

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

BETWEEN:

JENNIFER HOLLEY

APPLICANT
(Appellant on Appeal)

-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, ERNEST & YOUNG INC. IN ITS CAPACITY AS A MONITOR, OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC. AND THE OTHER U.S. DEBTORS, 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
(Respondents on Appeal)

JOINT RESPONSE TO THE APPLICATION FOR LEAVE TO APPEAL

FILED BY THE RESPONDENTS, NORTEL NETWORKS INC. AND THE OTHER U.S. DEBTORS,
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC. AND THE
OTHER U.S. DEBTORS, AND THE AD HOC GROUP OF BONDHOLDERS
PURSUANT TO RULE 27 OF THE *RULES OF THE SUPREME COURT OF CANADA*

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RESPONDENTS
(Respondents on Appeal)

COUNSEL CERTIFICATE, FORM 23A

FILED BY COUNSEL FOR THE NORTEL NETWORKS INC. AND THE OTHER U.S. DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF NORTEL NETWORKS INC. AND THE OTHER U.S. DEBTORS, AND THE AD HOC GROUP OF BONDHOLDERS
PURSUANT TO RULE 23 OF THE *RULES OF THE SUPREME COURT OF CANADA*

The undersigned counsel for the Respondents hereby certify that the following information is complete and accurate:

- (1) Is there a sealing or confidentiality order from a lower court or the Court in effect No in the file?
- (2) Is there a ban on the publication of evidence or the names or identity of a party No or witness under an order in effect in the file or under legislation?
- (3) Is there information in the file that is classified as confidential under legislation? No
- (4) Is there a restriction on public access to information in the file in a lower court? No

(5) May the full names of individuals named in the style of cause be published?

Yes

Dated at Toronto, Ontario this 18th day of May, 2017.



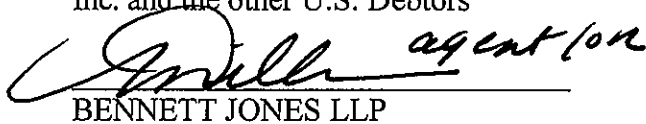
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 PURSUANT TO RULE 14 OF THE *RULES OF THE SUPREME COURT OF CANADA*

TAKE NOTICE that the following corporations, being Nortel Networks Inc. and the Other U.S. Debtors, certify that they do not have a bilingual name:

Nortel Networks Inc. (formerly Northern Telecom International)

Nortel Networks Capital Corporation,

Nortel Altsystems Inc.

Nortel Altsystems International Inc.

Xros, Inc.

Sonoma Systems

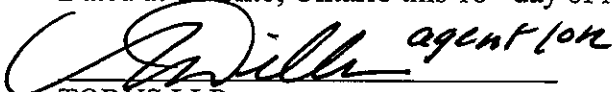
Qtera Corporation

CoreTek, Inc.
 Nortel Networks Applications Management Solutions Inc.
 Nortel Networks Optical Components Inc.
 Nortel Networks HPOCS Inc.
 Architel Systems (U.S.) Corporation
 Nortel Networks International Inc.
 Northern Telecom International Inc.
 Nortel Networks Cable Solutions Inc.
 Nortel Networks (CALA) Inc.

AND TAKE NOTICE that The Official Committee of Unsecured Creditors of Nortel Networks Inc. and the Other U.S. Debtors certifies that it does not have a bilingual name.

AND TAKE NOTICE that The Ad Hoc Group of Bondholders certifies that it does not have a bilingual name.

Dated at Toronto, Ontario this 18th day of May, 2017.



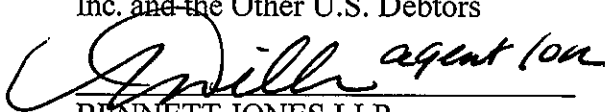
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FORMER EMPLOYEES AND DISABLED EMPLOYEES COURT APPOINTED
REPRESENTATIVES, NORTEL CANADIAN CONTINUING EMPLOYEES COURT
APPOINTED REPRESENTATIVES**

Respondents

**JOINT MEMORANDUM OF ARGUMENT OF THE RESPONDENTS,
NORTEL NETWORKS INC. AND THE OTHER U.S. DEBTORS,
THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND OTHER U.S.
DEBTORS, AND THE AD HOC GROUP OF BONDHOLDERS**
Rule 27 of the Rules of the Supreme Court of Canada

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PART I – OVERVIEW OF POSITION AND FACTS

A. Overview

1. Nortel Networks Inc. and its affiliated debtors¹ (the “U.S. Debtors”), the Official Committee of Unsecured Creditors of the U.S. Debtors (the “Official Committee”) and the Ad Hoc Group of Bondholders (the “Bondholders”, together with the U.S. Debtors and the Official Committee, the “U.S. Interests”) oppose the application brought by Ms. Jennifer Holley (the “Leave Applicant”) for leave to appeal from the denial of leave by the Court of Appeal for Ontario in connection with the LTD Objectors² proposed appeal of the orders made by the Ontario Superior Court of Justice (Commercial List) (the “CCAA Court”) to sanction the Canadian Debtors³ CCAA Plan⁴ and approve escrow arrangements in connection therewith. For the purposes of this application, the U.S. Interests adopt and repeat the facts and argument set out in the Memorandum of Argument of the Respondent, Ernst & Young Inc., in its capacity as the Monitor of the Canadian Debtors (the “Monitor”). What follows is a supplement to the facts and argument of the Monitor.

2. For the sole purpose of permitting the CCAA Plan and the U.S. Debtors’ chapter 11 plan (which were cross-conditional on each other) to become effective and to permit distributions to be made to creditors in partial satisfaction of their claims, funds in the amount of \$44 million

¹ The U.S. Debtors are Nortel Networks Inc., Nortel Networks Capital Corporation, Nortel Altsystems Inc., Nortel Altsystems International Inc., Xros, Inc., Sonoma Systems, Qtera Corporation, CoreTek, Inc., Nortel Networks Applications Management Solutions Inc., Nortel Networks Optical Components Inc., Nortel Networks HPOCS Inc., Architel Systems (U.S.) Corporation, Nortel Networks International Inc., Northern Telecom International Inc., Nortel Networks Cable Solutions Inc., Nortel Networks (CALA) Inc. and Nortel Networks India International Inc.

² The LTD Objectors are Ms. Holley and Mr. Greg McAvoy.

³ The Canadian Debtors are Nortel Networks Corporation (“NNC”), 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. The term “Canadian Estate” is also used to refer to the Canadian Debtors.

⁴ The CCAA Plan is the Plan of Compromise and Arrangement pursuant to the *Companies’ Creditors Arrangement Act* (the “CCAA”) concerning, affecting and involving the Canadian Debtors.

were escrowed pursuant to the Waiver and Reserve Agreement⁵ pending the resolution of this application and any appeal. Accordingly, creditors will be delayed in receiving their full *pari passu, pro rata* entitlements under the CCAA Plan, including their respective shares of the escrowed funds, until at least such time as this application and any appeal are resolved. The Waiver and Reserve Agreement and the CCAA Court's Order approving it expressly reserved all of the parties' rights to continue to oppose any leave to appeal or appeal to this Court by the LTD Objectors and to otherwise challenge any claimed entitlement for payment or distribution from the Canadian Estate beyond *pari passu, pro rata* distributions, and in no way do these escrow arrangements diminish the entitlement of creditors to the escrowed funds.

3. In opposing this application for leave, the U.S. interests submit that this application for leave to appeal does not raise any issue of national or public importance, and just as the Court of Appeal For Ontario denied leave to appeal, so too should this Court.

B. Facts

4. The U.S. Interests adopt the facts as set out in the Monitor's Memorandum of Argument in response to this application for leave to appeal.

U.S. Debtors

5. The U.S. Debtors, as subsidiaries of NNC, commenced proceedings under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware. The U.S. Debtors are significant creditors of the Canadian Debtors, holding claims in excess of US\$2 billion, comprised of both secured and unsecured components. The distributions received on account of these claims will provide the U.S. Debtors with the funds that they require to make distributions to their own creditors, including the Bondholders and the various general unsecured creditors – including trade creditors, former employees and retirees, among others – represented by the Official Committee. In accordance with the Cross-Border Insolvency

⁵ The Waiver and Reserve Agreement was entered into on April 26, 2017, among the LTD Objectors, the U.S. Debtors and the Canadian Debtors, among other parties, and was approved by the CCAA Court on May 1, 2017.

Protocol⁶, which recognizes the U.S. Debtors as a “Core Party” in the Canadian proceedings, the U.S. Debtors have the right to appear and to be heard to the same extent as individual creditors and other interested parties domiciled in Canada.

Official Committee

6. The Official Committee is a creature of statute, appointed on January 22, 2009, by the Office of the United States Trustee for the District of Delaware in the U.S. Bankruptcy Proceedings of the U.S. Debtors. The role of the Official Committee is to represent, in a fiduciary capacity, the interests of all general unsecured creditors of the U.S. Debtors. In accordance with the Cross-Border Insolvency Protocol, which recognizes the Official Committee as a “Core Party” in the Canadian proceedings, the Official Committee has the right to appear and to be heard to the same extent as individual creditors and other interested parties domiciled in Canada.

Bondholders

7. The Bondholders are significant creditors of both the Canadian Debtors and the U.S. Debtors having claims in excess of US\$4 billion. In accordance with the Cross-Border Insolvency Protocol, which recognizes the Bondholders as a “Core Party” in the Canadian proceedings, the Bondholders have the right to appear and to be heard to the same extent as individual creditors and other interested parties domiciled in Canada.

PART II – QUESTION IN ISSUE

8. The issue in this application is whether this case raises an issue of national or public importance that ought to be decided by this Court. The U.S. Interests submit that it does not.

PART III – ARGUMENT

9. The U.S. Interests agree with and adopt the submissions as set out in the Monitor’s Memorandum of Argument opposing this application for leave to appeal. The questions raised by

⁶ The Cross-Border Insolvency Protocol was approved by the CCAA Court on January 14, 2009, as part of the Initial Order made in the Canadian Debtors’ CCAA proceedings.

the Leave Applicant are not of national or public importance and do not merit the attention of this Court.

10. In this case, the Court of Appeal for Ontario considered the well-settled and consistently applied test used to determine whether leave should be granted under the CCAA and exercised its discretion to deny the LTD Objectors' application for leave to appeal. The high threshold that was required to be met was not met, and this case is not the rare case in which this Court should entertain an appeal from a provincial appellate court's decision denying leave.

11. For the reasons cited by the Monitor and adopted by the U.S. Interests herein, the issues put forward by the Leave Applicant are not of national or public importance warranting consideration by this Court, especially when they are considered in the particular context of the Nortel case and the interests of creditors therein, which creditors will be delayed in receiving their respective shares of the escrowed funds until at least such time as this application and any appeal are resolved. Leave to appeal should not be granted.

12. The U.S. Interests do, and, to the extent necessary, will continue to, rely on the reservation of rights provided for in the Waiver and Reserve Agreement and the Order approving it, to oppose this leave application and any appeal before this Court.

PART IV – SUBMISSIONS ON COSTS


13. The U.S. Interests do not request their costs of this application and submit that there should be no order for costs whether or not leave to appeal is granted.

PART V – ORDER REQUESTED

14. The U.S. Interests request an order dismissing the application for leave to appeal.


May 18, 2017

ALL OF WHICH IS RESPECTFULLY SUBMITTED

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PART VI - TABLE OF AUTHORITIES

None

PART VII - STATUTORY PROVISIONS

None