

**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*

*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 follow<sup>1</sup>. 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

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

Gross in the U.S. Bankruptcy Court was appealed by the U.S. interests to the 3<sup>rd</sup> 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.

[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**

- (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.



[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;



- (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.



[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

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.



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.<sup>2</sup>

[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.

  
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Newbould J.

**Date:** January 30, 2017

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<sup>2</sup> 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.