

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

BETWEEN:

**JENNIFER HOLLEY**

**APPLICANT**

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

**RESPONDENTS**

**RESPONSE TO APPLICATION FOR LEAVE TO APPEAL  
(THE COURT APPOINTED REPRESENTATIVES OF THE FORMER AND DISABLED  
EMPLOYEES OF NORTEL, RESPONDENTS)**  
(Pursuant to Rule 27 of the *Rules of the Supreme Court of Canada*)

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## PART 1 – OVERVIEW AND STATEMENT OF FACTS

1. This application for leave to appeal at its core is an attempt to relitigate a 2010 court order and engage the *Charter of Rights and Freedoms* (the "**Charter**")<sup>1</sup> in a case where it is clearly inapplicable.
2. The court appointed representatives (the "**Representatives**") of approximately 16,000 former Nortel<sup>2</sup> employees in Canada, including pensioners, and persons claiming an interest on behalf of the former employees or pensioners, and approximately 360 disabled employees, object to this attempt. The Superior Court of Justice (Commercial List) (the "**CCAA Court**") and the Court of Appeal for Ontario have both already dismissed the attempt as being without merit. The proposed issues raised by the Applicant do not raise matters of public importance as to warrant an appeal to this Court and these proceedings have already resulted in costs and delays to other employees, including other disabled employees.
3. It is a fundamental tenet of insolvency law that all debts shall be paid *pari passu* and all unsecured creditors receive equal treatment. The Applicant has not raised any conflicting appellate decisions, legislation or legal principles that ought to be decided by this Court.
4. The Representatives have fought hard to obtain a significant recovery on behalf of those they represent in this insolvency, which will see the Applicant recover 66 percent of her losses as well as other favourable treatment. Nortel has many creditors, including pensioners, their surviving spouses, unemployed former employees and trade creditors who suffered significant financial devastation as a result of this insolvency. The suggestion that the rights of creditors should be determined by the personal financial circumstances or characteristics of those individuals is unsustainable and not something that attracts *Charter* protection.

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<sup>1</sup> [\*Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982\*](#), being Sch. B to the *Canada Act, 1982* (U.K.), 1982, c. 11.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the [Plan of Compromise and Arrangement dated November 30, 2016](#), attached as Appendix "A" to the One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017; Response of the Monitor and Canadian Debtors to Applicant's Application for Leave to Appeal ("**Monitor's Response**"), Tab 8, p.169-221; and the [One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017](#), Monitor's Response, Tab 8, p. 169-221.

## A. Background

5. The Representatives rely on the facts as set out in the January 30, 2017 decision of Newbould J. (the "**CCAA Judge**") to sanction the Plan of Compromise and Arrangement (the "**Plan**") (the "**Sanction Decision**")<sup>3</sup> as well as the background facts as set out in the One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017,<sup>4</sup> the Plan, and the Memorandum of Argument of the Monitor and Canadian Debtors filed in response to the application for leave to appeal from this Court. The Representatives further set out additional facts below relating to employee matters.

6. Following the granting of the *Companies' Creditors Arrangement Act* (the "**CCAA**")<sup>5</sup> stay, Donald Sproule, David Archibald and Michael Campbell were appointed as the Representatives of former Nortel employees in Canada, including pensioners and persons claiming an interest on behalf of the former employees or pensioners (with some exceptions, the "**Former Employees**") on March 27, 2009.<sup>6</sup> In addition, on July 30, 2008, the CCAA Court further appointed Susan Kennedy as the Representative of approximately 360 disabled employees (the "**LTD Beneficiaries**").<sup>7</sup>

7. At the time of the CCAA filing, Nortel employed approximately 6,000 people and had promised pensions and other benefits to some 15,000 others. Most former employees lost one or more of their termination and severance pay, health benefits, disability income and supplemental pensions, among other things, on January 14, 2009 or relatively soon thereafter. In addition, Nortel's registered pension plans were significantly underfunded and pensions were eventually

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<sup>3</sup> [\*Re Nortel Networks Corporation et al\*, 2017 ONSC 700](#) (the "**Sanction Decision**"), leave to appeal refused [2017 ONCA 210](#), Monitor's Response, Tab 9, p 222-240.

<sup>4</sup> [One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017](#), Monitor's Response, Tab 8, p. 169-221.

<sup>5</sup> [\*Companies' Creditors Arrangement Act\*, R.S.C. 1985, c. C-36](#).

<sup>6</sup> [Order \(Representation Order for Former Employees\)](#) dated May 27, 2009, Response of the Court Appointed Representatives of the Former Employees and Disabled Employees of Nortel, Tab 1, p. 14-19.

<sup>7</sup> [Order \(Representation Order for Disabled Employees\)](#) dated July 30, 2009, Monitor's Response, Tab 2, p. 52-57.



cut by about 30-40%. Such registered pensions will be improved by the Plan but not fully restored.

8. Specific measures were taken throughout the CCAA Proceedings to address some of the hardship imposed by the cuts and loss of benefits. The Representatives and Representative Counsel worked with the Monitor and the Canadian Debtors to devise and implement those measures, and communicate with former employees, LTD Beneficiaries, pensioners and surviving spouses, providing them with advice and information, and assisting them in a variety of ways.

9. All LTD Beneficiaries have benefited from the following:

- (a) the Employee Agreement and Settlement Approval Order (together the "**Employee Settlement** ") - a March 31, 2010 court order, which provided LTD Beneficiaries with:
  - (i) the continuation of disability income benefits, medical, life and dental benefits until December 31, 2010 (as opposed to cessation of benefits as of March 31, 2010 or earlier) so that they had their monthly disability income and other benefits for almost two years after the CCAA filing, from January 14, 2009 to December 31, 2010;
  - (ii) the continuation and current service funding of registered pension plans until the end of September 2010 for defined benefit pension plan members, including those on long term disability; and
  - (iii) the requirement to wind-up the Health and Welfare Trust ("**HWT**") and distribute its assets totalling approximately \$80 million to beneficiaries, including to LTD Beneficiaries.
- (b) the wind-up of the HWT provided a payout totalling approximately 38% of the value of all benefits owing, including disability income benefits and LTD life insurance. The remaining 62% of entitlements is to be paid at 45-49% from the Canadian Estate under the Allocation Settlement and the Plan for a total recovery

by LTD Beneficiaries of 66 to 68.4% of their lost disability income and other benefits;

- (c) the Advance Tax Ruling obtained from the Canada Revenue Agency confirming that lump sum distributions to LTD Beneficiaries for disability income from the HWT are not taxable under the Canadian Income Tax Act. Prior to the CCAA filing, the LTD Beneficiaries were taxed on their disability income upon receipt. Based on the favourable Advance Tax Ruling, Representative Counsel expects that the distribution to LTD Beneficiaries for lost disability income under the Plan will not be subject to income tax, resulting in a higher after-tax recovery for the LTD Beneficiaries;
- (d) Omnibus Claims were filed by Representative Counsel including on behalf of the LTD Beneficiaries for the loss of the Employee Assistance Program ("**EAP**"). The EAP claim was accepted by the Monitor for all LTD Beneficiaries, thereby increasing their claim values;
- (e) following the termination of disability income and other benefits to LTD Beneficiaries, the following sources became available to LTD Beneficiaries:
  - (i) the Hardship Process was amended to allow LTD Beneficiaries to apply for advances on their claim for up to \$24,200;
  - (ii) the Termination Fund provided up to \$3,000; and,
  - (iii) the first HWT distribution was completed in January 2011, in time to assist LTD Beneficiaries whose benefits had ceased as of December 31, 2010.
- (f) medical benefits coverage was negotiated with a replacement insurer providing optional benefit plans for those who signed up;
- (g) at the request of the LTD Representative, approval was obtained from the provincial pension regulator for interim transfers of up to 50% of the estimated

commuted value for LTD Beneficiaries with service in Ontario, Alberta and Nova Scotia suffering financial hardship;

- (h) the LTD Representative lobbied the provincial and federal government to provide assistance to Former Employees and LTD Beneficiaries of Nortel. These lobbying efforts resulted in automatic acceptance to the Trillium Drug Program for all Nortel LTD Beneficiaries who were Ontario residents, and requests were made to the Minister to have case workers designated to assist Nortel LTD Beneficiaries in obtaining information about Trillium and gaining access to specific drugs they require; and,
- (i) the Representatives advocated for a *pro rata* distribution of Nortel assets in the Allocation Dispute, a version of which was ultimately accepted by the Courts and has resulted in a significant recovery for LTD Beneficiaries as compared to the allocation positions argued by other creditors.<sup>8</sup>

10. 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 the CCAA Court in an earlier decision in the Nortel proceedings, wherein the court stated:

75 There is no doubt that the position of the Dissenting LTD Beneficiaries has been severely compromised by Nortel's insolvency. However, the Dissenting LTD Beneficiaries are not alone in this respect. All of the parties claiming entitlement to the HWT have been adversely impacted by Nortel's insolvency.

...

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

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<sup>8</sup> [One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017](#) at paras. 105 and 108-109, Monitor's Response at Tab 8, p. 179-182.

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. (emphasis added)<sup>9</sup>

11. There is no discrimination against LTD Beneficiaries. Enhancing the recoveries of the LTD Beneficiaries will effectively lower the recoveries of all other stakeholders including pensioners, surviving spouses and terminated employees. Only Parliament can enact legislation giving such a preference.

## **B. The Decisions Below**

12. A Plan dated November 30, 2016, and related Information Circular dated November 30, 2016 were filed by the Monitor. A meeting of Affected Unsecured Creditors was held on January 17, 2017 and as reported by the Monitor, the Plan was approved by over 99% of Affected Unsecured Creditors.<sup>10</sup> Pursuant to their respective Representation Orders, the Representatives voted in favour of the Plan.

13. On January 24, 2017, after hearing the submissions of the various parties, the CCAA Judge sanctioned the Plan (the "**Sanction Order**"), with reasons that followed on January 30, 2017 (the "**Sanction Decision**").

14. At the sanction hearing, two LTD Beneficiaries (the "**LTD Objectors**") objected unsuccessfully to the sanctioning of the Plan, alleging violations under the *Charter*.

15. At its core, the challenge by the LTD Objectors is an attempt to relitigate the Employee Settlement. The Employee Settlement was already the subject of an unsuccessful leave to appeal application by a group of LTD Beneficiaries which included the Applicant.<sup>11</sup>

16. The Sanction Decision was released on January 30, 2017. In his reasons, the CCAA Judge sympathized with the LTD Objectors, however, held that:

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<sup>9</sup> *Nortel Networks Corporation (Re)*, [2010 ONSC 5584](#) at paras. 75 and 110, leave to appeal refused [2011 ONCA 10](#) (without schedules), leave to appeal to S.C.C. refused, [Judgment dated June 9, 2011](#), Monitor's Response at Tab 5 p. 107 and 111.

<sup>10</sup> [One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017](#), Monitor's Response, Tab 8, p. 169-221.

<sup>11</sup> [Nortel Networks Limited \(Re\)](#), [2010 ONCA 402](#), Monitor's Response, Tab 4, p. 88-94.

- (a) Neither of the LTD Objectors elected to opt out of representation by the LTD Representative pursuant to the terms of the LTD Representation Order and are therefore bound by it and the actions of the LTD Representatives;<sup>12</sup>
- (b) There is no legal basis to reconsider the Employee Agreement seven years later, and in any event the CCAA Judge agreed with the findings of the reasons of Morawetz J. (as he then was) that the settlement was reasonable as the LTD Beneficiaries will receive the same pari passu treatment under the Plan as all other creditors;<sup>13</sup>
- (c) Issue estoppel prevents the LTD Objectors from now raising a Charter challenge to the 2010 motion to approve the Employee Agreement, as they were represented by competent counsel;<sup>14</sup>
- (d) Even if the Charter had any application, the request by the LTD Objectors to prioritize allocation proceeds to pay for 100% of the claims of LTD Beneficiaries at the expense of all other claimants involves economic interests which are not protected under section 7 of the Charter;<sup>15</sup>
- (e) Even if the Charter had any application, there is no basis to find a violation of section 15 of the Charter as the LTD Objectors are not being discriminated against; rather, they are being treated the same as all creditors of Nortel, including other similarly situated creditors many of whom are experiencing economic hardship due to lost income and benefits in the Nortel insolvency.<sup>16</sup>

17. The LTD Objectors sought leave to appeal and the Court of Appeal for Ontario dismissed the motion, providing four pages of reasons holding that:

- (a) the proposed appeal is not meritorious;

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<sup>12</sup> [Sanction Decision](#) at paras. 12 and 16, Monitor's Response, Tab 9, p. 229-230.

<sup>13</sup> [Sanction Decision](#) at paras. 18-19, Monitor's Response, Tab 9, p. 231.

<sup>14</sup> [Sanction Decision](#) at para. 26, Monitor's Response, Tab 9, p. 233.

<sup>15</sup> [Sanction Decision](#) at paras. 28-31, Monitor's Response, Tab 9, p. 233-235.

<sup>16</sup> [Sanction Decision](#) at paras. 33-35, Monitor's Response, Tab 9, p. 235-236.

- (b) the CCAA Judge correctly concluded that the LTD Objectors are bound by the 2010 Employee Settlement and have no right to opt out of the LTD Representation Order at this late stage; and
- (c) the LTD Objectors are the only long-term disability beneficiaries opposing a Plan that had the support of over 99% of unsecured creditors.<sup>17</sup>

18. The Court of Appeal for Ontario also held that the LTD Objectors did not file a notice of constitutional question challenging the constitutionality of the 2010 Employee Settlement Agreement in time and were out of time and therefore bound by the agreement.

19. One of the LTD Objectors (the "**Applicant**") has now filed an application for leave to appeal the decision of the Court of Appeal of Ontario.

## **PART II – STATEMENT OF QUESTION IN ISSUE**

20. The issue is whether this Court should grant leave to appeal under section 40 of the *Supreme Court Act* from the ONCA's dismissal of the LTD Objectors' appeal in that court.

## **PART III – STATEMENT OF ARGUMENT**

21. The proposed appeal does not raise issues warranting leave to this Court. In particular,

- (a) The proposed appeal is not a matter of public interest;
- (b) The proposed appeal does not raise any conflicting appellate decisions, legislation or legal principles that ought to be decided by this Court; and
- (c) The proposed appeal is not *prima facie* meritorious.

### **A. The proposed appeal is not a matter of public interest**

22. The *Charter* has no application to, what is in essence, a dispute about contractual entitlements among private parties. The resolution of this appeal cannot be said in any reasonable way to have any public interest.

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<sup>17</sup> [2017 ONCA 210](#), Monitor's Response, Tab 9, p. 237-240.

**B. No conflicting appellate decisions, legislation or legal principles that ought to be decided by this Court are raised by the Applicant**

23. The Applicant does not raise any conflicting appellate authorities or principles that would be engaged in its proposed appeal. The decisions below are consistent with principles set out in this Court and other appellate courts.

24. It is a fundamental tenet of insolvency law that all debts shall be paid *pari passu* and all unsecured creditors receive equal treatment.<sup>18</sup> The argument that certain creditors should obtain a higher distribution as a result of their personal circumstances is not discrimination, does not engage the *Charter*, and does not merit the consideration of this Court.

**C. The proposed appeal is not *prima facie* meritorious**

25. There is no sound basis upon which to assert a violation of the *Charter*. Section 7 of the *Charter* does not protect economic interests. There can be no violation of section 7 when the only assertion relied upon by the Applicant is a failure of the Plan to provide her with a greater share of the Canadian Estate than her fellow unsecured creditors.

26. Similarly, section 15 of the *Charter* protects the right to equal treatment and the right not to be discriminated against. The LTD Beneficiaries, including the Applicant, will receive the same proportionate share of the Canadian Estate as every other creditor, many of whom are similarly vulnerable or perhaps worse off than the Applicant. The LTD Beneficiaries will receive a significant dividend from the Canadian Estate, and when combined with previous recoveries from the Nortel HWT, the LTD Beneficiaries will receive a recovery of approximately 66-70 percent on their losses and have benefited in other ways as previously mentioned.

27. Further, the CCAA Judge was correct in holding that issue estoppel prevented the reconsideration of the Employee Agreement seven years after it was unsuccessfully appealed by a group which included the Applicant. Issue estoppel is a sound legal principle the application of

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<sup>18</sup> [Nortel Networks Corp. \(Re\)](#), 2014 ONSC 5274 at para. 12, aff'd [2015 ONCA 681](#), leave to appeal to S.C.C. refused [2016 CanLII 24877 \(SCC\)](#), Book of Authorities of the Monitor and Canadian Debtors, at Tab K.

which is important in ensuring that matters that have been determined, implemented and acted upon are not later subject to revision. The Employee Agreement has been relied upon, actions taken and amounts paid out in accordance with its terms. It is simply not possible nor should it be permissible to revisit or revise its effect.

28. The Representatives submit that the proposed appeal must be denied as there is no possibility of success. Representative Counsel has raised all tenable arguments on behalf of LTD Beneficiaries throughout the CCAA proceedings, and it is inappropriate for the Applicant to require Representative Counsel to raise frivolous arguments that have no application here.

29. Further, specific measures were taken throughout the CCAA proceedings to address some of the hardship imposed by the cuts and loss of benefits to LTD Beneficiaries and other former employees, surviving spouses and their beneficiaries. The Representatives and Representative Counsel have worked with the Monitor and the Canadian Debtors to devise and implement those measures, and communicate with Former Employees, LTD Beneficiaries, pensioners and surviving spouses, providing them with benefits, advice and information, and assisting them in a variety of ways.<sup>19</sup>

30. The Applicant is subject to the LTD Representation Order, cannot opt out at this late stage, and should not be permitted to do so in order to pursue frivolous arguments that will only deplete the Canadian Estate and delay finality in the Nortel insolvency proceedings.

#### **PART IV – SUBMISSIONS CONCERNING COSTS**

31. The Representatives will not be making a request for costs.

#### **PART V - ORDER SOUGHT**

32. The Representatives respectfully request an order dismissing this application for leave to appeal from the order of the Ontario Court of Appeal, without costs to the Representatives.

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<sup>19</sup> [One Hundred and Thirty Fifth Report of the Monitor dated January 20, 2017](#) at para. 108. Monitor's Response at Tab 8, p. 169-221.



ALL OF WHICH IS RESPECTFULLY SUBMITTED this 19<sup>th</sup> day of May, 2017.

Koskie Minsky LLP

A handwritten signature in black ink, appearing to read "Mark Zigler", is written over a horizontal line.

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**PART VI - TABLE OF AUTHORITIES**

<b>Tab in Monitor and Canadian Debtors' Authorities</b>	<b>Authority</b>	<b>Paragraph</b>
K.	<i>Nortel Networks Corp., Re</i> , <a href="#">2014 ONSC 5274</a> , aff'd <a href="#">2015 ONCA 681</a> , leave to appeal to S.C.C. refused <a href="#">2016 CanLII 24877 (SCC)</a>	24

**PART VII - LEGISLATIVE PROVISIONS**

<b>Legislation</b>	<b>Paragraph</b>
<i>Canadian Charter of Rights and Freedoms</i> , Part I of the <i>Constitution Act</i> , 1982, being Sch. B to the <i>Canada Act</i> , 1982 (U.K.), 1982, c. 11, s. 7 & 15	1, 4, 14, 16, 22, 24, 25-26
<i>Companies' Creditors Arrangement Act</i> , R.S.C. 1985, c. C-36	6, 28-29

Court File No. 09-CL-7950

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE MR. JUSTICE	)	WEDNESDAY, THE 27 <sup>TH</sup> DAY OF
	)	
MORAWETZ	)	MAY, 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**

THIS MOTION, made by Donald Sproule, David Archibald and Michael Campbell (collectively, the "Representatives") on behalf of former employees, including pensioners, of Nortel Networks Corporation, Nortel Networks Limited, Nortel Networks Global Corporation, Nortel Networks International and/or Nortel Networks Technology Corporation (collectively "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 (collectively the "Former Employees") was heard Monday, April 20, 2009, on the Commercial List at the courthouse at 330 University Avenue, Toronto, Ontario, Reasons for Decision having been reserved to May 27, 2009,

ON READING the Motion Record of the Representatives and on hearing the submissions of counsel for the Representatives, Nortel, the Monitor and other parties,

1. **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 April 20, 2009.

2. **THIS COURT ORDERS** that, subject to paragraphs 8-9 hereof, Donald Sproule, David Archibald and Michael Campbell are hereby appointed as representatives of all Former Employees 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 Former Employees in the Proceedings.

3. **THIS COURT ORDERS** that, subject to paragraphs 8-9 hereof, Koskie Minsky LLP is hereby appointed as counsel for all Former Employees in the Proceedings for any issues affecting the Former Employees in the Proceedings.

4. **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 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.

5. **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.

6. **THIS COURT ORDERS** that notice of the granting of this Order be provided to the Former Employees by advertisement in the national edition of the Globe and Mail, La Presse, the Ottawa Citizen and the Calgary Herald under such terms and conditions as to be agreed upon by the Representatives, the Applicants and the Monitor.

7. **THIS COURT ORDERS** that the Representatives, or their counsel on their 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.

8. **THIS COURT ORDERS** that, subject to paragraph 9 hereof, any individual Former Employee 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 publication 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.

9. **THIS COURT ORDERS** that notwithstanding paragraph 8 hereof any Former Employee already represented by Lewis Gottheil, counsel to the National Automobile, Aerospace, Transportation and General Workers Union of Canada ("CAW-Canada") ("CAW Counsel") are not bound by this Order and CAW Counsel shall deliver to Koskie Minsky LLP, the Monitor and Nortel a listing of each Former Employee so represented within 30 days of the issuance of this Order.

10. **THIS COURT ORDERS** that Former Employees bound by this Order specifically exclude any former chief executive officer or chairman of the board of directors, any non-employee member of the board of directors, or such former employees or officers that are

subject to investigation and charges by the Ontario Securities Commission or the United States Securities and Exchange Commission, and that the Representatives have no obligation to represent such persons.

11. **THIS COURT ORDERS** that the Representatives 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.

12. **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 À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 30 2009

PER / PAR: TV

**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

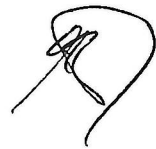
I, \_\_\_\_\_, am a former employee of the Nortel companies, as  
[Insert Name]  
defined in the Order of Mr. Justice Morawetz dated April 20, 2009.

Under Paragraph 8 of that Order, former employees 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**

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Lawyers for the Applicants