FORM 4F

Courts of Justice Act

AMENDED NOTICE OF CONSTITUTIONAL QUESTION

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)

AMENDED NOTICE OF CONSTITUTIONAL QUESTION
JENNIFER HOLLEY, APPLICANT
(Pursuant to Section 109 of Courts of Justice Act, RSO 1990, c C.43)

Date: May 18, 2017

Jennifer Holley
Nortel CCAA LTD Creditor
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Self-Represented

Jennifer Holley intends to question under S. 52(1) of the *Charter of Rights and Freedoms* the constitutional validity, in respect to court orders of representation and settlements affecting every individual having mental or physical disability, made under the following Federal Act Sections:

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.

This Amended Notice of Constitutional Question amends the Notice of Constitutional Question provided to the Attorney General of Canada and Attorney General of Ontario dated Feb. 27, 2017, which did not contain the details on the dates for consideration by the Supreme Court of Canada of this Constitutional Question. These details are now available.

The Constitutional Question is to be argued in writing within the Supreme Court of Canada Case # 37562, Application for Leave to Appeal to the Supreme Court of Canada, Jennifer Holley, Applicant. The Registrar at the Supreme Court of Canada, 301 Wellington Street, Ottawa, Ontario, K1A 0J1, reception@scc-csc.gc.ca has accepted, by way of the attached March 16, 2017 letter to Jennifer Holley, the filing of the Application. The Registrar at the Supreme Court of Canada has provided, by cc: of this letter to respondents, this "Note to respondents: If you intend to submit a response, it must be served and filed within 30 days of the date of this letter."

TO:

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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 **Reasons of Ontario Superior Court of Justice – Sanction - Jan. 30, 2017** say 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 on Feb. 14, 2017 a Motion for Leave to Appeal of the J. Newbould 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 Court of Appeal of Ontario dismissed the Leave to Appeal on March 13, 2017 for three reasons, including Pt [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 …"

8. Below are all the relevant court decisions and filings:

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

LOWER COURT REASONS AND JUDGMENTS SUBMITTED TO SUPREME COURT OF CANADA		
A.	**Reasons of Ontario Superior Court of Justice – Sanction - Jan. 30, 2017**	
B.	**Order of Ontario Superior Court of Justice - Sanction - Jan. 24, 2017**	**Added**
C.	**Reasons of Court of Appeal of Ontario – Sanction - March 13, 2017**	**Added**
D.	**Order of Court of Appeal of Ontario - Sanction – March 13, 2017**	**Added**
E.	**Order of Ontario Superior Court of Justice - Waiver and LTD Reserve - May 1, 2017**	**Added**
F.	**Order of Ontario Superior Court of Justice - Representative Order – July 30, 2009**	**Added**
G.	**Order of Ontario Superior Court of Justice - Interim Settlement - March 31, 2010**	**Added**
H.	**Reasons of Court of Appeal of Ontario - Interim Settlement - June 3, 2010**	**Added**

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

Holley Application for Leave to Appeal to Supreme Court May 8, 2017 - Revised

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. Court order of the Nortel Final Plan, combined with the 2009 Representative Counsel Order and the 2010 Revised Interim Settlement Agreement Order, 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 of **Affidavit Diane Urquhart Jan. 12, 2017.**

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.of **Affidavit Diane Urquhart Jan. 12, 2017.**

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 of **Affidavit Diane Urquhart Jan. 12, 2017.**

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 of **Affidavit Diane Urquhart Jan. 12, 2017.**

i) 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 Factums of the Monitor & Debtors and the Court Appointed Representatives with reference to cases in their Books of Authorities.

14. The Application for Leave to Appeal, Jennifer Holley Applicant, 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' 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.

15. 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.

(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.)