the Supreme Court of the Representative Order dated July 30, 2009 is that Jennifer Holley had no evidence disclosed on the material facts at the time to suggest that her group long term disability income benefits were in jeopardy. Nortel communications to that date lead Jennifer Holley to expect that her disability income would continue despite the Nortel insolvency.

- (a) Nortel began disclosing at 2005 and subsequent benefit handbooks on or about p. 2 that “Nortel plays a role similar to that of an insurance company for its employees.” The expectation of employees was that playing the role of an insurance company meant their disability income benefits were funded and safe.

“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.”

- (b) [*Corporate Leader John Doolittle Affidavit February 5, 2009*](#) says at p.41, “The HWT was originally settled in 1980 with the Montreal Trust Company. The HWT is used to fund certain long term disability, life and other insurance and medical benefits for current and former employees. LTD income benefits among certain other benefits, came from the HWT corpus.”

(c) The [Monitor's Pre-Filing Reports January 14, 2009](#) says at p. 6 of the Summary of Assumptions, "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."

31. The special circumstances for an extension of leave to appeal to the Supreme Court of the Representative Interim Settlement Agreement Order dated March 31, 2010 of the Ontario Superior Court of Justice, and the denial of leave to appeal of the latter order dated June 3, 2010 by the Court of Appeal of Ontario are:

a) The Court Monitor denied pre-hearing disclosure of evidence on material facts and J. Geoffrey Morawetz denied a brief adjournment for discovery of evidence of material facts needed to make a proper assessment of the Interim Settlement Agreement.

i. [Letter from Goodmans on Their Decision to Not Release Information Nov. 5, 2009](#) says:

As with other matters in the Nortel proceeding, 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.

Regarding your request, the Monitor is currently working with the Company and its advisors with respect to disclosure of information concerning the Health & Welfare Trust. For the time being, the Monitor remains of the view that the disclosure of certain of the requested information should remain subject to the non-disclosure agreement, given a number of matters currently in progress in the restructuring. However, we assure you that the Monitor and its counsel take your concerns seriously and will reconsider your request on an on-going basis as the restructuring evolves.

The Monitor will be reporting to the Court on a number of matters before November 30, 2009 and will provide an update on disclosure and timing of matters related to the Health and Welfare Trust at that time.

ii. [Interim Settlement Court Transcripts March 3, 4, 5, 2010](#) provides evidence that the CCAA judge denied an adjournment for discovery of evidence and thus it was not

possible to prepare viable causes of action in respect to the wrongdoings causing the shortfall of HWT funding or constitutionality.

MR. ROCHON: Yes. I am not disputing that, Your Honour. My point relates to the objectors and for them to have meaningful rights, we are here to represent, no notice to those individuals. So the objectors, and we have 30 of them here, their rights, have been extinguished through this process, because they have not had meaningful notice.

The timeline, there was pressure to get this moving, but to have the notice given, really, takes away any meaningful rights that the objecting parties had. That is the group that we are focussed on, and the right to object is really a pillar of due process in fairness in this country. I have never seen -- I am not someone that appears before Your Honour regularly, but where due process is something that you learned from day one, normally there is 60 or 90 days in order to prepare an objection. Here, there is no time -- or a week. Five business days to prepare an objection, and that, in my respectful submission, is meaningless and their rights have been seriously impacted upon or will be impacted upon unnecessarily so if the adjournment is not granted.

THE COURT: ... The adjournment is not going to be granted.

THE COURT: If you wish to reply, I would have thought there can't be anything new, but, please, go ahead.

MR. ROCHON: Well, Mr. Zarnett asked how much time we would be looking for. There was mention to that. I was going to talk about the time. We are looking for 45 days.

THE COURT: Given the remarks, the end of March, that is not persuading me.

MR. ROCHON: The point about the expiry of benefits, under the 39th Report there is evidence to suggest there is funds available in order to implement the settlement agreement, including the security, the security of the benefits and the pension to the end of the year. In terms of what I would do with the time, that would be for examining officers and directors of Nortel, possibly trustees, conducting cross-examination. We would make use of the time. We would locate further experts dealing with the issue of the trust and trust funds. Those are my submissions in reply.

THE COURT: Thank you. The issue of the 45 days, I am not persuaded that deals with the issue and on that basis alone, this matter will continue.

- b) As noted in the transcript reference in point 30 a) ii above, Joel Rochon of Rochon

Genova LLP, who represented the dissenting LTD at the March 3-5, 2010 hearing, had just five business days to prepare an objection to the Interim Settlement Agreement first announced on Feb. 8, 2010 and with first related document disclosures on Feb. 18, 2010. This was an unacceptably short amount of time for potential objectors to contact one another without a published list, find a lawyer and have this lawyer review the evidence and prepare arguments to support the objection for the Interim Settlement Agreement. Just the 2008 Health and Welfare Trust Financial Statement was disclosed on Feb. 18, 2010, showing a large deficit but with insufficient disclosure of prior year financial statements and actuarial reports to prove the cause of deficit being one of or all of: a

failure to make required contributions, making required contributions by way of a loan to Nortel and not by cash (loan was disclosed at Feb. 18, 2017 but no indications of its history or purpose), or fraudulent removal of historical contributions to pay Nortel obligations for certain other employee benefits and to materially improve Nortel's cash flow. With the limited evidence and time available, objectors put forward the cause of action breach of trust, but J. Geoffrey Morawetz nonetheless approved the Interim Settlement Agreement with a legal release that barred litigation, except for fraud.

- c) [Sue Kennedy Affidavit, Feb. 24, 2010](#) at p. 41i) shows that she made decisions that accepted Koskie Minsky LLP's incorrect legal opinion that there were no obligations for Nortel to fund in full the HWT benefits. J. Paul Perell in [Holley v. The Northern Trust Company, Canada, 2014 ONSC 889](#) says Jennifer Holley made a tenable constructive fraud claim, and there certainly could be no tenable constructive fraud claim if there were no legal obligations.

[Sue Kennedy Affidavit, Feb. 24, 2010](#)

40 i) "...however, our counsel advised us that (i) there was no statutory obligation under the terms of the Trust Agreement which required Nortel to fund in full the HWT benefits."

[Holley v. The Northern Trust Company, Canada, 2014 ONSC 889](#)

[143] The problem for Ms. Holley, however, is that although she has pleaded a tenable constructive fraud claim, the claim is caught by the CCAA release.

[148] ... There may be a breach of contract or a breach of trust, or a constructive fraud, but there is no dishonesty or moral turpitude of the degree necessary to constitute common law fraud, which is a very serious tort precisely because it responds to genuine and not constructive dishonesty and moral turpitude.

- d) [Reasons of Court of Appeal of Ontario - Interim Settlement - June 3, 2010](#) denied leave to appeal of the Interim Settlement Agreement on the high bar of sparingly permitting leaves of appeal on any CCAA orders made by the lower court judge administering the CCAA proceedings.

PART IV – SUBMISSION ON COSTS

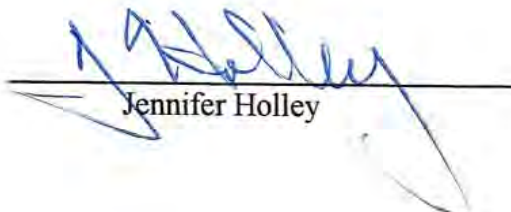
32. Jennifer Holley is not seeking an order for costs if the application for leave is granted,

because she is self-represented and does not have the money to pay the quid pro quo respondents' costs if the application for leave is dismissed.

33. The lawyers of parties served in this application, who were parties opposing Jennifer Holley and Greg McAvoy at the Ontario Superior Court of Justice and the Court of Appeal of Ontario, are funded from the Nortel estate, with the possible exception of the lawyers for the Ad Hoc Group of Bondholders. The bond holders are being paid 98 cents to full payment per \$1 of Nortel CCAA claim.
34. The granting of an appeal goes beyond potential remuneration of damages for Jennifer Holley and other Nortel long term disabled former employees. All future long term disabled employees in self-insured group long term disability benefit plans at future bankrupt companies will benefit from the precedent set if the leave to appeal is granted, and the appeal is successful.
35. The public as a whole benefits from improved confidence in the court system, when the Supreme Court is willing to consider "special circumstances" to prevent the miscarriage of justice for vulnerable disabled persons who are expressly protected in the Charter.

PART V – ORDERS SOUGHT

36. Grant an extension for the deadline to file an application for leave to appeal to the Supreme Court on the Representative Order of the Ontario Superior Court of Justice dated July 30, 2009 and Interim Settlement Order of the Ontario Superior Court of Justice dated March 31, 2010 and Court of Appeal of Ontario denial of Leave to Appeal dated June 30, 2010,
37. Grant this application for leave to appeal, without costs.


Jennifer Holley

PART VI – TABLE OF AUTHORITIES

Authorities	Paragraph
Procedural Authorities	
<i>Canadian Utilities Ltd. and Western Chemicals Ltd. v. Deputy Minister of National Revenue for Customs and Excise</i> [1963], 41 D.L.R. (2d) 429 (SCC)	25
<i>Eaton v. Brant County Board of Education</i>, [1997] 1 SCR 241 (SCC)	16
<i>Ernewein v. Minister of Employment and Immigration</i>, [1980] 1 SCR 639 (SCC)	25
<i>Guindon v. Canada</i>, [2015] 3 SCR 3 (SCC)	15
<i>Holley v. The Northern Trust Company, Canada</i>, 2014 ONSC 889	31 c)
<i>John (Jack) Robert White v. Her Majesty the Queen</i>, 2009 (SCC)	29
<i>Nicholson v. Haldimand-Norfolk Regional Board of Commissioners of Police</i>, [1981] 1 S.C.R. 92 (SCC)	25
<i>R. v. Shea</i>, [2010] 2 SCR 17 (SCC)	25
<i>Rivera v. LeBlond</i>, [2007] CanLII 7396 (ON SC)	9
<i>Rule 7.08(4) of the Rules of Civil Procedure for the Ontario Courts</i>	9
Nortel LTD Authorities	
<i>Holley v. The Northern Trust Company, Canada</i>, [2014] ONSC 889	31 c)
CCAA Authorities	
<i>Century Services Inc. v. Canada (Attorney General)</i>, [2010] 3 SCR 379 (SCC)	5 b)
<i>Newfoundland and Labrador v. AbitibiBowater Inc.</i>, [2012] 3 SCR 443 (SCC)	5 c)
<i>Sun Indalex Finance, LLC v. United Steelworkers</i>, [2013] 1 SCR 271 (SCC)	5 a)
<i>Westar Mining Ltd. (Re)</i>, [1993] 1 SCR 890 (SCC)	5 d)
Charter Authorities	
<i>Baker v. Canada (Minister of Citizenship and Immigration)</i>, [1999] 2 SCR 817 (SCC)	8
<i>Blencoe v. British Columbia (Human Rights Commission)</i>, [2000] 2 SCR 307, (SCC)	17
<i>Eldridge v. British Columbia (Attorney General)</i>, [1997] 3 SCR 624, 1997 (SCC)	6
<i>Godbout v. Longueuil (City)</i>, [1997] 3 SCR 844 (SCC)	17
<i>Gosselin v. Québec (Attorney General)</i>, [2002] 4 SCR 429 (SCC)	6
<i>Granovsky v. Canada (Minister of Employment and Immigration)</i>, [2000] 1 SCR 703 (SCC)	6
<i>International Covenant on Economic, Social and Cultural Right Articles, 4, 11, 12s</i>	8
<i>Irwin Toy Ltd. v. Quebec (Attorney General)</i>, [1989] 1 SCR 927 (SCC)	7
<i>R. v. Big M Drug Mart Ltd.</i>, [1985] 1 SCR 295, 1985 (SCC)	28
<i>R. v. Oakes</i>, [1986] 1 SCR 103, [1986] (SCC)	28
<i>Siemens v. Manitoba (Attorney General)</i>, [2003] 1 SCR 6 (SCC)	6
<i>Slaight Communications Inc. v. Davidson</i>, [1989] 1 SCR 1038 (SCC)	8
<i>United Nations Convention on the Rights of Persons with Disabilities Articles 10, 14, 28</i>	8

PART VII – STATUTORY PROVISIONS

<i>Supreme Court of Canada Act</i>
<i>Charter of Rights and Freedoms</i>
<i>Companies Creditors Arrangement Act</i>
<i>Federal Labour Code</i>
<i>Ontario Insurance Act</i>

FORM 4F

Courts of Justice Act

NOTICE OF CONSTITUTIONAL QUESTION

BETWEEN:

GREG JOSEPH MCAVOY, JENNIFER HOLLEY

APPLICANTS
(Moving Parties)

-and-

NORTEL NETWORKS CORPORATION, NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL CORPORATION, NORTEL NETWORKS INTERNATIONAL CORPORATION, NORTEL NETWORKS TECHNOLOGY CORPORATION, NORTEL NETWORKS INC., OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AD HOC GROUP OF BONDHOLDERS, ERNST & YOUNG INC. in its capacity as MONITOR, JOINT ADMINISTRATORS OF THE EMEA DEBTORS

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

RESPONDENTS
(Interested Parties)

NOTICE OF CONSTITUTIONAL QUESTION

Date: February 27, 2017

Joseph Greg McAvoy
Nortel CCAA LTD Creditor
Kingsland Terrace Supportive Living Facility
Suite 1, Room 2
835 68 Ave SW
Calgary AB, T2V ON5
(587) 582-8804
dignum.mcavoy@gmail.com

Jennifer Holley
Nortel CCAA LTD Creditor
2034 River Road
Ompah, ON, K0H 2J0
(613) 479-2653
jholley@xplornet.com

Self-Represented

Greg Joseph McAvoy and Jennifer Holley intend to question under S. 52(1) of the *Charter of Rights and Freedoms* the constitutional validity of:

Companies' Creditors Arrangement Act, RSC 1985

Compromises to be sanctioned by court

6 (1) If a majority in number representing two thirds in value of the creditors, or the class of creditors, as the case may be — other than, unless the court orders otherwise, a class of creditors having equity claims, — present and voting either in person or by proxy at the meeting or meetings of creditors respectively held under [sections 4](#) and [5](#), or either of those sections, agree to any compromise or arrangement either as proposed or as altered or modified at the meeting or meetings, the compromise or arrangement may be sanctioned by the court and, if so sanctioned, is binding

General power of court

11 Despite anything in the [Bankruptcy and Insolvency Act](#) or the [Winding-up and Restructuring Act](#), if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

The question is to be argued on a date to be fixed by the Registrar at the Supreme Court of Canada, 301 Wellington Street, Ottawa, Ontario, K1A 0J1, reception@scc-csc.gc.ca.

TO:

The Attorney General of Canada (as required by section 109 of the Courts of Justice Act)
Suite 3400, Exchange Tower Box 36, First Canadian Place, Toronto, Ontario M5X 1K6 fax: (416) 952-0298

-and-

Justice Building, 234 Wellington Street, Ottawa, Ontario K1A 0H8 fax: (613) 954-1920
mcu@justice.gc.ca

The Attorney General of Ontario (as required by section 109 of the Courts of Justice Act)
Constitutional Law Branch, 4th floor, 720 Bay Street, Toronto, Ontario M5G 2K1 fax: (416) 326-4015
attorneygeneral@ontario.ca

The Attorney General of Alberta
c/o Constitutional and Aboriginal Law Section, 4th Floor, Bowker Building, 9833-109 Street, Edmonton, Alberta T5K 2E8
ministryofjustice@gov.ab.ca

NAMES AND ADDRESSES OF LAWYERS FOR ALL OTHER PARTIES EXPECTED TO RESPOND:

GOODMANS LLP

Barristers & Solicitors Bay Adelaide Centre
333 Bay Street, Suite 3400 Toronto, Ontario, Canada M5H 2S7

Benjamin Zarnett (LSUC#17247M) bzarnett@goodmans.ca

Jessica Kimmel (LSUC#32312W) jkimmel@goodmans.ca
Peter Kolla (LSUC#54608K) pkolla@goodmans.ca

Tel. 416.979.2211 / Fax 416.979.1234

Lawyers for the Monitor, Ernst & Young Inc.

GOWLING WLG (CANADA) LLP

Barristers & Solicitors One First Canadian Place
100 King Street West, Suite 1600 Toronto, Ontario, Canada M5X 1G5

Derrick Tay (LSUC#21152A) derrick.tay@gowlingwlg.com
Jennifer Stam (LSUC#46735J) jennifer.stam@gowlingwlg.com

Tel: 416.862.5697 / Fax: 416.862.7661

Lawyers for the Canadian Debtors

KOSKIE MINSKY LLP

20 Queen Street West, Suite 900 Toronto, Ontario, Canada M5H 3R3

Mark Zigler (LSUC #19757B) mzigler@kmlaw.ca
Tel: 416.595.2090 / Fax: 416.204.2877

Susan Philpott (LSUC #31371C) sphilpott@kmlaw.ca
Tel. 416.595.2104 / Fax 416.204.2882

Barbara Walancik (LSUC #62620U) bwalancik@kmlaw.ca
Tel: 416.542.6288 / Fax: 416.204.2906

Lawyers for the Canadian Former Employees and Disabled Employees through their court appointed Representatives

TORYS LLP

79 Wellington St. W., Suite 3000 Box 270, TD Centre, Toronto, Ontario, Canada M5K 1N2

Sheila Block (LSUC#14089N) sblock@torys.com
Scott A. Bomhof (LSUC#37006F) sbomhof@torys.com
Andrew Gray (LSUC#46626V) agray@torys.com
Adam M. Slavens (LSUC#54433J) aslavens@torys.com
Jeremy Opolsky (LSUC#60813N) jopolsky@torys.com

Tel: 416.865.0040 / Fax: 416.865.7380

Lawyers for Nortel Networks Inc. and the other U.S. Debtors

CASSELS BROCK & BLACKWELL LLP

Suite 2100, Scotia Plaza 40 King Street West, Toronto, Ontario, Canada M5H 3C2

Shayne Kukulowicz (LSUC# 30729S) skukulowicz@casselsbrock.com

Michael Wunder (LSUC# 313510) mwunder@casselsbrock.com

Ryan Jacobs (LSUC# 59510J) ijacobs@casselsbrock.com

Geoff Shaw (LSUC #26367J) gshaw@casselsbrock.com

Tel: 416.869.5300 / Fax: 416.360.8877

Lawyers for the Official Committee of Unsecured Creditors of Nortel Networks Inc., et al.

BENNETT JONES LLP

I First Canadian Place Suite 3400, Toronto, Ontario, Canada M5X 1A4

S. Richard Orzy (LSUC# 23181I) orzyr@bennettjones.com

Gavin Finlayson (LSUC# 44126D) finlaysong@bennettjones.com

Richard Swan (LSUC# 32076A) swanr@bennettjones.com

Tel: 416.863.1200 / Fax: 416.863.1716

Lawyers for the Ad Hoc Group of Bondholders

LAX O'SULLIVAN LISUS GOTTLIEB LLP

Suite 2750, 145 King Street W, Toronto, Ontario, Canada M5H 1S5 www.counsel-toronto.com

M. Paul Michell pmichell@counsel-toronto.com

Tel: 416.598.1744 / Fax: 416.598.3730

Lawyers for Joint Administrators of the EMEA Debtors

MATERIAL FACTS GIVING RISE TO THE CONSTITUTIONAL QUESTION:

1. Gregory McAvoy and Jennifer Holley, who have standing as Nortel CCAA long term disabled ("LTD") creditors, made a submission and appeared before the Nortel CCAA Fairness Hearing on Jan. 24, 2017 requesting that the CCAA J. Frank Newbould make an adjustment of the Nortel CCAA Plan of Arrangement and Compromise ("Nortel Plan"), permitted under CCAA S. 6(2), to make it compliant with the Charter, fair and reasonable for the LTD, fair in regard to the interests of Greg McAvoy, Jennifer Holley and other members of the LTD and in the LTD's best interests. This adjustment requires reconsideration of the [Representative Counsel Order for Long Term Disability Employees July 30, 2009](#) and the [Revised Interim Settlement Agreement March 30, 2010](#).
2. The J. Newbould [Nortel Certification Endorsement January 30 2017](#) says at Pt. [25] "I accept that any order I make to sanction the Plan may be subject to the Charter."

3. J. Newbould says at Pt [28], “What the LTD Objectors seek is to have the allocation proceeds re-allocated by providing that 100% of the claims of the LTD Beneficiaries will be paid from the Sale Proceeds at the expense of all other claimants. This involves their economic interests which are not protected by section 7 of the Charter.”
4. J. Newbould says at Pt [33]: “In this case, it cannot be said that the LTD Objectors are being deprived of these section 15 rights because of discrimination based on physical disability. They are being treated like all creditors of Nortel. All unsecured creditors, be they bondholders, trade creditors, pensioners or LTD Beneficiaries, will receive the same pari passu treatment under the Plan.”
5. J. Newbould does not address the Supreme Court of Canada Oakes Test because he concluded there are no S. 7 and S. 15(1) Charter violations.
6. Greg McAvoy and Jennifer Holley filed a Motion for Leave to Appeal of the J. Newbould Feb. 14, 2017 order to sanction the Nortel Plan on the grounds of J. Newbould errors in respect to the applicability of S. 7 and S. 15(1) of the Charter of Rights and Freedoms and other issues.
7. The Responses and Reply to the Motion for Leave to Appeal were served on February 21, 2017 and February 24, 2017. The Leave to Appeal decision is pending.
8. It is anticipated that there will be an application made for Leave to Appeal to the Supreme Court of Canada by the losing parties at the Court of Appeal of Ontario decision in respect to the Nortel Plan. It is in this next legal proceeding that the Constitutional Question in this Form 4F dated Feb. 27, 2017 will be a central issue.
9. Below are all the relevant court decisions and filings:

COURT ENDORSEMENTS, PLEADINGS, RESPONSES AND REPLIES, AND RELATED BOOK OF AUTHORITIES

Nortel Certification Endorsement January 30 2017

Nortel Endorsement on Reconsideration Motions July 6, 2015

McAvoy and Holley Submission to the Nortel CCAA Fairness Hearing Jan. 13, 2017

Affidavit Diane Urquhart Jan. 12, 2017

Monitor & Cdn Debtors Factum Jan. 22, 2017

Monitor & Cdn Debtors BOA Jan. 22, 2017

Court Appointed Representatives Factum Jan. 23, 2017

Court Appointed Representatives BOA Jan. 23, 2017

McAvoy and Holley Leave to Appeal Feb. 14, 2017

McAvoy and Holley Leave to Appeal BOA - Vol II Feb. 20, 2017

McAvoy and Holley Leave to Appeal BOA - Vol III Feb. 20, 2017

McAvoy and Holley Leave to Appeal BOA- Vol I Feb. 20, 2017

McAvoy and Holley Reply Feb. 24, 2017

Monitor & Cdn Debtors Response Factum Feb. 21, 2017

Monitor & Cdn Debtors BOA Feb. 21, 2017

Court Appointed Representatives Response Factum Feb. 21, 2017

Court Appointed Representatives BOA Feb. 21, 2017

EMEA Letter to Registrar Court of Appeal Feb. 21, 2017

NCCE Response Factum Feb. 21, 2017

US Interests Response Factum Feb. 21, 2017

LEGAL BASIS FOR THE CONSTITUTIONAL QUESTION:

10. Approval of the Nortel Plan by the CCAA judge constitutes the use of his discretion under S. 6(1) and S. 11 of the CCAA to directly violate expressly protected LTD Charter rights: S. 15(1) on deprivation of substantive equality; and, S. 7 on deprivation of life, liberty and security. None of the Oakes test conditions for acceptable limitation of Charter rights have been met, that is: reasonable limits demonstrably justified in a free and democratic society in S.1; in accordance with [principles of fundamental justice](#) in S. 7; or, due to a notwithstanding clause within the statute enabled in S. 33.
11. Therefore S. 6(1) and S. 11 of the CCAA are unconstitutional to the extent of their provision of discretionary authority to a CCAA Judge to violate disabled Charter rights. This aspect of S. 6(1) and S. 11 of the CCAA are of no force or effect.
12. Approval of the Nortel Plan, combined with the 2010 revised interim settlement agreement, results in LTD being:
 - i) deprived of adequate disability income for basic housing, food, clothing and high medical and dental expenses, and so cannot live independently and with dignity:
 - a) 66% to 68% estimated combined HWT and CCAA recovery of the amount owed for Nortel disability income, is applied to Nortel's pre bankruptcy disability income that was already reduced to 50% to 70% of their working income before disability (most employees opted for the higher 70% coverage paid for by employee contributions.) The LTD outcome is Nortel disability income reduced to 33% to 48% of pre-disability

- income. The 160 dependent children cannot help but be seriously deprived compared to their peers with parents able to work. See TABLE 1 and TABLE 2.
- b) medical and dental expenses claim has only 45% to 49% recovery, of an average of Cdn\$7,291 per year for the LTD at 2010. See TABLE 1, TABLE 2 and TABLE 6.
 - c) LTD unable to preserve capital from both the HWT and CCAA settlements, due to the six year delay of the CCAA settlement. The deeply compromised 38% HWT and 45% to 49% CCAA settlements' capital is already used up by 2018 to cover the deficiencies in CPP disability income relative to reasonable basic housing, food and clothing expenses and the high medical and dental expenses during 2011 to 2017. The estimated average annual deficiencies of income over expenses have grown from \$27,015 in 2011 to \$33,223 in 2017. The 2017 average basic living costs are estimated at \$36,220 derived from adjustments made to the Statistics Canada average household expenditures in Canada. See TABLE 3 and TABLE 4.
 - d) due to settlement capital depletion by 2018, the LTD receives only CPP disability income, at a maximum of Cdn\$15,763 in 2017. See TABLE 3.
- ii) LTD deprived of substantive equality in Canadian society, through their loss of dignity, and exclusion and marginalization. An LTD, who once worked and who actively sought group LTD insurance coverage at Nortel, is by 2018 reduced to annual income at the maximum CPP disability income of Cdn\$15,763 in 2017.
13. All the pro and con legal arguments for this constitutional question are robustly argued in the McAvoy and Holley Submission to the Nortel CCAA Fairness Hearing, Motion for Leave to Appeal, Reply for the Motion for Leave to Appeal with reference to cases in their Book of Authorities; and in the Fairness Hearing and Leave to Appeal Response Facts of the Monitor & Debtors and the Court Appointed Representatives with reference to cases in their Books of Authorities.

(This notice must be served as soon as the circumstances requiring it become known and, in any event, at least 15 days before the question is to be argued, unless the court orders otherwise.)

urquhart@rogers.com

Subject: FW: Compromise of Long Term Disabled Claims in Bankruptcy Violate the Charter of Rights and Freedoms

Attachments: Compromise of Long Term Disabled Claims In Bankruptcy Violate The Charter.pdf

From: Urquhart [mailto:urquhart@rogers.com]

Sent: November-08-16 4:21 PM

To: ised.minister-ministre.isde@canada.ca; Navdeep.Bains@parl.gc.ca; mark.schaan@canada.ca; paul.morrison@canada.ca; navdeep.bains.A1@parl.gc.ca

Cc: 'Art Eggleton'; 'Judy Sgro'; Mark.Eyking@parl.gc.ca; John.McCallum@parl.gc.ca; 'Robert Oliphant'; Minister of Finance <Bill.Morneau@parl.gc.ca>; Prime Minister/Premier Ministre <PM@pm.gc.ca>; Minister of Sports and Persons with Disabilities <Carla.Qualtrough@parl.gc.ca>; 'kent.hehr@parl.gc.ca'; Tim Krupa (Tim.Krupa@pmo-cpm.gc.ca); Zoe Caron (Zoe.Caron@pmo-cpm.gc.ca); 'Greg McAvoy'; 'Jennifer Holley (jholley@xplornet.com)'; sammygirl1@rogers.com; 'jackie.bodie@gmail.com'; 'Diane Urquhart (urquhart@rogers.com)'; 'Minister Ralph Goodale'; 'Minister Jody Wilson-Raybould'

Subject: Compromise of Long Term Disabled Claims in Bankruptcy Violate the Charter of Rights and Freedoms

Minister Navdeep Bains

Mark Schaan and Paul Morrison, Ministry of Innovation, Science and Economic Development

[Prime Minister Pierre Trudeau's Speech at the Charter Signing Ceremony on Parliament Hill on April 17, 1982](#)

In our October 28, 2016 teleconference call with Mark Schaan and Paul Morrison, we were informed that the Minister was concerned about the spillover effects of Minister Navdeep Bains prescribing self-insured group long term disability benefit plans as Eligible Financial Contracts on a retroactive basis to benefit the Nortel disabled.

We communicated in the teleconference our position that Minister Navdeep Bains has a legal obligation to amend the CCAA or its regulations so that this statute is not violating the Charter of Rights and Freedoms in respect to disabled persons. We committed to prepare a report on why the compromise of long term disabled claims in bankruptcy violate the Charter rights of disabled persons. We attach a comprehensive report on this subject today.

There were no spillover effects, at the time the Liberal Party supported Bills S-216, C-610 and C-624 during 2010-2011, all of which provided for the full payment of the Nortel disabled on a retroactive basis. There is no change in circumstances to warrant a new concern about spillover effects since then.

In addition to breaking a political promise to the Nortel disabled, Minister Navdeep Bains is exposing the Federal Government to a Charter claim for damages from long term disabled employees who had their Charter S. 15(1) right to substantive equality and S. 7 rights not to be deprived of life, liberty and security. These vulnerable Canadian have been forced into poverty by an unconstitutional law and bankruptcy court processes.

The Nortel disabled group is experiencing the severe deleterious effects of their Charter S. 15(1) and S. 7 violations and the Federal Government has an obligation to correct this non-compliance with the Charter

without regard to spillover effects. Secondly, in respect to other creditor groups seeking Federal Government intervention on future bankruptcy court approved settlements, the Federal Government's response is clearly no to the creditor groups whose Charter rights have not been violated. It is yes to future creditor groups whose Charter rights are violated. Minister Navdeep Bains upholding Charter rights for the disabled will ensure that future CCAA judges cannot use discretion to compromise a disabled person's creditor claim in breach of the Charter.

Based on the criteria that numerous Supreme Court cases have set and the facts applicable to self-insured group long term disability benefit plans in general and in the Nortel plan in particular, the Supreme Court will be lead to the decision that the CCAA's flexibility is unnecessarily broad in respect to disabled persons. It is so because judges use discretion to force the compromise of disabled persons' claims, in violation of their Charter S. 15(1) right to substantial equity and S. 7 rights not to be deprived of life, liberty and security. The facts applicable to these self-insured group long term disability benefit plans do not support the Charter's limitation of rights, be it S. 1 limitation reasonably and demonstrably justified in a free and democratic society, or an exception in S. 7 in accordance with the principles of fundamental justice.

Minister Navdeep Bains prescribing self-insured group long term disability benefit plans as an Eligible Financial Contract on a retroactive basis in the CCAA regulations fulfils the Federal Government's obligation for the CCAA to be compliant with the Charter in respect to disabled persons. He, as a Minister, and the Cabinet have an obligation to act now so that the Nortel Canada estate rightfully pays for the damages of the Charter breach, rather than the Federal Government paying for it later after successful Charter litigation. Canadian disabled should be spared the need for Charter litigation given the poverty imposed upon them by an unconstitutional law and bankruptcy court practices.

Sincerely

Diane Urquhart
Independent Financial Analyst
Pro Bono Advisor to the Nortel Disabled

November 8, 2016

**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 JOHN DOOLITTLE
(sworn February 5, 2009)**

I, John Doolittle, of the City of Oakville, in the Province of Ontario, MAKE OATH AND SAY:

1. I am the Treasurer of Nortel Networks Corporation ("NNC") and Nortel Networks Limited ("NNL") and have held those positions since June 23, 2008. From October 14, 2002 to June 12, 2006, I was the Vice-President, Tax for NNC and NNL. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. 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.

2. Capitalized terms not defined in this affidavit are as defined in my affidavit sworn January 14, 2009 (the "Initial Order Affidavit"). A copy of my Initial Order Affidavit (without exhibits) is attached hereto as Exhibit "A".

BACKGROUND

3. On January 14, 2009, the NNC, NNL, Nortel Networks Technology Corporation, Nortel Networks Global Corporation and Nortel Networks International Corporation (collectively, the "Applicants") were granted protection under the *Companies' Creditors Arrangement Act*,

alignment of individual quota targets determined on an annual basis in the ordinary course of business.

37. The success of Nortel is directly dependent on the highly skilled and educated people who work for it, developing products and selling innovative ideas. Nortel's employees are a key component to achieving success through a restructuring process. As such, the Applicants intend to develop and seek Court approval of certain incentive programs appropriate for maintaining this valuable asset of the enterprise.

Pension and Benefit Plans

38. The Nortel Companies' employee benefits plans for eligible employees and retirees include health and dental benefits, life insurance and disability benefits, defined benefit and other retirement savings, and other ancillary benefits. The benefit plans differ by country in line with local market practices and legal requirements. These plans are sponsored on a regional basis by specific operating subsidiaries in the particular region.
39. The Applicants' primary current retirement program in Canada is its Capital Accumulation and Retirement Program ("CARP"), which consists of a combination of separate pension and other retirement savings plans, a Transitional Retirement Allowance Plan, retiree healthcare, life insurance and other ancillary benefits. All eligible Nortel employees and retirees participate in some combination of the various vehicles and plans that exist under CARP.
40. The Applicants also administer two defined benefit registered pension plans in Canada, namely the Nortel Networks Limited Managerial and Non-Negotiated Pension Plan and the Nortel Networks Negotiated Pension Plan (the "Cdn DB Plans") by way of which they provide pension benefits to more than 11,000 current pensioners. A small number of Canadian unionized employees and certain grandfathered non-union employees continue to accrue service under each of the plans.
41. The non-pension CARP benefits are administered by Sun Life Assurance Company of Canada through the Northern Telecom Health & Welfare Trust (the "HWT"). The HWT was originally settled in 1980 with the Montreal Trust Company. The HWT is used to

✓

fund certain long term disability, life and other insurance and medical benefits for current and former employees.

42. Upon filing, it is anticipated that the Applicants will:
- (a) continue to make current service payments to the Cdn DB Plans; and
 - (b) continue to make their current service payments under the other retirement savings programs included in CARP for active employees.
43. It is anticipated that benefits will continue to be provided for active employees going forward.
- c. Boards of Directors**
44. Each of the Boards of Directors of NNC and NNL is comprised of the same 10 directors and has the same non-executive chair. Meetings of the Boards of Directors of NNC and NNL are generally held together as joint meetings with limited exceptions. The following individuals sit on the Boards of Directors of NNC and NNL: Jalynn H. Bennett; Dr. Manfred Bischoff; The Honorable James Baxter Hunt, Jr.; Dr. Kristina M. Johnson; John A. MacNaughton; The Honourable John P. Manley; Richard D. McCormick; Claude Mongeau; Harry J. Pearce (Chair); and Mike S. Zafirovski. Mr. Zafirovski is also the President and Chief Executive Officer of NNC and NNL.
45. The Boards of Directors of the other Applicants are run separately from the Boards of Directors of NNL and NNC. The Boards of Directors of each of NNTC, NNGC and NNIC consist of Gordon Davies, Paul W. Karr and Paviter Binning, all of whom are members of management of NNC and NNL.
46. The members of all of the Applicants' Boards of Directors are collectively referred to as the "Directors".



- (ii) *Payroll* - Canadian payroll accounts are all with RBC. Funds are physically transferred into these accounts from the treasury accounts to the payroll accounts.
- (iii) *Benefit Trusts* – As discussed above, employee benefits are funded into accounts administered by a third party and are trust accounts. The Applicants do not have any access to funds that are transferred into these accounts.
- (d) *Other* – The Applicants also maintain a number of “specific purpose” accounts that are accessible to them for financing and tax matters.

Transfer Pricing

- 91. As described above, the Nortel business is highly integrated with several key Nortel Companies acting as purchasing hubs for Nortel Companies around the world. This results in high levels of inter-company receivables and payables, which necessitate the complex transfer pricing and inter-company settling methods employed by Nortel.
- 92. Nortel’s transfer pricing model (the “Transfer Pricing Model”) in most instances can be broken down into two main components:
 - (a) *Inventory mark up* – when a TCC purchases inventory on behalf of a distributor Nortel Company, it invoices (the “Internal Invoice”) that Nortel Company for the product with a mark up (the “Initial Mark Up”) on cost from the supplier invoice. The mark up is the first component of Nortel’s Transfer Pricing Model;
 - (b) *Residual Profit Sharing* – the second component of the Transfer Pricing Model is derived from Nortel’s profit sharing adjustment model which is premised on the profit projections that Nortel forecasts for its global entities and its designated residual profit sharing entities ->NNL, NNI, NN UK, NN France and Nortel Networks (Ireland) Limited (collectively the “RPS Entities”). On a quarterly, potentially moving to monthly, basis, operating profit is assessed and re-allocated based on the projections for these Nortel Companies. To the extent that any Nortel Company has enjoyed a profit that exceeds its profit entitlement (after

✓

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

Court File No: 09-CL-7950

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

AFFIDAVIT OF JOHN DOOLITTLE
(sworn February 5, 2009)

OGILVY RENAULT LLP

Suite 3800

Royal Bank Plaza, South Tower
200 Bay Street

P.O. Box 84

Toronto, Ontario M5J 2Z4, Canada

Derrick Tay LSUC#: 21152A

Tel: (416) 216-4832

Email: dtay@ogilvyrenault.com

Mario Forte LSUC#: 27293F

Tel: (416) 216-4870

Email: mforte@ogilvyrenault.com

Jennifer Stam LSUC #46735J

Tel: (416) 216-2327

Email: jstam@ogilvyrenault.com

Fax: (416) 216-3930

Lawyers for the Applicants

Goodmans^{LLP}

Barristers & Solicitors

250 Yonge Street, Suite 2400
Toronto, Ontario Canada M5B 2M6

Telephone: 416.979.2211
Facsimile: 416.979.1234
goodmans.ca

Direct Line: 416.597.4148
grubenstein@goodmans.ca

November 5, 2009

Our File No.: 08-3800

Via E-mail

Lawrence Clooney
Rights for Canadian Nortel Disable Employees
lkclooney@hotmail.com
613 825-9969

Arlene Plane
Rights for Canadian Nortel Disabled Employees
arleneplane@hotmail.com
613 692-5461

Nanc Ekiert
ekiert@comcast.net
802 893-1751

Josee Marin
marin.josee@sympatico.ca
613 678-2960

Jennifer Holly
jholley@xplornet.com
613 479-2653

Greg McAvoy
jgmcavoy@shaw.ca
403 288-5568

Dear Sirs/Mesdames:

Re: CCAA Proceedings of Nortel Networks Corporation *et al.* ("Nortel")

Your correspondence to Mr. Justice Morawetz was forwarded to us in our capacity as counsel to Ernst & Young Inc., the court appointed Monitor in Nortel's CCAA proceeding.

Having acted in this capacity in a large number of these kinds of proceedings, the Monitor and its representatives understand that Nortel's insolvency has created a very difficult and stressful situation for each of you and your families, and for all of those receiving long-term disability incomes from the Health and Welfare Trust established by Nortel.

Representatives of the Monitor and its legal counsel have met and continue to meet with your court-appointed counsel and participated in the Webinar for Nortel employees on long term disability held on October 27. In addition, we have provided your legal counsel and your court-appointed representative with the information and documents currently available with respect to the Health and Welfare Trust, the provision of which was made subject to a confidentiality agreement.

As with other matters in the Nortel proceeding, 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.

Regarding your request, the Monitor is currently working with the Company and its advisors with respect to disclosure of information concerning the Health & Welfare Trust. For the time being, the Monitor remains of the view that the disclosure of certain of the requested information should remain subject to the non-disclosure agreement, given a number of matters currently in progress in the restructuring. However, we assure you that the Monitor and its counsel take your concerns seriously and will reconsider your request on an on-going basis as the restructuring evolves.

The Monitor will be reporting to the Court on a number of matters before November 30, 2009 and will provide an update on disclosure and timing of matters related to the Health and Welfare Trust at that time.

Yours very truly,

GOODMANS LLP

A handwritten signature in black ink, appearing to read 'Gale Rubenstein', with a long, sweeping horizontal stroke extending to the right.

Gale Rubenstein
GOR/dm

cc: Lee Close (Ernst & Young Inc.)
Murray McDonald (Ernst & Young Inc.)
Mark Zigler (Koskie Minsky LLP)
Susan Philpott (Koskie Minsky LLP)
Barry Wadsworth (CAW)
Tony Reyes (Ogilvy Renault LLP)
Jay Carfagnini (Goodmans LLP)

Urquhart

Subject: FW: [SPAM]Fw: Request for Public Disclosure of Legal Documents Related to Nortel Long Term Disability Benefits and the Health and Welfare Trust

From: Lawrence Clooney [mailto:lkclooney@hotmail.com]
Sent: November-02-09 4:02 PM
To: Arlene Plante (LTD); Nanc Ekiert (LTD); Josee Marin (LTD); Greg McAvoy (LTD); jholley@xplornet.com
Cc: Diane Urquhart
Subject: [SPAM]Fw: Request for Public Disclosure of Legal Documents Related to Nortel Long Term Disability Benefits and the Health and Welfare Trust

The contents of this email are CONFIDENTIAL for the time being. Do NOT send to anyone else for the time because we need to give the justice folks time to move on our request in a positive ethical manner.

Lawrence

From: [Lawrence Clooney](#)
Sent: Monday, November 02, 2009 2:38 PM
To: geoffrey.morawetz@jus.gov.on.ca
Cc: heather.j.smith@jus.gov.on.ca ; thomas.s.harrison@ontario.ca ; tara.stead@ontario.ca
Subject: Request for Public Disclosure of Legal Documents Related to Nortel Long Term Disability Benefits and the Health and Welfare Trust

Dear Justice Geoffrey Morawetz:

I'm writing to you on behalf of the Rights for Canadian Nortel Disabled Employees (RCNDE) group to request that you as judge for the Nortel CCAA proceeding require that Nortel post all the material contracts and legal documents pertaining to the Nortel Canadian long term disability benefits plan and the Nortel Health & Welfare Trust (H & WT) in an electronic format on the Ernst & Young Canada Nortel Court Monitor's Website. Please ensure that our requested documents are easily accessible and viewable by the Nortel Canadian long term disabled employees, with the English language being an acceptable format.

We are not satisfied with the Ernst & Young Canada Court Monitor Tom C. Ayres' pledge to provide a summary report of the Nortel H&WT in an upcoming Court Monitor's report. He made this pledge on the October 27, 2009 LTD Webinar hosted by Susan Philpott and Mark Zigler of KM LLP, your appointed Representative Counsel for the Nortel pensioners, long term disabled and severed employees. The lawyers at KM LLP have advised our group of disabled persons that they are unable to provide a copy of the material contracts and legal documents we request due to a Non Disclosure Agreement. Both KM LLP and the Ernst & Young Canada Court Monitor have received these documents.

Our group would like to examine for ourselves the legal documents relevant to our LTD benefit since our benefit brochures indicate that if there is a difference between the benefit brochure and the legal documents for the LTD plan the plan legal documents will prevail. Up until 2005, Nortel never disclosed to us that our long term disability benefits were not insured by an insurance company.

Even in 2005, when Nortel said our long term disability benefits were self-insured, they said this meant that Nortel plays a role similar to that of an insurance company for its employees and that the Company assumes the risk. Many of us made employee contributions to the Nortel LTD plan to

raise our LTD coverage from 50% to 70% of pre-disability earnings, and now we wonder where did our money go.

The documents we wish to see are:

1. legal documents for the Long Term Disability Benefit
2. legal documents for the Survivor Income Benefit
3. all financial and legal documents pertaining to the H&WT, which includes contracts with all past and present trustees and benefit administrators.
4. the plan for wind-up of the H&WT upon Nortel's liquidation
- 5.

We believe the public disclosure of the requested information is key to our personal and group decisions about creditor claims, full examination of our legal rights for remedy of our situation in an expeditious manner and simply planning for our future in terms of living arrangements and the funding of our drug and other medical needs. Our request is of an urgent nature, since we have been advised in the October 27, 2009 LTD Webinar hosted by KM LLP that Nortel is paying for our current LTD income from the H & WT assets, that is only \$69 million as of June 30, 2009. We are advised that this small amount of assets is also being depleted by other beneficiaries, such as survivor income for deceased Nortel employees. We would like to see our requested documents within 5 business days on the Nortel Court Monitor website.

I wish to thank you in advance for ensuring that the material contracts and legal documents that are our right to see as creditors in this bankruptcy proceeding will be posted on the Ernst & Young Canada Website as soon as possible.

Lawrence Clooney
Rights for Canadian Nortel Disabled Employees
lkclooney@hotmail.com
613 825-9969

Arlene Plante
Rights for Canadian Nortel Disabled Employees
arleneplante@hotmail.com
613 692-5461

Nanc Ekiert
ekiert@comcast.net
802 893-1751

Josée Marin
marin.jossee@sympatico.ca
613 678-2960

Jennifer Holly
jholley@xplornet.com
613 479-2653

Greg McAvoy
jgmavoy@shaw.ca
403 288-5568

14

Nortel Hearing

to -- I understand the group has now retained you, and you may wish to make representations on their behalf, and you have that opportunity to do so.

5 As far as this hearing, I am not convinced so far this matter should be adjourned.

MR. ROCHON: In a nutshell, Your Honour, the notice went out last week or the week before. That is when it was delivered. That is after
10 February 16th, the only meaningful --

THE COURT: The point I am trying to make, counsel, this group has been part of this settlement discussion and has participated in the negotiations, participated in the notice
15 of hearing. All of that, I am not aware of any --

MR. ROCHON: Yes. I am not disputing that, Your Honour. My point relates to the objectors and for them to have meaningful
20 rights, we are here to represent, no notice to those individuals. So the objectors, and we have 30 of them here, their rights, have been extinguished through this process, because they have not had meaningful notice.

25 The timeline, there was pressure to get this

15

Nortel Hearing

moving, but to have the notice given, really,
takes away any meaningful rights that the
objecting parties had. That is the group that
we are focussed on, and the right to object is
really a pillar of due process in fairness in
this country. I have never seen -- I am not
someone that appears before Your Honour
regularly, but where due process is something
that you learned from day one, normally there
is 60 or 90 days in order to prepare an
objection. Here, there is no time -- or a
week. Five business days to prepare an
objection, and that, in my respectful
submission, is meaningless and their rights
have been seriously impacted upon or will be
impacted upon unnecessarily so if the
adjournment is not granted.

Those are my submissions, Your Honour.

THE COURT: Thank you. Okay?

MR. TAY: Your Honour, I don't think I need to
reply. With your permission, I will proceed.
Would you like me to reply?

THE COURT: I have to make a determination.
It's a formal request.

MR. TAY: Right. We clearly object to it for

22

Nortel Hearing

THE COURT: Yes.

MR. WADSWORTH: Briefly. The CAW Canada is the bargaining unit, and bargaining for long term disability, and we represent 640 retirees who retained our services to act on their behalf in these proceedings. The potential problem to our members is such that as Mr. Zigler pointed out, they may suffer health consequences if at the end of this month there is not a means by which their health benefits are replaced, and that is unlikely to happen in the amount of time that this took just to get the settlement in place. There is insufficient reason, from my perspective, to grant the adjournment. There is more sufficient reason to go forward with it to insure those people that will benefit from the settlement do so as quick as possible. Those are my submissions.

THE COURT: Thank you. Any other counsel that wish to comment before I rule on the adjournment request?

The adjournment is not going to be granted. First counsel have the points to the group that you will be speaking on behalf with

Nortel Hearing

respect to all proceeding to date.

Second, the process for setting up this hearing today, the notice of provisions, I am satisfied there will be prejudice to a variety of groups, long-term disabled, Nortel itself and other creditors if this matter is delayed further. We heard representation that the continuation of certain benefits run at the end of the month, at this point it is uncertain, and above all, in considering the matters, and the sensitivity to people's health and this court will do whatever it can to insure this is heard in a timely basis.

The motion record does indicate that you do have arguments prepared, and for what you have to say.

MR. ROCHON: Your Honour, thank you for that. I had a brief reply.

THE COURT: If you wish to reply, I would have thought there can't be anything new, but, please, go ahead.

MR. ROCHON: Well, Mr. Zarnett asked how much time we would be looking for. There was mention to that. I was going to talk about the time. We are looking for 45 days.

Nortel Hearing

THE COURT: Given the remarks, the end of March, that is not persuading me.

MR. ROCHON: The point about the expiry of benefits, under the 39th Report there is evidence to suggest there is funds available in order to implement the settlement agreement, including the security, the security of the benefits and the pension to the end of the year.

In terms of what I would do with the time, that would be for examining officers and directors of Nortel, possibly trustees, conducting cross-examination. We would make use of the time. We would locate further experts dealing with the issue of the trust and trust funds. Those are my submissions in reply.

THE COURT: Thank you. The issue of the 45 days, I am not persuaded that deals with the issue and on that basis alone, this matter will continue.

MR. TAY: Thank you, Your Honour.

You will recall, Your Honour, when I was before you on January 14th, of 2009, that I had said this is I the end of Nortel, this is

Court File No. 09-CL-7950

**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 SUSAN KENNEDY
(sworn February 23, 2010)**

I, Susan Kennedy, of the City of Ottawa, in the Province of Ontario, MAKE OATH
AND SAY:

1. I am an employee of Nortel Networks Limited ("Nortel") and am currently not working due to a medical condition in respect of which I receive long term disability ("LTD") income benefits. I have been receiving LTD income benefits from Nortel since June 23, 1995.
2. I am the Court-appointed Representative for all employees of Nortel who are not working due to an injury, illness or medical condition in respect of which they are receiving or are entitled to receive disability income benefits by or through Nortel ("the LTD Beneficiaries") pursuant to the Representation Order for Disabled Employees dated July 30, 2009 (the "Representation Order"). Attached hereto as **Exhibit "A"** is the Representation Order dated July 30, 2009 (the "Representation Order").

3. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. 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.
4. Capitalized terms used in this Affidavit and not otherwise defined shall have the meanings given to them in the Settlement Agreement dated February 8, 2010, the Monitor's Thirty-Sixth report dated February 8, 2010 (the "Thirty-Sixth Report") and the Monitor's Thirty-Ninth report dated February 18, 2010 (the "Thirty-Ninth Report") that have already been filed with this Court. Attached at Schedule "A" to this Affidavit is a list of those defined terms and their meanings.
5. I swear this Affidavit in support of a motion for the approval of a Settlement Agreement which provides all former employees of Nortel, including pensioners and surviving spouses (the "Former Employees"), and all LTD Beneficiaries, with continued health, dental, life and income benefits until the end of 2010.
6. The specific relief being sought in this motion by the Applicants is outlined in detail at paragraph 4 of the Affidavit of Elena King sworn February 18, 2010 in support of this motion (the "King Affidavit"). I have reviewed the King Affidavit and I am in agreement with the relief being sought as outlined in its paragraph 4. Based on information I have received from a broad cross-section of the LTD Beneficiaries, and after much discussion with Representative Counsel, our financial and actuarial advisors and the Representatives of the Former Employees, I swear this Affidavit in support of this motion on my behalf and on behalf of the individuals I represent, in its form put forward before this Court including in particular, the following relief:
 - (a) Approval of the Settlement Agreement, dated as of February 8, 2010, among the Applicants, the Monitor, the Former Employees' Representatives¹, the LTD Representative², Representative Settlement Counsel and the CAW (the "Settlement Parties") which requires, among other things, that the Applicants pay to the LTD Beneficiaries their disability income benefits on a "pay as you

¹ On their own behalf and on behalf of the parties they represent.

² On her own behalf and on behalf of the parties she represents.

go basis” and shall continue to pay medical and dental benefits and life insurance benefits to Pensioners and LTD Beneficiaries until December 31, 2010;

- (b) An Order that the Applicants shall make all current service payments and special payments to the Pension Plans in the same manner as they have been doing over the course of these insolvency proceedings, through to March 31, 2010, in the aggregate amount of \$2,216,254 per month and that thereafter and through to September 30, 2010, the Applicants shall make only current service payments to the Pension Plans, in the aggregate amount of \$379,837 per month; and
- (c) An Order that notwithstanding anything else in the Settlement Agreement, in the event of a bankruptcy of Nortel, if there is an amendment to any provision of the *Bankruptcy and Insolvency Act* that changes the current, relative priorities of the claims against the Applicants, no party will be precluded by the Order from arguing the applicability or non-applicability of any such amendment in relation to any such claim.

7. As the Court-appointed Representative of the LTD Beneficiaries, I have been closely involved with Representative Counsel throughout the discussions concerning and negotiations leading up to the Settlement Agreement. In my opinion, this Settlement Agreement represents a fair and reasonable solution for the provision of benefits through 2010 to a small, but vulnerable group of disabled individuals who, for the most part, do not have any other source of income or ability to replace their benefits, and in particular, the health, dental, life and income benefits they receive from Nortel. It also provides more time for the LTD Beneficiaries to prepare to live and support themselves and their families, and to deal with their health concerns and disabilities after Nortel, as we know it, ceases to exist.

BACKGROUND

8. On January 14, 2009, the Applicants (“Nortel”) were granted protection under the *Companies’ Creditors Arrangement Act*, R.S.C. c. C-36, as amended (“CCAA”)

pursuant to an initial order (as subsequently amended and restated, the “Initial Order”) of this Honourable Court. Ernst & Young Inc. was appointed as Monitor (the “Monitor”) in the CCAA proceedings. Details regarding the background to the company’s proceedings, and the insolvency proceedings of Nortel’s related foreign entities, are set out in the affidavit of John Doolittle, sworn January 14, 2009, and previously filed by the Applicants in these proceedings and are therefore not repeated herein.

9. The committee now known as the Canadian Nortel Employees on Long Term Disability (“CNELTD”) was formed at the end of January 2009, shortly after Nortel filed for protection under the CCAA. It was originally called the Nortel Networks Long Term Disability Survivors (“NNLTDS”). A number of LTD Beneficiaries, including Charles Black, Connie Walsh and myself, formed the committee for support, information sharing, legal guidance and in order to ensure we had a voice in Nortel’s insolvency proceedings. Upon the resignation of Connie Walsh as committee leader and Yahoo! Group facilitator on April 23, 2009, I volunteered to take over this role. In addition to communicating with the committee via the internet, I set up two face-to-face meetings among committee members in Ottawa on April 30, 2009 and June 1, 2009.
10. Anyone who is an LTD Beneficiary is permitted to join the CNELTD. Membership in the CNELTD grew from about 20 members in June 2009 to approximately 84 members by the end of 2009.
11. At my request, our legal counsel sent a letter to all Nortel LTD Beneficiaries on January 15, 2010. Since then an additional 46 LTD Beneficiaries have contacted and joined the CNELTD, which now has 130 members (a number that continues to increase).
12. Since its establishment, members of the CNELTD have engaged in numerous projects and undertakings to assist in the plight of LTD Beneficiaries. We have done extensive research into Nortel’s decision to self-insure our income benefits, including benefit industry practices, tax implications, the historical documents and legal aspects of the matter. Our members have also met with politicians to lobby for legislative and policy

change, have broadcast information about our situation through the media, and we have created a database of information and documents relevant to our research.

13. From the outset, it has been the mandate of the CNELTD to protect the income and health benefits of the LTD Beneficiaries, as we learned very soon after the Initial Order was issued that both our income benefits and health benefits were in jeopardy by virtue of the insolvency proceedings. Many disabled employees were unaware that our disability income benefits were not insured. We discovered through our research and our discussions with Koskie Minsky LLP that Nortel provided our income benefits on a self-funded basis through a vehicle known as the Health and Welfare Trust ("HWT").
14. I contacted Koskie Minsky LLP in May of 2009 to determine whether they would provide legal representation to the LTD Beneficiaries. I was in regular communication with Koskie Minsky LLP through that period, as the LTD Beneficiaries were very concerned about the effect of Nortel's insolvency on them. It was ultimately agreed that Koskie Minsky LLP would represent us and would seek a representation order from the Court to that effect.
15. By the July 30, 2009 Representation Order, I was appointed as Representative of all LTD Beneficiaries, and Koskie Minsky LLP was appointed as Representative Counsel, subject to certain exceptions. Individuals who are not bound by the Representation Order are:
 - (a) Those LTD Beneficiaries who are employed and whose benefit or other payments arise directly or inferentially out of a Collective Agreement between the Applicants, or any of them, and the CAW; and
 - (b) Any individual LTD Beneficiary who did not wish to be bound by the Order and filed an opt-out notice with the Monitor by September 25, 2009.
16. Individuals who wished to opt-out of the Representation Order were required to do so within thirty days of the publication of the Notice of the Order. As indicated in paragraph 30 of the Monitor's Thirty-Ninth Report already filed with this Court in support of this motion, which I have reviewed, none of the LTD Beneficiaries opted-out

of representation by me and by Representative Counsel. Accordingly, I have the mandate and authority to represent the interests of an estimated 250 individuals.

17. The individuals who belonged to the CNE LTD organization at the time of the Representation Order were very pleased to have Koskie Minsky LLP appointed as our Representative Counsel, as we knew from our research that they had experience in this area of law. Additionally, we were glad to be represented as a separate group, rather than as a subgroup of the company's active employee group. Attached hereto as **Exhibit "B"** is a copy of the Representation Order dated July 22, 2009 appointing Representative Counsel on behalf of certain of Nortel's active employees.
18. As indicated in paragraph 3 of our Representation Order, the scope of my mandate is to represent all LTD Beneficiaries in the insolvency proceedings or any other proceeding which has been or may be brought before this Honourable Court, including, without limitation, for the purpose of settling or compromising claims by the LTD Beneficiaries in the insolvency proceedings. I take this significant responsibility very seriously.

ORGANIZATION AND COMMUNICATIONS

19. By the date of my appointment as Representative, I had already been very involved with the CNE LTD. I was responsible for communications, maintaining a database of LTD Beneficiaries joining the CNE LTD, sending information to members, and interfacing with Koskie Minsky LLP. I also participated with other CNE LTD members in meetings with politicians and media events, such as demonstrations. Following my appointment as Representative, I gathered together the key people who had been involved in the CNE LTD up to that point, to establish a working group to assist me in these activities and to ensure that the varying interests among the LTD Beneficiaries were being heard and addressed.
20. After July 30, 2009, on an informal basis, we started to regularly seek input from Koskie Minsky LLP as our counsel, to gather information about our situation and to seek guidance from our lawyers as to what steps we could take to improve our position.
21. I arranged for Susan Philpott and Andrea McKinnon of Koskie Minsky LLP to participate in a conference call with the CNE LTD members on August 18, 2009. The

CNELTD members then had an opportunity to listen to a Webinar presented by Koskie Minsky LLP on August 25, 2009. We held a meeting on August 28, 2009 with a number of members of our group and discussed different roles that individuals could take on.

22. We established a Legal Steering Committee which participated in periodic calls with Koskie Minsky LLP. We sent out a call for volunteers and from these volunteers, I selected the people I felt would work well together with each other, and with our Representative Counsel. Attached hereto as **Exhibit "C"** is a copy of the Call for Volunteers which was posted on our Yahoo! Group.
23. The CNETLD has had a communications structure in place since September 2009 through the CNETLD Yahoo! Group, and for several months before this date, certain LTD Beneficiaries communicated through the NNETLDS Yahoo! Group. Individuals on long term disability can join CNETLD group by sending an e-mail to CNETLD-Owner@yahoogroups.com. Membership in the group enabled individuals to partake in the e-mail communications that occurred within that group including the circulation of reports and answers to questions pertaining to the circumstances of the LTD Beneficiaries in Nortel's insolvency proceedings. As some LTD Beneficiaries did not wish to join the Yahoo! Group, we established a separate email mechanism to send them information of importance. We also communicate with other LTD Beneficiaries by telephone.
24. We also instructed our counsel to include information for the LTD Beneficiaries on their website. A special page was established on the Koskie Minsky LLP website tabbed "Information for Disabled Employees". We use that page as a means of communication with the members of the CNETLD and all other LTD Beneficiaries who have not joined the group. Anyone with internet access can access that page.
25. At the end of September, 2009 the CNETLD established a formal Legal Steering Committee to liaise regularly with counsel, seek their guidance, provide instructions and provide information to the LTD Beneficiaries group as a whole. The Legal Steering Committee was originally comprised of myself, Johanne Bérubé, Anne Clark-Stewart, Kevin Leblanc, Manon Gaudreau and Sylvain de Margerie, four of whom are bilingual.

Both Manon Gaudreau and Sylvain de Margerie have resigned from the Legal Steering Committee.

26. In addition, Anne Clark-Stewart, who is a Nortel pensioner and a member of the Political Action Committee of the Nortel Retiree and former employee Protection Canada ("NRPC") and who was a disabled employee of Nortel until shortly after the Initial Order was issued, also sits on the Legal Steering Committee. Ms. Clark Stewart fills a valuable role in providing us with information about the political and lobbying efforts of the NRPC and assisting with our own lobbying, and in providing a liaison with the NRPC.
27. The CNETLD and NRPC work together in many circumstances where our collaboration and coordination is advantageous to our constituencies.
28. The Legal Steering Committee participates in weekly teleconference calls with Representative Counsel and our actuarial advisors, the Segal Company. With the assistance of counsel, we prepare reports of those meetings and deliver periodic updates by e-mail to the CNETLD Yahoo! Group. The agendas of our conference calls with counsel and our actuaries are typically informed by the questions and inquiries that we receive from the LTD Beneficiaries.
29. The Legal Steering Committee receives a vast number of e-mail questions and inquiries about the status of the proceedings, the projects in which we are engaged, seeking status reports on the work of counsel, and raising possible legal actions that should be investigated. Despite our disabilities, Johanne, Anne and I spend many hours per day responding to e-mails, speaking with LTD Beneficiaries on the telephone, speaking with our counsel, coordinating with the members of the Legal Steering Committee, preparing presentations and reports and meeting with politicians. Johanne and Kevin are both bilingual.
30. In addition, information is also available to any LTD Beneficiary who wishes to access it through the Koskie Minsky LLP website or by leaving a message on the toll free number that is administered by Koskie Minsky LLP. Individuals can also contact me directly by e-mail (and regularly do) for any information they require.

31. There are approximately 391 LTD Beneficiaries, which include an estimated 100 members of the CAW. CAW members are represented by counsel for the CAW in these proceedings. I have been provided with a list of the individuals in our constituency by Nortel. We communicate with members of our constituency who have contacted us by telephone, email and through the Yahoo! Group and in doing so, keep them advised of all developments in the proceedings.

NATURE OF ISSUES AND CONCERNS OF THE LTD BENEFICIARIES

32. I have personally spoken with numerous LTD Beneficiaries and have had e-mail communications with many more. The range of illnesses, disabilities and medical conditions that exist among the LTD Beneficiaries are quite diverse.
33. In addition, the characteristics of the group in terms of their financial needs and their medical needs vary as well. Included in the group are single parents, individuals with spouses who work and have benefits coverage, individuals who are close to retirement or already qualify for retirement pension, those who are still very young and have no reasonable prospect of ever working again, and those who are highly dependent on costly prescription drugs and medical benefits. The common characteristic of the individuals in the group, however, is that they are all extremely anxious about their futures. They have no financial security or certainty and this is causing great anxiety among members of our group.
34. Many of the LTD Beneficiaries with whom I have spoken or from whom I have received e-mail communication were unaware and shocked about the uninsured nature of their disability income benefits and to learn that those benefits could disappear through Nortel's insolvency. It takes considerable time for people to accept that the benefits were not insured, and I have noticed that some individuals are unwilling to accept that they will receive a future reduction, in any amount, to their monthly income benefit payments. This has been and continues to be a constant source of discontent and disagreement within the CNELTD group.
35. The key concerns of the LTD Beneficiaries that have been articulated to me, and which I share, are as follows:

- a) **Income** – The LTD Beneficiaries want to know whether and for how long their disability income will continue, and from what source it will be paid. They want to know when it will stop and how much notice they will be provided of the cessation of payments because they require time to make other arrangements and plan for their financial futures.
- b) **Medical Benefits** – The LTD Beneficiaries want to know if their health plan will continue, whether they will be able to replace their medical benefits in some way at an affordable cost and whether they will be able to replace their life insurance once coverage by Nortel is terminated.

OUR BENEFITS SINCE THE CCAA FILING

- 36. I understand from counsel that in accordance with the Initial Order, Nortel was “entitled but not required” to make payment of outstanding and future wages, salaries and employee benefits, which specifically included medical benefit plans, and both current service and special payment contributions into the registered Pension Plans. In other words, Nortel could have terminated our income benefit payments at any time after January 14, 2009.
- 37. However, Nortel chose to continue paying and providing the LTD Beneficiaries with our health and medical benefits, to continue making our long term disability income payments out of the HWT, a trust vehicle Nortel uses as a mechanism to fund some of our benefits, and also to continue to make both current service contributions and special payment contributions into the registered Pension Plans.
- 38. The current structure of the HWT, the benefits relevant to the motion that are paid from it and its history, are described by the Monitor in paragraphs 45 through 52 of its Thirty-Ninth Report dated February 18, 2010 (the “Thirty-Ninth Report”), which I have reviewed. I have also reviewed the trust agreement, and amendments thereto³,

³ The Trust Agreement is more fully described at paragraph 46 of the Thirty-Ninth Report, and attached as Appendix “E” thereto.

establishing the HWT and understand from my counsel that based upon the documents and information that they have received, this description is accurate.

39. The HWT is the vehicle through which Nortel provided a Health and Welfare Plan to its employees and retirees. The Health and Welfare Plan included a health care plan, a management long term disability plan, a union long term disability plan, a management survivor income benefit plan, a management short term disability plan and a group life insurance plan. Certain employee benefits, including the income benefits for LTD Beneficiaries, in recent years, have been paid by the HWT with trust assets, whereas other employee benefits, including medical and dental benefits, have been funded by the Applicants on a pay-as-you-go basis, but paid through the HWT as an administrative matter.
40. There was fear among our group that our medical benefits and our monthly income benefits would be discontinued, or worse, that they would be discontinued without notice. This concerned me, and other LTD Beneficiaries who contact me regularly, as we are dependent on these plans to pay for prescription drugs, dental and other health related benefits. The LTD Beneficiaries have significant medical needs in this regard.

CNELTD EFFORTS SINCE REPRESENTATION ORDER

Maximize Replacement of LTD Income

41. One of the main concerns of the LTD Beneficiaries has been their financial security in the future. With this in mind, I and other members of the Legal Steering Committee and members of the CNELTD at large, have explored as many avenues as we can think of to find ways to replace as much of our disability income as possible, knowing that at some point in the not-to-distant future, our disability income payments from Nortel will cease. Accordingly, with the guidance and advice of our counsel at Koskie Minsky LLP, we have explored the following:

(a) HWT – Payment of Assets to the LTD Beneficiaries

We learned from the Thirty-Second Report of the Monitor dated November 30, 2009, that the assets in the HWT had a market value of approximately \$84 million (see

paragraph 19). We have made it a priority to ensure that the LTD Beneficiaries would receive the largest portion of those assets to which we could reasonably claim entitlement. Our counsel, with our input, has been engaged in discussions about the allocation and distribution of the assets in the HWT since early October of 2009. As described in the Thirty-Ninth Report, the Settlement Agreement provides that the Settlement Parties will work towards a court-approved distribution of the HWT in 2010 to its beneficiaries entitled thereto, and to resolve any issues related to this distribution.

With the relief provided by the Settlement Agreement, I understand from our counsel that the objective is to be in a position to have a lump sum distribution from the HWT to the LTD members before our income payments from Nortel cease on December 31, 2010. I have asked our actuaries to calculate roughly what percentage of the future value of our disability income would be paid to us from the HWT assuming that the trust assets are divided pro-rata to the liabilities. I have been advised that although we are still awaiting 2009 numbers, we can expect that there will be a lump sum payment which will be equivalent to a sizeable percentage of the value of our future payments. Attached hereto as **Exhibit "D"** is a copy of an unofficial memorandum prepared by our actuary, Segal Company, delivered to our legal counsel on February 23, 2010.

We are also exploring the most tax effective way of distributing those assets to LTD Beneficiaries and will seek a tax ruling to ensure as tax-effective a distribution as possible.

(b) HWT – Preservation of Assets

Recognizing that the continued payment of our disability income from the HWT was depleting assets that belonged to us in any event, we raised this concern with counsel, and sought ways to have our disability income payments made by Nortel directly rather than from the HWT. The Settlement Agreement achieves that goal for a significant period of twelve (12) months. I am advised by my counsel that this change in payment, if Court approved, will apply retroactively, starting at January 1, 2010.

(c) Making a Claim against Nortel for Negligent Misrepresentation

One of the causes of action that we asked our counsel to explore was the possibility of a negligent misrepresentation claim. Many of our constituents wanted to see such a claim launched, however, our counsel were quite clear that no advantage would be gained by such a claim because Nortel is currently under Court protection and no lawsuits can be made against Nortel while it is under the protection of a stay of proceedings. Nortel will not emerge from Court protection as a viable entity, against which the LTD Beneficiaries could make a claim for the loss in our benefits. In any event, our claim against Nortel for 100% of the loss of our disability income benefits will be made in the claims process.

(d) Making a Claim against Nortel for Failing to Fund the HWT

We also asked our counsel to explore the possibility of suing Nortel for failing to fully fund the HWT and, in particular, failing to remit monies to the HWT sufficient to pay 100% of our disability income.

Again, many of our members urged us to make such a claim, however, our counsel advised us that (i) there was no statutory obligation under the terms of the Trust Agreement which required Nortel to fund in full the HWT benefits, and (ii) no advantage would be gained in any event by such a claim because Nortel is currently under Court protection, no lawsuits can be made against Nortel while it is under the protection of a stay of proceedings, Nortel will not emerge from Court protection as a viable entity, and our claim against Nortel for 100% of the loss of our disability income benefits will be made in the claims process in any event.

(e) Making a Claim against Nortel's Directors

The Legal Steering Committee asked our counsel to evaluate the viability of a claim against Nortel's directors for Nortel's decision to self-insure the LTD program, a claim for negligent misrepresentation by Nortel's directors, a claim against Nortel's directors for failing to ensure that the LTD program was fully funded, and any other possible claim we could make against the directors. We were advised that there are very strict limitations on the kinds of claims that can be made against directors of a corporation.

Our counsel reviewed the documentation pertaining to the HWT and the LTD program including the summary benefits booklets and other communications that were provided to Nortel employees. They also reviewed the applicable case law and statutory provisions. Based on the evidence that was available, our counsel advised us that any claim that could be made against the directors of Nortel would be risky, costly, lengthy and without any guarantee of success.

(f) Making a Claim against the Trustee of the HWT for Failing to Ensure that Nortel Fully Funded the LTD Program

The Trustee of the HWT has responsibility for undertaking actuarial calculations for the benefits to be paid under the health benefit programs in the HWT, but no obligation to pay them. Only Nortel is obliged to pay them and there is no clear obligation on the Trustee to enforce payment. We have been advised by counsel that actuarial calculations for accounting purposes were prepared for accounting purposes by Mercer, the actuaries for the plans, not the Trustee. Further, the Trust Agreement precludes legal action by trust beneficiaries against the Trustee. Any claim against the Trustee is therefore risky and uncertain, both as to liability of the Trustee and any damages that might result.

In summary, like many of our members, the Steering Committee also wished that we could find a way to end up with a greater percentage of our actuarial values. However, we understood that to pursue the lawsuits outlined above in these circumstances would just prolong the process, use up additional funds from Nortel's estate for legal fees, and possibly would lead to the cessation of our medical and income benefits. If this course was taken, we may have had to wait years to receive a distribution in respect to our claims against Nortel, and most disabled employees could not afford to take this chance. We felt that the responsible decision was to rely on the advice of our legal counsel and our actuarial advisors, rather than to proceed with what possibly could be prolonged and risky litigation.

(g) Lobbying

The CNELTD has also been very active politically and has approached various levels of government to request legislative reforms that would offer protection for the

vulnerable members of our group. One initiative is to elevate uninsured disability income benefits to preferred status in any insolvency proceedings. The other is to eliminate the ability of companies to "self-insure" their disability income programs or, if they do self-insure, to ensure that their programs are fully funded. Regardless, the latter request for legislative reforms would not benefit our group.

Ensure Replacement of Health Benefits

42. The second major concern of the LTD Beneficiaries is that they have access to continued prescription drug and other medical and dental benefits coverage. As I have explained, the LTD Beneficiaries are particularly vulnerable and dependent on their medical and drug coverage. Many have prescription drugs costs of thousands of dollars per month and without benefits coverage, would become more ill, and potentially die, and would be required to rely on the mercy of government programs.
43. Over the past year the CNE LTD, with the help of Representative Counsel, has fought hard to keep medical, dental and life insurance benefits intact.
44. The CNE LTD and the NRPC have formed a joint committee, which includes members of both the CNE LTD and the NRPC to explore alternative solutions that would allow some form of replacement benefit coverage to continue once Nortel no longer exists as a company and the HWT is wound up. We have joined with the NRPC in this project because we have been advised that the sheer size of that group will assist in making a plan attractive and viable, and without the pensioners, the LTD Beneficiaries alone might not be in a position to secure benefits coverage.
45. With the help of our actuaries at the Segal Company, our legal counsel, Nortel's benefits personnel, actuaries and consultants at Mercer and the existing benefits administrator, Sun Life, the committee is exploring funding options, and whether there are viable benefit plan options which suit the varied needs of the constituencies. These explorations are still at a preliminary stage but I expect that the work of the joint committee will accelerate in the coming months if the Settlement Agreement is approved, as we will not be distracted by the uncertainty of our benefits continuation in the short term.

OPPOSITION TO CNETLD

46. Shortly after the CNETLD Legal Steering Committee was struck, a dissident group of LTD Beneficiaries formed, who, among other things, were unhappy with the way that the members of the Legal Steering Committee were selected. At various times since then, these individuals have sought to replace me as the Court-appointed Representative (but have never taken formal steps to do so), have insisted they be permitted to access the confidential information disclosed to me and counsel under a non-disclosure agreement, have refused to follow the civility protocols put in place for communications on the CNETLD Yahoo! Group, and have written abusive and harassing emails to me, other members of the Legal Steering Committee and our counsel.
47. Johanne Bérubé is the group owner and moderator of the CNETLD Yahoo! Group. The moderator controls the flow of messages among the members of the group. When emails from certain members became aggressive, threatening and hostile, the Legal Steering Committee instituted a moderating policy whereby all messages were first reviewed to ensure they met a standard of ordinary civility. Messages which did not meet such a standard were not allowed on the site by the moderator and one member was removed. That way the members of the CNETLD who were content with my representation and that of Representative Counsel were not unnecessarily exposed to the hateful communications. I must be clear, however, that I have not stopped responding to the communications and questions in those uncirculated emails. Johanne Bérubé and I conscientiously respond, to the best that we are able, to all of the inquiries that are sent to us. We also ensure that important messages are forwarded to members' email addresses whether or not they are members of the Yahoo group.
48. Most recently, these individuals wrote to Koskie Minsky LLP and a copy of their letter and the reply from counsel is attached hereto as **Exhibit "E"**. Counsel's response is attached.

49. There have been a number of individuals who have communicated to me their opposition to the Settlement Agreement, however, the majority of those who contacted me have been in support of the agreement.

THE SETTLEMENT AGREEMENT

General

50. Efforts of the CNELTD in conjunction with the NRPC have ultimately resulted in the Settlement Agreement that is the subject of this motion. I agreed to the terms of the Settlement Agreement, which was executed on February 8, 2010, following weeks of intensive negotiations by Representative Counsel with the Monitor, the Company, the CAW, the bondholder group and the Unsecured Creditors Committee from the U.S. insolvency proceedings. We were guided in those negotiations by our counsel.
51. The terms of the Settlement Agreement which was ultimately reached have been described by the Monitor in its Thirty-Ninth Report and in paragraph 19 of the King Affidavit. I have reviewed both of these documents and substantially agree with the description of the Settlement Agreement contained therein.

Negotiation of the Settlement Agreement

52. In December 2009, our concern about the future of our disability income, and our health, medical and life insurance benefits increased. We became aware, through discussions with our legal and financial advisors, that there was limited cash flow within the Canadian estate and that a new funding agreement (the "Funding Agreement") was being negotiated to fund Canadian operations through 2010 and beyond. We were uncertain how long the company planned to continue paying for our income and benefits, and were worried that our group's benefits might cease without notice.
53. We were eventually advised that the proposed Funding Agreement ensured the funding of our benefits and the Pension Plans only through to the end of Q1 of 2010. This was unacceptable to us.

54. On January 6, 2010, Representative Counsel, on behalf of both the CNELTD and the NRPC, sent correspondence to a representative of the Monitor, the Monitor's counsel and counsel for Nortel, which explained our discontent with the Funding Agreement in that it provided only for the funding of pension and benefits to March 31, 2010. In that letter our counsel indicated that we would object to the Funding Agreement unless there were some provisions made for the following:
- a) health benefits;
 - b) pension funding;
 - c) payment of long-term disability and SIB income benefits directly by the company; and
 - d) provision for some minimum standards payment for those of our constituency whose employment with Nortel had been terminated without pay. Attached at **Exhibit "F"** is a copy of our counsel's letter dated January 6, 2010.
55. Subsequent to the date of that letter, Representative Counsel entered into negotiations with the Monitor, the company and various other parties concerning our pensions and benefits. I am advised by our counsel that these negotiations were extensive, and took place during various meetings with the company and Monitor, and also in separate meetings with other creditor groups.
56. Despite all parties' good faith negotiations and our best efforts to reach an agreement, there was no settlement agreement reached by January 21, 2010, the date scheduled for the court approval of the Funding Agreement.
57. Representative Counsel attended at the January 21, 2010 hearing to inform the Court that there were ongoing negotiations concerning our benefits. Our counsel insisted that if an Order approving the Funding Agreement was issued on that date, it should include a provision that the approval of the Funding Agreement would not preclude interested parties from seeking relief with respect to the payment of our benefits post-March 31, 2010. Further, our counsel requested that a clause be inserted in the Order to ensure that the Court would in no way be precluded from ordering such relief in the future. Paragraph 17 of the Order dated January 21, 2010 reflects this relief. Paragraph 18

further orders the Monitor to report to the Court on or before January 29, 2010 to advise on the status of the ongoing negotiations.

58. Negotiations continued after the January 21 hearing, and the Settlement Agreement was executed on February 8, 2010.
59. Throughout the negotiations, the inclusion of Clause H.2 in the Settlement Agreement remained critical to me and the Representatives of the Former Employees. The inclusion of this clause would ensure that if future amendments were made to the BIA that were favourable to our group, we would maintain the right to assert that such provisions would apply to our constituency. This clause was imperative to our group, given the lobbying efforts of the CNELTD to date.
60. In the end, I signed a Settlement Agreement with the company and the Monitor that did include clause H.2. When negotiations concluded and the Settlement Agreement had been executed, I was satisfied that we had achieved a good result, and the best outcome obtainable in the circumstances. Essentially, we traded away the right to file risky and uncertain litigation and the right to argue that the LTD Beneficiaries should be in a separate class or have priority in any CCAA Plan, for guaranteed money and benefits for a one year period, while we sort out our futures. We did not give up our claims to the assets in the HWT, our claims against Nortel in the CCAA proceedings, or the rights of the LTD Beneficiaries to object to any CCAA Plan. Attached as **Exhibit "G"** is a chart, in both French and English, that sets out the features of the Settlement Agreement versus rights if the Settlement Agreement is rejected by the Court.

Notice Procedure for the Settlement Agreement

61. Concurrent with the negotiations which resulted in the Settlement Agreement, I was consulted by our counsel about the best ways to provide the LTD Beneficiaries with appropriate notice of the Settlement Agreement, and an opportunity to voice their opinion on its appropriateness.
62. While we were confident that we could reach our CNELTD membership base quite easily through the Yahoo! Groups communication tool, personal emails and in a few cases via phone, we were more concerned with those who we have not been in close

contact with. After some discussion, we agreed that the Notice Procedure, which is outlined in paragraphs 27 through 46 of the Thirty Sixth Report and was approved by this Court on February 9, 2010, provides the members of our constituency with adequate notice and time to review and assess the Settlement Agreement, and to appear in Court and oppose the Settlement Agreement on March 3, 2010, if they wish to do so.

63. All of the members of the Legal Steering Committee reviewed and had input on the Notice Letter that was sent to, among others, each LTD Beneficiary and Former Employee of Nortel.
64. In order to ensure that all individuals are provided with full and accurate information of the Settlement Agreement, the Legal Steering Committee also engaged in a process to generate a set of frequently asked questions, and had our counsel provide responses, all of which have been posted on the website of Koskie Minsky LLP.
65. In addition, the Legal Steering Committee ensured that our Representative Counsel had an active toll-free hotline whereby individuals who do not have access to the internet were able to call and speak to Representative Counsel, or to be directed to a representative of the CNELTD, in order to obtain answers to their questions and concerns about the Settlement Agreement.
66. I, along with the court-appointed Representatives for the Former Employees, held a webcast information session on February 23, 2010. A dial-in audio-only option was available for individuals who did not have access to the internet and there was French translation available.

Benefits of the Settlement Agreement

67. Over the past year, I have come to the realization that Nortel is insolvent and is winding up its business. The company's cessation of the payment of our medical benefits, the discontinuation of our disability income payments, and the transfer of the administration of the Pension Plans is inevitable. These are very unfortunate circumstances. My constituency will suffer significant losses as a result of Nortel's insolvency. I see it as my responsibility to ensure that all available steps to minimize the harm suffered by our constituency are taken, and to seek solutions for the future.

68. From the perspective of the LTD Beneficiaries, the Settlement Agreement provides much-needed certainty and security for 2010. We will continue to receive our disability income and health and medical benefits through 2010 at 100% of current levels. This gives us time to plan for the future and structure our financial arrangements to the extent possible for the time when we know that we will not have 100% of our income and benefits.
69. After canvassing my constituency and engaging in many discussions with interested parties, I have concluded that in the circumstances, the Settlement Agreement represents a fair and reasonable one-year solution for the payment of our disability income and the continuation of our health benefits and in coming to that conclusion I have weighed the concessions we were asked to make. Individuals in our group, for the most part, do not have any other source of income or ability to replace the benefits they receive from Nortel.
70. LTD Beneficiaries will also receive their customary medical benefits through 2010. I am advised by my counsel that the Funding Agreement does not provide for our benefits after March 31, 2010, and there is nothing to require that these benefits continue after March 31, 2010 if the Settlement Agreement is not approved. Many of these people rely heavily on these benefits and continuing them for an additional nine months is critical for them.
71. As I discussed above, Nortel is not obligated to continue the payment of our medical and dental benefits and is able to cut off these payments at any time. Prior to the approval of the Funding Agreement, in January 2010, we were informed by our legal counsel and financial advisors that provisions for our continued benefits were only in the cash flow until March 31, 2010. Our success in securing payments until December 31, 2010 not only provides our constituency with an additional nine months of coverage, it also provides us with additional time to seek alternative replacement benefit coverage.
72. Another key benefit of the Settlement Agreement is that our income will come from Nortel directly through the Company's cash flow for 2010, and not from the HWT, thus preserving those assets as much as possible for the future distribution.

73. I am advised by our actuaries that the \$12.2 million in LTD income payments that will be paid directly by Nortel in 2010 represent approximately 12% of the present value of our claims.
74. I have also been advised by our actuary that based on the existing assets in the HWT and a calculation of the existing obligations of the HWT as at December 31, 2009, a *pro rata* distribution of those assets would provide the LTD Beneficiaries with an approximate 30% of the present value of their LTD income benefits, which produces a higher aggregate recovery when added to future payments. We will also, of course, have a claim against the Nortel Estate for the balance of the value of our LTD income benefits which we know will be paid out at something less than 100% (see our actuaries' memorandum attached at **Exhibit "D"**).
75. The Settlement Agreement will see current service contributions to the Pension Plans continue until September 30, 2010 and special payments will continue to be paid until March 31, 2010. More importantly, the Settlement Agreement provides certainty that Nortel will continue to administer the Pension Plans until September 30, 2010 and that there will be no wind up of the plans before that date.
76. Because of this extension of payments, LTD Beneficiaries will also have their pension accruals continue until at least September 30, 2010, or, if the Pension Plans are not wound up at that time, until December 31, 2010, on which date their employment with Nortel will be terminated. To the extent that they have an entitlement to the continuation of those pension accruals past December 31, 2010, a claim against Nortel in the insolvency proceedings will be made on their behalf.
77. Finally, in order to ensure that the promised payments are made by Nortel, all amounts are secured by a \$57 million charge on the estate, which survives a bankruptcy.

Quid Pro Quo of the Settlement Agreement

78. The Representative and the CNELTD have been involved in many discussions with our Representative Counsel and our constituency. Based on everything I have seen, it is my understanding that the Settlement Agreement can essentially be distilled down to

this: in exchange for security and certainty of our benefits through 2010, we were required to give up rights to future, risky and uncertain litigation.

79. Since the announcement of the Settlement Agreement, the CNELTD has been contacted about the reasons for our release of certain claims. For example, if the signed Settlement Agreement is approved by the Court, it will mean that the LTD Beneficiaries and the Former Employees have done the following:

- a) Acknowledged that all claims made in respect of the Pension Plans or the HWT will be unsecured claims, and will rank as unsecured claims on equal footing with all other unsecured creditors, subject to Clause H.2 of the Settlement Agreement, described further below;
- b) Released all Releasees, which includes directors, trustees and other parties listed in the defined term (see Schedule A), from claims in respect of the HWT and Pension Plans. However, there has been no release of any claim for fraud, and no release against any director for matters concerning misrepresentation or anything else referred to in subsection 5.1(2) of the CCAA;
- c) Acknowledged that LTD Beneficiaries and the Former Employees will not be placed in a separate classification for the purposes of a CCAA Plan of Arrangement, and will be treated as unsecured creditors in terms of distribution, in any future CCAA Plan of Arrangement; and
- d) Agreed that the LTD Beneficiaries and Former Employees will not object to the employee incentive program approved for 2010, provided the Monitor is of the view that the payments are reasonable.

80. The CNELTD Legal Steering Committee, along with the input of our advisors and many others, has discussed these concerns at length. I will address each in turn.

A. Ranking as Unsecured Claim

81. Our acknowledgement that all claims in respect of the Pension Plans or the HWT will rank as unsecured claims means that when it comes time for a distribution of Nortel's estate, we will rank as unsecured creditors and on equal footing with all other

unsecured creditors, subject to clause H.2 of the Settlement Agreement. I have been advised by my legal counsel that this position is consistent with the law and that pension claims are treated as unsecured claims and offered no priority status in a bankruptcy scenario. If we insisted on using our numbers to block a CCAA Plan of Arrangement that did not give us priority, other creditors could easily petition the Applicants into bankruptcy, where there is no priority under the BIA.

82. Clause H.2 of the agreement caused concern for the CNE LTD. It was very important to the CNE LTD and its membership to limit this clause to provide that in the event there is ever an amendment to the BIA giving the LTD Beneficiaries preferred status under the BIA, and that Nortel at the time of the distribution has moved into proceedings under the BIA, we maintained our right to argue that any amendment providing priority should apply to us. We were successful at achieving the inclusion of Clause H.2 in the Settlement Agreement.

B. Releases Against the Company, Directors and Trustee

83. The releases of the Pension Claimants simply means that we have agreed not to pursue claims based on the administration or funding of the Pension Plans against Nortel or its directors and officers or members of the Pension Plan' Committees, or any claims against the trustee of the HWT and Nortel's directors and officers (subject to section 5.1(2) of the CCAA).
84. Essentially, we are giving up the right to pursue risky, costly and very uncertain litigation, which would require evidence of misconduct on the part of these individuals or entities. We have expressly preserved the right to pursue claims with respect to allegations of fraud or misrepresentation. We have not given up that right.
85. Our counsel, actuaries and financial advisors have closely examined documentation pertaining to the Pension Plans and the HWT. I have been advised that any claims against the directors for failing to properly fund the Pension Plans are unlikely to succeed. I have also been advised that claims against the directors for failing to fund the HWT are risky and could take years to resolve without any guarantee of success. There is no evidence of any representation or statement by the directors that would

make them personally liable. However, misrepresentation and fraud claims are excluded from the release.

86. Our counsel have further advised us that any claim against the Trustee for failure of Nortel to adequately fund the HWT benefits is risky and unlikely to result in any significant recovery. Nothing in the trust document makes the Trustee personally responsible for funding the benefits, and the document precludes beneficiary claims against the Trustee.

C. Classification for the Purposes of the Plan

87. With respect to the agreement to be classified in the same group with other unsecured creditors, I am advised by my counsel that this means that LTD Beneficiaries and Former Employees will be placed in the same classification, for voting purposes of a CCAA Plan, as other unsecured creditors. Additionally, we will be entitled to distribution in the same proportion as all other unsecured creditors.
88. It is my understanding that the inclusion of this clause in the Settlement Agreement does not mean that the Court-appointed Representative, the LTD Beneficiaries, or the Representative on behalf of the LTD Beneficiaries, are not entitled to vote on any future Plan of Arrangement. It simply means that we cannot be treated differentially from other unsecured creditors.

D. Agreement not to Challenge 2010 Employee Incentive Programs

89. With respect to our agreement not to challenge the employee incentive programs for 2010, it is through the Monitor, who is involved in the review and assessment of the appropriateness of these payments, that the LTD Beneficiaries and other Canadian creditors have input. We rely on the Monitor as a court-appointed officer to ensure that all incentive payments are reasonable and necessary.
90. Further, we have been advised by our legal and financial counsel that the majority of the monies to be paid in bonuses in 2010 will be paid to eligible employees by the purchasers of Nortel's assets, not by Nortel, thus having little impact on our constituency.

E. Supreme Court of Canada Litigation

91. Finally, in recognition of the priority payments that eligible terminated employees would be entitled to receive from the Termination Fund, we have agreed to abandon the litigation that currently is pending at the Supreme Court of Canada. Again, by giving up this right, we are avoiding uncertain and costly litigation in favour of a payout of funds that is certain, and is payable within a reasonable time frame.

Conclusion

92. I have had a number of discussions with our legal counsel about the benefits of the Settlement Agreement in comparison to the releases of rights that we have agreed to in the agreement. I have had many discussions with our counsel, advisors and the Legal Steering Committee, about the impact the releases of claims against Nortel's directors and the Trustee of the HWT will have on the LTD Beneficiaries. I am advised, and I believe, that all we have given up is the opportunity to file difficult and risky law suits against those individuals and entities, that I am told may easily result in no recovery or a recovery that is less than the benefits attainable under the Settlement Agreement, and which will take years of litigation to resolve. I am advised that the LTD Beneficiaries maintain all valid claims against the assets in the HWT and the Nortel estate.
93. There have been a number of LTD Beneficiaries who have voiced concerns with me about giving up the right to commence a human rights claim against Nortel, and about releasing the right to appeal for fairness in the company's CCAA proceedings. I have discussed these issues with my Representative Counsel. I am advised that any human rights claim likely would take years to resolve and ultimately is just a claim against Nortel, which is insolvent and likely will no longer exist once these proceedings are completed. I am further advised that we have not given up the right to argue fairness at any future sanction hearing in the CCAA proceedings.
94. In assessing the merits of the Settlement Agreement, I, along with the help of the Legal Steering Committee, have canvassed and taken into consideration the interests of a wide cross-section of our constituency. We engaged in many lengthy discussions to assess the advantages and disadvantages of the Settlement Agreement. After careful

consideration and many discussions with our advisors and constituency, I, as Court-appointed Representative, and CNELTD fully support the Settlement Agreement. The Settlement Agreement provides the LTD Beneficiaries with a reasonable outcome, and the best outcome we were able to achieve, given the circumstances.

95. I make this Affidavit in good faith and in support of this motion to approve the Settlement Agreement dated February 8, 2010 and for no improper purpose.

SWORNBEFORE ME at the City of
Toronto, in the province of Ontario, on
February 23, 2010


Commissioner for Taking Affidavits


SUSAN KENNEDY