Senate Hansard Transcripts on Disability Benefits 2010

Senate, Wednesday, December 8, 2010

The Senate met at 1:30 p.m., the Speaker in the chair.

Nortel

Hon. Claudette Tardif (Deputy Leader of the Opposition): Honourable senators, in 2008, when Nortel officials announced that the company had sought bankruptcy protection, to say the world was shocked is an understatement. With this announcement came a cloud of uncertainty that hovered over both the country's economy and its politics. As more and more information became available, it soon became clear to the entire country that stories about the Nortel bankruptcy would continue to dominate news headlines.

However, no news story can dominate without some form of a human face. In the case of Nortel, stories were centred on the numerous worries and concerns of the thousands of Nortel employees across the country.

As honourable senators may know, Nortel workers were divided into four main pension groups. Of these groups, three were unionized and one was not. While the union sprang into action organizing various lobby teams and starting to plan protests, those without a union umbrella wondered where to begin.

In a time of crisis, human instinct often has us turn to others for help, whether it be one's family, friends or neighbours. In the case of Nortel, this person was the Canadian government. Amongst all Nortel's employees, there was a general belief that there was no way the government would let their pensions fail. Surely, they said, the politicians would realize the implications and the hardships these individuals would face if the pension fund collapsed. In lunchrooms and coffee shops across the country, they hoped, all anxiously awaiting news on the fate of their pensions — their livelihoods.

For months, Nortel's call for help remained unanswered, until word reached the Congress of Union Retirees of Canada. "We will help," they said. "Please tell us what you need."

Within a matter of months, they, along with Nortel's retirees executive board, had organized three rallies: one on Parliament Hill and two in front of Queen's Park. Buses were hired, speakers were found and a tiny ray of hope was offered to all Nortel pensioners, union or non-union. To those caught in the middle, knowing they had the support of the Congress of Union Retirees of Canada was a comfort beyond words.

Nortel collapsed in 2009. To date, their pension fund is the largest pension fund to have failed. Honourable senators, we have heard the stories of those who are most at risk, notably those who are dependent on long-term disability payments, which are finished as of December 31, 2010.

As senators, we have a responsibility towards our fellow Canadians in need. Time is of the essence. Only 23 days remain for those dependent on long-term disability benefits. The government has a responsibility to act.

QUESTION PERIOD
Industry
Long-term Disability Benefits—Nortel Employees

Hon. Art Eggleton: Honourable senators, my question is to the Leader of the Government in the Senate.

I have a letter from Helen Ma of Calgary, Alberta.

To All the Senators

Do you have parents who are elderly, in retirement and receiving government pension?

What do you think would happen to them, if they were being cut-off from those payments? How do you think they would eat, pay their medical bills from aging illnesses and cover utilities to warm and light their home? You would see the hardship that they would be thrust into. Being that they are your family, you would do what you could to help them.

I am a Nortel disabled employee who is essentially losing her pension!

It is a direct relation, because I am too young to retire and I am unable to work because of my illness. I need to worry about all those same things that your aging parents would have to worry about, except with the important addition of my children to feed, keep healthy and warm and, most important, to continue to trust in me as a parent to keep them safe.

I am not asking for the world. I am merely asking for your compassion to help me keep my family from living in poverty and possibly on the streets.

Please look deep into your hearts and see us as family, your fellow Canadians.

Bill S-216 would only mean a little less profit for creditors but would mean life or death for us, the LTDers.

You have the power to determine our destiny.

How does the government respond to Helen Ma?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, obviously, with respect to the situation Senator Eggleton has described in that letter, I am certain that all senators, myself included, would be doing everything we could to help our family members. However, honourable senators, one thing I would not do is hold out false hope that a piece of legislation I brought in would in any way change the situation for these unfortunate victims of the situation at Nortel.

All senators sympathize with these unfortunate people; however, witnesses before our committees have told us that the bill will not help Nortel long-term disability recipients and instead will lead to

endless litigation to the detriment of all involved. This situation is the result of a court-approved agreement between the parties enacted under the legislation in effect at the time, and yesterday my colleague Senator Greene in his excellent remarks here in the Senate succinctly put the facts on the record.

Those are the facts. It does not lessen our concern for these individuals. However, for the honourable senator and for anyone else to suggest to Nortel pensioners that his bill would in any way help their situation is, as he knows, quite wrong and does a great disservice to these people.

Senator Comeau: No conscience.

Senator Tkachuk: You are the ones exploiting them, not us.

Senator LeBreton: As Senator Greene pointed out yesterday, this is a shameless act. These people are in a very difficult position. Obviously, we all understand and sympathize with their dilemma. The honourable senator is wrong to suggest that his bill would change their situation. Furthermore, the Ontario government is the primary government responsible for pensions of this type.

(1400)

This is not something from which any of us gets any joy. All senators receive these letters and I am as upset by them as anyone else. However, I would not do what Senator Eggleton is doing and have these people believe that the actions of this place can change their situation in any way, because Senator Eggleton knows that is not the case.

Senator Eggleton: The leader still has not answered the question on what the government would do, but I will say that she is absolutely wrong. False hopes? That is ridiculous.

Honourable senators, this bill was drafted after consultation with experts in the field of corporate business law, commercial law and bankruptcy law. The leader talks about the provincial government. This is an amendment to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act, which are federal laws.

The only witnesses who indicated opposition to this were the ones representing the self-interests of the Canadian Banking Association. Do you expect them to get up and say we want more regulation? Did they justify their opposition? No, they did not. The expert witnesses who appeared before committee said that this bill could do the job. The leader does not respond to the facts; she and her colleagues give political spin. That is all.

Let me bring it closer to the floor since she will ignore Helen Ma of Calgary. Let me talk about six senators who sit on the other side with the leader. In the Banking Committee on November 25, after they put forward that terrible report we will vote on later today, those honourable senators very quickly said that they wanted to have a letter sent to the Honourable Tony Clement because they wanted to go on record as saying that something should be done for these people.

The letter said:

. . . all members of the Committee are urging you to develop and implement a solution to rectify what some believe is a grave injustice. Time is of the essence, and we look forward to hearing from you about a solution that will ensure revenue for them beyond the end of December 2010.

That letter was sent based on a resolution put forward by Senator Greene, supported by Senator Dickson, Senator Kochhar, Senator Mockler, Senator Plett and Senator Ataullahjan. Those six Conservative senators said, yes, let us write to Minister Clement because something needs to be done for these people. What does the leader say to them?

Senator LeBreton: I will say what I said yesterday, what I have said in this place and what my colleagues have said. The situation that former employees of Nortel are facing is very serious. We know that.

Senator Eggleton: You are doing nothing about it.

Senator Tkachuk: How do you know?

Senator LeBreton: We also said that this is an issue of great concern to the government, and that is why —

Senator Eggleton: When?

Senator Tkachuk: When we were ready. No false hopes.

Senator LeBreton: — we made a commitment in the Speech from the Throne to better protect workers when their employer goes bankrupt. That is why we are currently looking at ways to better protect employees on long-term disability in the event of bankruptcy.

An Hon. Senator: How?

Senator LeBreton: I am sorry if honourable senators opposite think we are not doing this, because we are, in fact, doing this.

Senator Tkachuk: You were on the Banking Committee. You did not do it.

Senator LeBreton: My colleagues signed the letter; that is exactly what the government is trying to do.

An Hon. Senator: Bully us.

Senator LeBreton: Oh, bullying us, he says.

An Hon. Senator: You should take this seriously.

Senator Eggleton: Honourable senators, what the leader just said has some consistency as to what was done in 2007 with the Wage Earner Protection Program Act. In that act, the government moved wages up into a super-priority category. Why can the government not do something for these people?

The leader says she is looking at it. This bill was presented on March 25. I saw Minister Clement at around that time, and he said his department would work on it. Here we are towards the end of the year, when time is running out for these people, when the current court arrangement will go into effect at the end of the year and these people will be cut off. Why is something not done in a timely fashion to be able to deal with these sick and disabled people?

Senator Harb: Show some compassion.

Senator LeBreton: I thank the honourable senator for that question. My colleague Senator Greene yesterday put the situation on the record. I urge honourable senators to read his speech, particularly on page 1531 where he discusses "retroactive" and "retrospective" law.

Honourable senators, no one who knows these individuals who are affected by the bankruptcy of Nortel gets any joy out of this. As I pointed out yesterday, I do not recall anyone from the previous government stepping in and doing anything for these individuals who were affected by the bankruptcy of Nortel when all of this was happening.

Senator Tkachuk: You did not get it done.

Senator Mercer: After six years, are you not responsible for something? Shame on you. Shame on you.

Senator LeBreton: Actually, Senator Mercer, yelling at the top of your lungs will not help these individuals.

Senator Mercer: That was not the top of my lungs. Stick around.

Senator LeBreton: We have something to look forward to, do we?

Senator Mercer: Do not challenge me.

Senator LeBreton: The government, in a commitment in the Speech from the Throne in this very chamber, acknowledged the seriousness of this situation, and we are seeking solutions —

Senator Harb: You are doing nothing.

Senator Tkachuk: How do you know?

Senator LeBreton: — to assist those individuals who happened to work for a company that goes bankrupt who are on long-term disability.

Senator Harb: No compassion.

ORDERS OF THE DAY
Business of the Senate

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, when we proceed to Orders of the Day, under Government Business, I would ask that Motion No. 29 be called first.

[*English*]

Point of Order

Hon. Gerald J. Comeau (Deputy Leader of the Government): Honourable senators, since I am on my feet, I would like to raise a point of order. While listening to Senators' Statements today, I heard Senator Tardif, the Deputy Leader of the Opposition, raise the issue of the Nortel long-term disability workers. Rule 22(4) of the *Rules of the Senate of Canada* says that Senators' Statements are reserved for items that:

. . . need to be brought to the urgent attention of the Senate. . . . and for which the rules and practices of the Senate provide no immediate means of bringing the matters to the attention of the Senate.

The rule further states that:

. . . a Senator shall not anticipate consideration of any Order of the Day. . . .

We do have before the Senate the Nortel long-term disability issue, and we will vote on this matter later today. I do not raise this point of order because I wish to nitpick. That is not the case at all.

Senator Mercer: Oh, no, not you.

Senator Di Nino: Why don't you listen with a little respect sometime?

Senator Comeau: The two sides have discussed this issue on a number of occasions and we agreed that we would monitor our side. Once in a while this may happen, but we monitor our side. We ask senators to stay away from matters that are a subject matter under consideration in the Senate under Orders of the Day. I presumed the other side was monitoring this situation, but now I am starting to question — since the Deputy Leader of the Opposition raised this subject — how seriously they take this matter.

I raise this issue as a point of order. I think I am right on this point, that items that are before the Senate should not be introduced under Senators' Statements.

Hon. Sharon Carstairs: Honourable senators, it is interesting that this particular point is raised today. I listened carefully to the Honourable Senator Tardif's comments. She was speaking almost entirely about retired persons. That has never been the subject of the debate that is before this house. That is another issue in its entirety.

(1430)

The other thing that I find interesting is that the purpose of that rule, I would suggest, is that it should not anticipate debate. Debate cannot be anticipated on this particular issue today, because it is a deferred vote. There will be no discussion of this issue today. There will only be a vote on this issue today.

Some Hon. Senators: Hear, hear.

Hon. Joan Fraser: I think Senator Carstairs is entirely right, Your Honour. I would add to her observation that I also listened carefully to Senator Tardif's statement. The point of her statement, which was contained in her last line, was that it is time for the government to act on this matter. The report killing the bill, on which we shall vote later today, is not a call for government policy; it is a call for change in legislation.

Senator Comeau: I have just one final point. If, in fact, Senator Tardif was not in any way referring to the issue of the disability, LTD — that is, if it is an issue of retirement, which is a different issue — then I would withdraw my point of order. However, Senator Carstairs and I may not recall exactly what Senator Tardif did say. We might ask His Honour to refer to the statements that were made today in Hansard and come back with a response.

I am more than willing, if in fact I erred, to withdraw my point of order.

The Hon. the Speaker: Honourable senators, I should like to deal with this matter now.

I want to begin by thanking Senator Comeau for raising the matter because I had intended to rise, under rule 18, to express certain disquiet from the chair on both Senators' Statements and Question Period. The rule on Senators' Statements that we all understand is clear. We cannot anticipate items that are on the Order Paper. Sometimes statements are made that cannot help but come close to the line. I think there is enough generosity in the chamber to recognize that.

However, equally, during Question Period, while we do not have an equivalent to rule 22(4) which as Senator Comeau cited does not allow us to anticipate items on the Order Paper, we ought not to be raising questions around items that are on the Orders of the Day.

I would like to recall, from the parliamentary procedural literature, paragraph 410 in Beauchesne's 6th Edition, at page 122, dealing with "Oral Questions." Item 14 states:

(14) Questions should not anticipate an Order of the Day although this does not apply to the budget process.

As all honourable senators know, there have been a number of questions in the past little while that did deal with bills or other items on the Orders of the Day. I simply wish to conclude by saying that I invite all honourable senators to be careful about the statements and to give some reflection to what the procedural literature suggests. Whether or not this is something that the Rules Committee might want to look into and specify in the rules will be a judgment that the committee can make.

Business of the Senate

The Hon. the Speaker: Honourable senators, this brings us to the end of our Order Paper. As we all know, there is an order that we will have a vote at 5:30 p.m. The bells will start ringing at 5:15 p.m. We shall therefore interrupt our proceedings and suspend until 5:30 p.m., with the bells ringing at 5:15 p.m.

Do I have permission to leave the chair?

Hon. Senators: Agreed.

(The sitting of the Senate was suspended.)

(1730)

(The sitting of the Senate was resumed.)

Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act
Bill to Amend—Sixth Report of Banking, Trade and Commerce Committee Adopted

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tkachuk, for the adoption of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans, with a recommendation), presented in the Senate on November 25, 2010.

Motion agreed to and report adopted on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Lang
Angus	LeBreton
Ataullahjan	MacDonald
Boisvenu	Manning
Braley	Marshall
Brazeau	Martin
Brown	Mockler
Carignan	Nancy Ruth

Champagne	Neufeld
Cochrane	Ogilvie
Comeau	Oliver
Demers	Patterson
Di Nino	Plett
Dickson	Poirier
Duffy	Raine
Eaton	Rivard
Finley	Runciman
Fortin-Duplessis	Segal
Frum	Seidman
Greene	Stewart Olsen
Housakos	Stratton
Johnson	Tkachuk
Kinsella	Wallace—47
Kochhar	

NAYS
THE HONOURABLE SENATORS

Baker	Losier-Cool
Banks	Lovelace Nicholas
Callbeck	Mahovlich
Campbell	Massicotte
Carstairs	McCoy
Chaput	Mercer
Cools	Mitchell
Cordy	Moore
Cowan	Munson
Dallaire	Murray
Dawson	Pépin

Day	Peterson
Downe	Poulin
Eggleton	Poy
Fairbairn	Ringuette
Fox	Robichaud
Fraser	Rompkey
Furey	Sibbeston
Harb	Smith
Hubley	Tardif
Jaffer	Watt
Joyal	Zimmer—44

ABSTENTIONS
THE HONOURABLE SENATORS

Nil

(The Senate adjourned until Thursday, December 9, 2010, at 1:30 p.m.)

Senate, Tuesday, December 7, 2010

QUESTION PERIOD
Industry
Long-term Disability Benefits—Nortel Employees

Hon. Art Eggleton: Honourable senators, my question is to the Leader of the Government in the Senate.

I want to read portions of a letter received from Ann Hackett. She says:

I am a Nortel Networks disabled employee and I am a highly educated individual. When Nortel hired me in 1988, I was told that they highly valued their employees, and consequently they were offering the best benefit coverage to be found. Never the fact that this benefit program was self-insured by the company was mentioned. Thinking that my family and I were fully insured, I declined on many occasions opportunities to get insurance . . . which is now totally impossible in my condition.

I fully paid my contributions into Nortel's benefit plans; Nortel did not pay its share, not to mention that money from the fund was used for other purposes and that unsecured loans were taken against my future benefits. It is Nortel's responsibility to pay for its part of our contract. I am the mother of a ten year old child, I survived from a severe cancer which let me disabled. I fought extremely hard for

my life, and now the perspective of losing my long term disability benefits by December 2010 causes me and my family a tremendous amount of stress and instability.

. . . failure to pass Bill S-216, Canadian taxpayers will eventually have to support the burden of Nortel despicable actions the day disable employees become left with no other alternative but to seek shelter from the state. The UK and other western nations have enacted laws to protect their citizens in a situation such as mine.

Employees were Nortel's most valuable asset; we worked hard and had confidence in our company. Most of my RRSP has been wiped out in the Nortel bankruptcy. We now find ourselves in line with bond sharks and speculators to recover money to pay for our own basic needs, and not to reap millions in profit or bonus. There are no other words to describe this injustice.

Nobody wants to be sick or disabled. Constant worry about what will happen when the disability/medical payments stop on Dec 31st, 2010 is a nightmare. Time is quickly running out for us . . .

. . .

In this coming Christmas time, I hope that, in your heart, you will find the strength to make the right decision for the sake of all 400 Nortel disabled employees. On Christmas day, when your loved ones will look in your eyes in happiness, only you will remember and imagine what shines from our eyes and the ones we love on the same day, but also for the rest of our life.

We thus turn our lives in your hands and ask you to save us from this injustice that struck our families in time of illness.

I ask the minister this question: Since the government has made the decision that it does not support Bill S-216, what will the government do to help these Nortel employees before the end of the year? Will the leader do the right thing in the spirit of this time of year? Christmas is a time of miracles. These people need a miracle. What will the government do?

Hon. Marjory LeBreton (Leader of the Government): Honourable senators, the letter that the honourable senator read into the record is sad and troubling. All our hearts go out to people from Nortel who are caught in this bad situation.

As a matter of record, I encountered a close friend of mine on Saturday who, of course, is also a Nortel employee. I think, though — and it pains me to say this — the reality is, and the honourable senator knows this, and even people that I have talked to know this, that Senator Eggleton's bill would have done absolutely nothing to help the unfortunate victims of the Nortel bankruptcy. That is a statement of fact.

Senator Moore: How so? That is shameful.

Senator LeBreton: Honourable senators, the government also was in the position of being asked to intervene in a situation that has already been settled in the courts.

At the moment, as we know, Nortel is going through restructuring. It can only be hoped that in this restructuring process, when December 31 arrives, the pensions will not end at that time. We have reason to be hopeful. I am hopeful that is the case.

As the honourable senator knows, at the moment, many other programs are available through the government, not only the federal government but also the provincial government, to assist people with disabilities. It is to be hoped that these and any future programs will continue to help and benefit people who, unfortunately, are faced with long-term disabilities.

No one, including myself, likes to contemplate people spending Christmas in such unhappy circumstances.

Senator Eggleton: I strongly disagree with the minister's assessment of whether Bill S-216 will help people. That assessment does not align with what expert witnesses told us; it does not align with what almost every other country that is a trading partner of ours already does. We can deal with that issue later in the subject of debate, which is still part of our agenda.

The minister said there are other ways that the state can help these people. Sure, there are Canada Pension Plan Disability Benefits, but they have a maximum of about $13,000. These people, on average, have $12,000 in medical expenses alone. Those benefits will not pay the rent or put food on the table. There is also welfare, but one can understand why they would not want to go on to welfare. Why should the government have to pick up the tab when it should be Nortel that does that? They have the assets.

Senator Mercer: Hear, hear!

Senator Eggleton: I want to ask the minister about the Standing Senate Committee on Banking, Trade and Commerce. After the Banking Committee decided against my bill, a majority on a vote of six to five — in fact, it was Senator Greene who moved the motion — voted that we send a letter to the government and ask that they do something to help these people.

On behalf of all the Conservatives who voted on that particular motion, what will the government do? If it is not Bill S-216, then what is it?

Senator LeBreton: The honourable senator talked about the Banking Committee and witnesses. However, senators also heard from witnesses who confirmed that the Nortel long-term disability recipients would not be helped by this bill. Witnesses also warned that endless litigation would result for all those involved.

The fact of the matter is — and this fact is acknowledged by people I have spoken to — this situation is a result of a court-approved settlement among all the parties. It was arrived at under the legislation in effect at that time. As much as the honourable senator would like to wish it so, he knows full well that his bill would not have helped the Nortel pensioners.

(1500)

As I have mentioned before, the government is concerned and committed to finding solutions to address this serious problem. We acknowledged the seriousness of this matter when we made a commitment in the Speech from the Throne to better protect workers when their employers go bankrupt.

The situation with Nortel has been going on for quite some time. The bankruptcy and the failure of Nortel, I believe, started to develop when the honourable senator was in government. This is a long, sad story. However, the fact of the matter is that, although most of us wish it were not so, the honourable senator's bill would have done nothing to assist the Nortel pensioners.

Hon. Pierrette Ringuette: Honourable senators, I am a member of the Banking Committee and I want to set the record straight. I want to talk about the facts. The witnesses who appeared before the committee, to whom the leader referred, could not prove the issues of cost, litigation or retroactivity, which the leader's colleagues, as members of our committee, have included in their report.

With regard to the issue of cost, how can the leader accept that the seven CEOs of this company that is under bankruptcy are paying themselves $8 million in bonuses only, on a one-year basis, while the people who are on long-term disability, afflicted with MS and so forth, cannot get the proper attention of her government?

Furthermore, with regard to retroactivity, we will soon have before us in this house a bill called Bill C-47. That again is a government bill, but in at least two places in that piece of legislation, there is retroactivity.

Why is retroactivity okay when it comes from this government, but it is not okay with regard to helping the people who desperately need it?

Senator LeBreton: Honourable senators, the retroactivity I am referring to is that this was a court-ordered settlement. The private member's bill introduced in this place by Senator Eggleton would not have helped the people of Nortel. No one derives any joy from any of this. It is a very sad situation.

I cannot answer for Canadian companies as to how they restructure themselves. Those matters are for others to comment on.

All I can say is that the government has made a commitment, as I have said before, and we made a commitment in the Speech from the Throne to address the issues in order to better protect innocent victims of companies that go bankrupt.

Again, since I am an optimist by nature, and since I do know that Nortel is going through restructuring, I am hopeful that this restructuring will in fact be such that come December 31, people who are receiving their pensions and disability pensions will continue to receive them under the restructured Nortel plan.

Hon. James S. Cowan (Leader of the Opposition): Honourable senators, I want to return to the last point the leader made and also to the answer she gave in response to Senator Eggleton's first question.

Last week, the leader suggested that in some way, Senator Eggleton was holding out false hope to these Nortel pensioners by introducing this bill, which she alleged was not the answer to this problem. The leader has now suggested that she is hopeful. Leaving Bill S-216 aside, both in response to Senator Eggleton and just again at the tail end of her response to Senator Ringuette, the leader has suggested that, as a result of the restructuring this company is now undergoing, she is hopeful that by the drop-dead date of December 31, this issue must be solved. We understand that.

No one would suggest that the leader is holding out any false hope, but can she explain to me and to the members of this house the basis upon which she is hopeful that, as a result of the restructuring, this issue will be solved?

Senator LeBreton: Returning to Senator Eggleton's bill, and others, we know from all the information that this was a court-ordered settlement. Senator Eggleton's bill had a long road ahead of it and it would not have solved the Nortel pensioners' issues.

With regard to my own comments, I am reflecting my own hope. There has been some comment in the media that Nortel is going through a restructuring, so I am holding out some hope for this deadline of December 31. This is not a government-driven comment; it is just me, as a person, trying to put myself in the position of these individuals. Since Nortel is still undergoing restructuring, I believe that there is some reason to hope that people who are receiving pensions and disability pensions from Nortel will not have their pensions cut off.

Perhaps it is wishful thinking on my part, but I am trying to be optimistic for these people. I know exactly what they are going through. As I mentioned, I have friends who were employees of Nortel.

If we are dealing specifically with the private legislation and not other issues that are going on, the legislation does not and will not help the employees of Nortel, principally because we are dealing with a court-ordered settlement that the Nortel pensioners participated in.

Senator Cowan: We are not talking about Bill S-216. The leader has already made it clear that the government will not support that bill. It is clear that bill is dead, although we would like to see it brought to a vote so that we can have that made absolutely clear. Let us assume, however, for the purposes of this discussion, that that bill is dead.

The leader spoke here not just as an interested, concerned citizen. She is the Leader of the Government in the Senate and she speaks in this chamber on behalf of the government, so this is not an idle comment by an ordinary senator. The leader is speaking in this chamber during Question Period on behalf of the government.

When the leader expresses a wish and a hope that out of this restructuring will emerge the answer to the problem that Senator Eggleton has tried to address, and when she says that Senator Eggleton's bill does not address that issue, let us accept that for the moment. The leader expressed a hope, as Leader of the Government in the Senate, in response to questions in this chamber. This is not just an idle comment. I ask the leader, so that no one would ever suggest that there was any false hope being held out to people who are in serious jeopardy, what is the factual basis of the hope she expresses in this chamber as Leader of the Government in the Senate?

(1510)

Senator LeBreton: Honourable senators, there are reports that Nortel is going through restructuring and my comments were based on that information. If I am not allowed to show any sympathy for these people at all, then I apologize for doing so.

I would like to think that while Nortel is going through this restructuring they will take into consideration the pensioners and those on disability.

Senator Cowan: We have had this kind of discussion before with the leader expressing faith in people and hoping that things will happen. However, if as a result of this restructuring no action is taken by December 31, what will the government do?

Senator LeBreton: Honourable senators, I must first point out that Senator Eggleton's bill would not have addressed this problem. Second, as the honourable senator knows, only 10 per cent of pensions in Canada fall directly under the purview of the federal government. The case of the Nortel pensioners actually falls more under provincial jurisdiction. Quite a number of people have rightly expressed concern for Nortel. I am simply saying that there are programs already available at various levels of government to assist the disabled.

In the Speech from the Throne, the government did commit to find means by which we can better protect workers who become unfortunate victims of the bankruptcies of their employers. We made the commitment that we would look at ways to deal with this situation.

Honourable senators, I have said before that this is a very complex issue. It involves many jurisdictions and many departments of government. The government is seriously looking at ways to better protect employees in the event of bankruptcy, and we will continue to seek out options to provide such protection.

[*Translation*]

Hon. Céline Hervieux-Payette: Honourable senators, giving the private sector the responsibility for finding a solution to a problem that could have been subject to an agreement in September is risky.

We should remember that Nortel received hundreds of millions of dollars for research and development. The government invested heavily in this company to ensure its growth which, in the end, did not materialize, not because of the employees we are talking about, but because of the employees in general.

It was the management of this company that failed. It is this management that will compensate these employees by using monies that are owed for the most part to financial institutions. Does your government have a responsibility in this matter? What does the government plan on doing to solve the problem, besides expressing empty wishes?

[*English*]

Senator LeBreton: Honourable senators, Senator Hervieux-Payette's question is similar to that of Senator Ringuette. Nortel is a private company. The honourable senator is right that it was the previous government that put a significant amount of money into Nortel. We have privately-run companies.

The situation that developed with Nortel has been a long time coming. We have lived with this for about 10 years. I could ask Senator Hervieux-Payette or Senator Eggleton what they did when it was obvious that Nortel was in serious financial difficulty and their employees would suffer as a result.

I cannot answer for the management of Nortel, a private Canadian company. As I pointed out earlier, only 10 per cent of Canada's pensions fall under the jurisdiction of the federal government because of the way pensions are set up in Canada.

The honourable senator talked about laws that are in place in the United Kingdom and the United States. It is true that there are laws in place. When our government studies this matter to seek resolution, I am quite certain that our officials will look at examples in other countries.

I cannot answer for the executives of Nortel. There are many stories about the management problems at Nortel. I am, perhaps, dismayed like any other ordinary citizen, but there is nothing more that I can say to answer the honourable senator's question.

[*Translation*]

Senator Hervieux-Payette: I believe that the leader has forgotten to answer the question. We are facing a unique problem involving disabled people who will not receive pensions or medical treatment because, in Canada, there is no law requiring corporations to fund these programs. And given that Nortel accounted for one third of the transactions on the Toronto Stock Exchange, it was not a small corporation.

And as for the issue of leaving private businesses to their own devices, I would like to point out that your government invested $9 billion to save a private American company. At this point, I do not believe that we have lessons to learn from you about whether government money can be invested to save jobs. We supported that measure. But do not turn around later and tell us that you are at arm's length from the company.

When will the government introduce a bill to ensure that no employee in Canada experiences such difficulties and that Canada will join the OECD countries that currently provide better protection for their employees?

[*English*]

Senator LeBreton: The honourable senator completely overlooked the very large responsibility that the provinces have with regard to pensions.

On the question of disabilities, the government has done a number of things to help people who suffer from disabilities. For instance, in March, Canada ratified the UN Convention on the Rights of

Persons with Disabilities. We created the Registered Disability Savings Plan in September and over 35,000 Canadians have these plans. Last year's budget provided $75 million for housing for people with disabilities. Our Working Income Tax Benefit provides an extra supplement for persons with disabilities. We have labour market agreements with persons with disabilities to help them prepare for or return to work. We have also increased the number of eligible medical expenses from a tax point of view for people with disabilities. The government has already taken some significant steps to improve the lives of the disabled.

I know that we are dealing here specifically with a group of people who were, unfortunately, employed by Nortel, but the government has programs to assist the disabled. As I have mentioned many times, in our Speech from the Throne we committed to looking at ways to better assist workers with companies that go bankrupt. There is nothing more I can add at this point.

Hon. Sharon Carstairs: Honourable senators, I know that the honourable senator has received numerous emails, as have I.

I hope the leader can help me, because I would like to respond to the particular individual who writes:

(1520)

Dear senators:

Nortel disabled employees like me never had a vote on the settlement and there was no evidence supplied that there was majority support from disabled employees, who were not, in any case, in a position to give informed consent without fear of Nortel cutting off their essential medical benefits within weeks of the first settlement, and hours of the revised settlement. I did not agree to the settlement as Minister Clement —

— and this honourable minister has said —

— implies when he says the lawyers for the parties agreed.

The Nortel disabled employees never voted for on court representative. Nortel disabled employees were not democratically involved in the process to select the court appointed lawyers. . . .

What do I respond to this individual?

Senator LeBreton: Honourable senators, I have received the same emails. The fact is we can only deal with what we know. There are many people now who say they did not agree with the settlement. However, the fact is people representing these individuals went to court and agreed with the settlement. That is a question that that individual will have to direct to the people who were representing them directly in the court proceedings.

I do not know what else we can say to these people. When people go to court, like all of us if we are part of a court action, they have people representing them and there is a court settlement. When, after the fact, they say, "Well, I did not agree with it," I do not know what Senator Carstairs, I or anyone

could possibly say that would be of help to that individual. I do not know what anyone in the government or any individual senator could say to a person who has been part of a legal court action. It is one of those situations. We are now getting those emails. Nortel and their employees were part of a court action. The court decided and now, after the fact, the senator is asking us to do something that is not legally possible.

Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act
Bill to Amend—Sixth Report of Banking, Trade and Commerce Committee—Vote Deferred

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tkachuk, for the adoption of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans, with a recommendation), presented in the Senate on November 25, 2010.

Hon. Stephen Greene: Honourable senators, I would like to begin by stating my sincerest sympathies for how difficult this situation is for the 378 Nortel long term disability claimants. Not only do they have to cope with whatever physical reasons have forced them into being disabled claimants in the first place, they are now drawn into a very complicated and difficult legal and financial circumstance. I have read many of the claimants' letters and emails and have reflected on them.

In any insolvency situation, we are dealing with one constant: There is simply not enough money to go around and difficult decisions must be made. The case before us is perhaps as difficult to solve as anyone could imagine.

Unfortunately, Bill S-216 does not offer a solution for Nortel's LTD claimants. The reason for this is as follows: Bill S-216 attempts to retroactively change the legal framework for creditors, in particular the Nortel LTD claimants, but is not capable of enforcing the solution it wants.

It proposes to put unsecured LTD claims higher on the list of creditors, thus solving or ameliorating the workers' problem. I will admit that, as a policy issue, I am probably not against such a provision. Other countries have this type of priority, and it might be an option that Canada ought to look at in the future. Unfortunately, while future claimants could conceivably be helped by this bill, changing the current legal framework and having those changes apply to the past will not solve the problem for Nortel workers on long-term disability.

Nortel, of course, is subject to proceedings under the Companies' Creditors Arrangement Act, which requires that certain legal procedures must be followed, and they have. In this case, changing the legal landscape after the event will not be enough.

We have heard plenty of arguments as to how the will of Parliament is supreme and that it can legislate retroactivity. This is true. *British Columbia v. Imperial Tobacco Canada Limited*, 2005 confirmed this. This is not a case of simple retroactive legislation, though. The CCAA procedures

underline that if any claims are to be paid, Nortel itself must file a Plan of Compromise, by which the remaining funds in the company are divided and paid to creditors.

In the Nortel case this plan has been court approved. There is also a clause in the court agreement that immunizes the agreement from future changes in the law that might affect the plan. All of the creditors are bound by this, including the Nortel workers.

The Ontario Superior Court's decision states very plainly that Nortel can choose to ignore any future legal changes that have a retroactive effect on the order of claims. The judge stated that such compromises, as found in the sad case of Nortel, are final.

In rendering his decision the judge said:

It is not, in my view, reasonable to require creditors to, in effect, make concessions in favour of the Former and LTD Employees today. . .

Which has occurred,

. . . and be subject to the uncertainty of unknown legislation in the future.

It is thus highly unlikely that, just because a law has been changed, Nortel would file a new plan without a legal fight, and likely a lengthy and costly one, because there is no requirement for Nortel to do so. We all must recognize this. Retroactivity is not the only issue here. The court agreement allows Nortel to ignore legal changes. Thus, for the LTD claims to be extended, Nortel itself must recognize that the laws have been changed and then must decide to file a new plan in order that Nortel LTD claimants are satisfied.

(2020)

There is nothing in this bill that can force Nortel to file a new compromise plan, which would be necessary in order for any new claim to be awarded to the LTD claimants. This is unfortunate, but true.

In short, the bill changes the rules under which the previous compromise plan was made, but it is powerless in forcing a new compromise to be made and it is powerless in avoiding the court's decision that Nortel can ignore retroactive legal changes to the priority of claimants. As it is, the bill would simply state that the order of claimants is different, to which Nortel can legally answer, "So what? We have a court agreement that says we can ignore it," and they can, without legal consequences.

We know Nortel will not file a new compromise plan, because they have given no indication that they wish to do so. They are free to alter the compromise plan now.

As it turns out, because of the court agreement, this bill, as it applies to Nortel, is a retrospective piece of legislation, not a retroactive piece. There is a difference.

The Supreme Court of Canada, in *Benner v. Canada*, adopted these definitions to explain the distinction: A retroactive statute is one that operates as of a time prior to its enactment. A retrospective statute is one that operates for the future only. It is prospective, but it imposes new results in the future with respect to a past event.

In plain English, a retroactive law has action on previous events, while a retrospective law only looks at previous events. With Bill S-216 — and this is a fact — the law would only be looking at the past and passing a kind of judgment on it. However, it is powerless to force any action. The court settlement states exactly that. This bill will not force any action. Nortel will not file a new plan, as is necessary in any CCAA process. Nothing will change for Nortel LTD employees if this bill is passed, at least not unless Nortel wants change.

The bill can only look at the past, not act on the past. Of course, as senators, and as public servants, which we are, we would all like to help people. However, it is important that we actually help, and not just leave the impression that we are helping. As Senator LeBreton has said in this chamber, we must not raise false hopes with this bill. This goes for both this legislation and us senators: We must be more concerned with action that will help and less with appearances that will not.

Let us not forget that even if Bill S-216 was a magic bullet and actually worked, the money that would end up with LTD claimants would not come out of the pool of money that was used to pay the million-dollar bonuses to executives that my colleagues like to rail about. It would come from monies owed to other creditors, other companies, big and small.

When not discussing magic bullets and other fantasies, when truly discussing action on this file or any other, we must be wary of unintended consequences. We must be wary of unintended consequences whenever we contemplate picking out one group of people and seeking to legislate specifically for them in the context of a law that would apply and operate generally.

Once again, this is all so terrible; it really is. However, the answer is not in this legislation, not by a long shot.

Our committee's report mentions what some of these unintended consequences could be. For example, as some witnesses told us, this bill might cause companies in bankruptcy proceedings to prefer to be liquidated rather than to be restructured.

As several witnesses stated, Bill S-216 would reduce the amount that some creditors would otherwise hope to recover in bankruptcy proceedings. Bill S-216 would also increase the risk for investors and raise, however marginally, the financing costs for bond-issuing companies.

Considering further the cost to business of raising funds, companies that offer long-term disability insurance benefits would find themselves at a financial disadvantage to companies not offering such benefits, both domestic and foreign.

In the case of investors who buy bonds in a Canadian business, a change in the order of priority increases the risk that they will not be able to recoup their investment in the event of a company's

failure. This increased risk could mean that investors will become less willing to buy corporate bonds of companies offering LTD, depriving them of financing and hindering their ability to grow.

It could also create a higher risk premium on bonds, making financing more expensive. In effect, higher risk means increased financial costs for businesses financing their operations or expansions. In the grand scheme of the economy, this could lead to reduced economic growth and job creation.

There was lots of testimony at committee that the bill needs amendment before it even has a ghost of a chance to do some good. Senators Hervieux-Payette and Eggleton both mentioned a witness in their speeches, a legal expert by the name of James Pierlot. Both senators mentioned that this legal expert supported the bill. They failed to mention, however, that in his testimony and in his brief, Mr. Pierlot offered 35 amendments to the bill. Thirty-five amendments to a bill with only eight clauses by a supposed advocate ought to raise some flags amongst senators being asked to support a bill.

Do we realize how complex this issue is? There can be so many variables, depending on how generous the employer is to its employees. Each and every corporation may have a different definition as to what constitutes a disability or the length of the benefit term. What if some long-term disability plans are integrated with other programs? There are many variations that need study.

Looking at changing the order of claim priority in bankruptcy law for everyone from the date of Royal Assent onward is something the Senate or the minister might want to explore. I, myself, would be sympathetic to a study of this. However, singling out one group out of all the others in our country and making a general and broadly applicable legal change that affects the whole population, but which is actually aimed at one group to solve a particular problem, does not strike me as good law precedent and practice.

I say this with the full appreciation of the difficulties, stresses and heartaches that Nortel's LTD claimants are currently experiencing. We know that Nortel is going through restructuring right now, so there is reason to hope that the benefits for LTD workers will be extended beyond December 31.

In the meantime, the chamber should join my colleague Senator Kochhar's appeal to the current Nortel stakeholders to agree by consensus and in good faith to allow LTD claimants to withdraw their share of funds from Nortel's assets, and we encourage them to do so.

These, then, are the reasons that we must unfortunately adopt the report on Bill S-216 of the Standing Senate Committee on Banking, Trade and Commerce.

Hon. Art Eggleton: Will the honourable senator take questions?

Senator Greene: Yes, of course.

Senator Eggleton: Let me start with the question of retroactivity. The honourable senator cited James Pierlot, who is a pension lawyer, consultant and expert on this subject. He said that retroactivity is not an issue with this bill.

The honourable senator says that Mr. Pierlot proposed amendments. Yes, in fact, he proposed an amendment to clause 8, the transitional clause, which I indicated to the committee that I wanted to put forward. If you look at it in that light, clause 8 would read:

For greater certainty, this Act applies to a debtor in respect of whom proceedings under the Bankruptcy and Insolvency Act or under the Companies' Creditors Arrangement Act have commenced before the coming into force of this section and, notwithstanding any judgment or order by any court during those proceedings.

The honourable senator already cited the Supreme Court decision that says this kind of retroactivity is all legal to do. It is a limited retroactivity, because the matter is not closed yet; it is still before the courts.

I do not understand how the honourable senator can say that this bill would not be successful in terms of retroactivity when the clause that is in the bill, with that amendment, makes it clear that retroactivity applies to this case.

Can the honourable senator explain that?

Senator Greene: Yes, I would be happy to. I am looking for a particular reference. This is from the judgment of the Superior Court of Justice, Ontario, Justice Morawetz, who rendered his decision on the settlement agreement.

He said that he is firmly of the view, and is right in his judgment, that retroactivity is not a subject that can apply to this particular court agreement. He said, as I said in my speech:

It is not, in my view, reasonable to require creditors to, in effect, make concessions in favour of the former and (disabled) employees today, and be subject to the uncertainty of unknown legislation in the future.

(2030)

Mr. Justice Morawetz is clear: It is right in the legal agreement that retroactivity cannot apply a change in the law. This particular agreement is immune to changes in the law. All that will result is endless lawsuits.

Senator Eggleton: If I can continue with the questioning; if more time is possible, I would appreciate it.

The Hon. the Speaker: As a matter of order, Senator Greene's allotted time has expired.

Senator Cools: So give him more time.

Senator Tardif: Five more minutes.

The Hon. the Speaker: It is up to the honourable senator whose time we have just been on —

Senator Cools: Ask for time.

The Hon. the Speaker: — to ask for additional time. Should he choose not to ask for additional time then we continue debate, and I hear no request for extension of time.

Senator Eggleton: Are you afraid of the questions?

The Hon. the Speaker: Continuing debate.

Senator Eggleton: Maybe he is afraid of the questions.

The Hon. the Speaker: Hearing no further debate, are honourable senators ready for the question?

Some Hon. Senators: Question.

The Hon. the Speaker: I will put the question.

It was moved by the Honourable Senator Hervieux-Payette, seconded by the Honourable Senator Tkachuk, that this report be adopted now.

Is it your pleasure, honourable senators to adopt the motion?

Some Hon. Senators: Yes.

Some Hon. Senators: No.

The Hon. the Speaker: Those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

Hon. Jim Munson: Your Honour, I wish to defer the vote.

The Hon. the Speaker: Pursuant to the rules, the chief opposition whip has the right to defer the vote, which is deferred until tomorrow, Wednesday, at 5:30 p.m.

Senate,Thursday, December 2, 2010

International Day of Persons with Disabilities

Hon. Vim Kochhar: Honourable senators, I stand here today to bring to your attention that tomorrow, December 3, is the International Day of Persons with Disabilities. On this planet there are more than 650 million people who live with disabilities and often we are not aware of the challenges they face.

It was more than 30 years ago when I picked up the torch for the disability movement from an extraordinary woman, Marg McLeod. I remember at that time in Toronto, Bloorview was called the Crippled Children's Centre, and the Centre for Addiction and Mental Health was called the Hospital for the Insane. I remember when the media called our Paralympians "crippled athletes." I remember when the only place for the severely disabled was to live in an institution or at home. I remember when any service to people who were deaf-blind was considered a waste of time and money.

(1340)

From the outset, we believed there was absolutely nothing that people with disabilities could not achieve and that they should be recognized for their achievements. We also believed that the wheelchair was no longer a symbol of disability but a symbol of freedom for those who could not walk.

This week, honourable senators, we pause to celebrate the many milestones we have established. We celebrate the opening of the Canadian Helen Keller Centre in Toronto, the only training centre for people who are deaf-blind in Canada. We celebrate the opening of Rotary Cheshire Homes where 16 people who are deaf-blind live barrier-free and independently in their own apartments. This is still the only facility of its kind in the world.

We celebrate the election victory of Minister Fletcher, who is a quadriplegic, and his appointment to the cabinet. We celebrate the appointment of David Onley, who is physically disabled, as the Lieutenant-Governor of Ontario.

We have not achieved everything in full measure, but we have redeemed enough to celebrate on December 3. Today, Canada is the best country in the world for people with disabilities. Please keep the International Day of Persons with Disabilities in mind this week, and we will continue to work together to make a difference in the way Canadians think about disability.

Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act
Bill to Amend—Sixth Report of Banking, Trade and Commerce Committee—Debate Continued

On the Order:

Resuming debate on the motion of the Honourable Senator Hervieux-Payette, P.C., seconded by the Honourable Senator Tkachuk, for the adoption of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans, with a recommendation), presented in the Senate on November 25, 2010.

Hon. Stephen Greene: Honourable senators, I would like to put my notes together on this topic. As Senator Eggleton made some excellent comments in his last speech, I believe they deserve a reply. In addition, senators on both sides could use a full explanation of where we are on this particular bill, and I would be happy to do that. I am putting my notes together and would like to adjourn the debate in my name for the balance of my time.

The Hon. the Speaker: Is it your pleasure, honourable senators, to —

Some Hon. Senators: Agreed.

Some Hon. Senators: No.

Hon. Art Eggleton: We have had enough debate. People want a decision on this matter. I would hope we would take the vote today.

The Hon. the Speaker: Honourable senators, the motion that was put to the house is as follows:

It was moved by the Honourable Senator Greene, seconded by the Honourable Senator MacDonald, that further debate on this item be adjourned to the next sitting of the Senate. There is no debate on an adjournment motion, so this is the question before the house.

Those in favour of the motion will signify by saying "yea."

Some Hon. Senators: Yea.

The Hon. the Speaker: Those opposed to the motion will signify by saying "nay."

Some Hon. Senators: Nay.

The Hon. the Speaker: In my opinion, the "yeas" have it.

And two honourable senators having risen:

The Hon. the Speaker: Call in the senators.

Senator Cowan: You have had months to speak.

The Hon. the Speaker: The whips are advising the house that there will be a one-hour bell. The vote will take place at 3:30 p.m. Do I have permission to leave the chair?

Hon. Senators: Agreed.

(1530)

Motion agreed to on the following division:

YEAS
THE HONOURABLE SENATORS

Andreychuk	Kochhar
Angus	Lang
Ataullahjan	LeBreton
Boisvenu	MacDonald
Braley	Manning
Brazeau	Marshall
Brown	Martin
Carignan	Mockler
Champagne	Murray
Cochrane	Nancy Ruth
Comeau	Neufeld
Cools	Ogilvie
Demers	Patterson
Di Nino	Plett
Dickson	Rivard
Duffy	Runciman
Eaton	Segal
Fortin-Duplessis	Seidman
Frum	Stratton
Greene	Tkachuk
Housakos	Wallace
Kinsella	Wallin—44

NAYS
THE HONOURABLE SENATORS

Baker	Joyal
Banks	Losier-Cool
Callbeck	Mahovlich

Carstairs	McCoy
Chaput	Mercer
Cordy	Merchant
Cowan	Moore
Dallaire	Munson
Day	Pépin
Eggleton	Peterson
Fairbairn	Poulin
Fox	Poy
Fraser	Ringuette
Furey	Robichaud
Harb	Rompkey
Hervieux-Payette	Smith
Hubley	Tardif
Jaffer	Zimmer—36

ABSTENTIONS
THE HONOURABLE SENATORS

Senate, Wednesday, December 1, 2010

ORDERS OF THE DAY

Speaker's Ruling

The Hon. the Speaker: Honourable senators, I undertook yesterday to come back this afternoon with my ruling on the point of order that was raised yesterday.

Honourable senators, yesterday, during debate on the sixth report of the Standing Senate Committee on Banking, Trade and Commerce, a point of order was raised as to whether the report, which recommends that the Senate not further consider Bill S-216, was properly before the Senate. This concern arose from the fact that the committee had not gone through the bill clause-by-clause, a usual requirement under rule 96(7.1). That rule states that "[e]xcept with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill." Against this requirement, there is rule 100, which states, in part, that "[w]hen a committee to which a bill has been referred

considers that the bill should not be proceeded with further in the Senate, it shall so report to the Senate, stating its reasons."

[*Translation*]

There are relatively few instances in which Senate committees have used the process allowed under rule 100. Research has identified eight cases since 1975, of which the 1998 example of Bill C-220 is the most recent. According to the available records, committees have always made the decision to report against a bill without starting clause-by-clause study. That is to say, the basic issue of whether a committee considers that a bill should be proceeded with is decided, either explicitly or, most often, implicitly, before clause-by-clause. If the committee decides to make a recommendation under rule 100, it does not ever reach the clause-by-clause stage.

[*English*]

This helps to understand how rule 96(7.1), which was added to the *Rules of the Senate* in 2005, is to be used. This rule only applies if the committee actually gets to the stage of considering a bill clause-by-clause. If that point is not reached, because a committee decides to recommend against the bill pursuant to rule 100, the requirement of rule 96(7.1) does not come into play. To require that a committee must go through a bill clause-by-clause when it has already decided to report against the bill would be contradictory and inconsistent.

[*Translation*]

A review of the blues of the meeting of the Banking Committee on November 25, indicates that, although the term "dispense with clause-by-clause" was used at one point, this was quickly corrected to "not proceed with clause-by-clause." A motion to that effect was put to a recorded vote and carried. A report was then proposed, with a recommendation that the Senate not continue consideration of the bill. This report was adopted on another recorded vote. The proceedings, except for the passing reference to dispensing with clause-by-clause, which was corrected, were thus in order. Not proceeding with clause-by-clause when the committee is recommending against a bill is, as already noted, proper practice.

[*English*]

Honourable senators, as a ruling of September 16, 2009, noted, "[w]hile committees are often said to be 'masters of their own proceedings,' this is only true insofar as they comply with the *Rules of the Senate*." This is in keeping with rule 96(7), which prohibits committees from adopting inconsistent special procedures or practices without the Senate's approval, and also reflects points to be found at pages 1047-1048 of the second edition of the *House of Commons Procedure and Practice*.

This said, the practice in our committees has been that they are permitted considerable freedom in governing their proceedings. When there are concerns about the propriety of proceedings in committee, they should be raised at that time and that venue when corrective action can be more easily taken.

The ruling is that the sixth report is properly before the Senate, and debate can continue when the item is called.

Hon. Wilfred P. Moore: Honourable senators, I read the Speaker's ruling as he went over it, and I did not see any reference to the fact that the committee —

The Hon. the Speaker: Honourable senators, there is no debate on the ruling. If the ruling is being appealed, then I should hear that the ruling is being appealed, but there is no debate on the ruling.

Senator Moore: Honourable senators, I do not want to challenge the Speaker, but I am concerned that things were not looked into. We had an agreement in the committee, two agreements —

The Hon. the Speaker: Order.

Senate, Tuesday, November 30, 2010

Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act
Bill to Amend—Sixth Report of Banking, Trade and Commerce Committee—Debate

The Senate proceeded to consideration of the sixth report of the Standing Senate Committee on Banking, Trade and Commerce (Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans, with a recommendation), presented in the Senate on November 25, 2010.

Hon. Céline Hervieux-Payette: Honourable senators, it gives me no pleasure to move the adoption of this report, but as the Deputy Chair of this committee, I have certain responsibilities.

(1700)

Since my chair was not at the meeting last week, I move, with great sorrow, the adoption of the report to ensure that it is brought forward for debate in the Senate, where I hope it will be defeated.

The Hon. the Speaker: It is moved by the Honourable Senator Hervieux-Payette, seconded by the Honourable Senator Tkachuk, that this report be adopted.

On debate, Honourable Senator Hervieux-Payette.

[*Translation*]

Senator Hervieux-Payette: Honourable senators, I would like to explain how I feel about this report, which took us all by surprise at last Thursday's meeting. I would like to explain how, when it came time for clause-by-clause consideration of the bill, just as I was asking whether there was agreement to proceed with a clause-by-clause study of Bill S-216, the Conservative senators asked that we not proceed with the vote on the clause-by-clause study. There was a vote on this procedure and the Conservative senators simply ignored the clause-by-clause study of Bill S-216.

I would like to reiterate the comments I made to my colleagues, which were that since we have a British parliamentary system, voting for a clause-by-clause study allows senators to speak to each clause and to vote for or against each clause. There was nothing to prevent our colleagues from exercising their right to vote. We are lawmakers and our way of dealing with all issues is simply through bills.

The second phase of our meeting consisted of the tabling, by the same senator, of a report by God knows who, a report that I was obliged to table by virtue of my position and that did not at all reflect the evidence submitted by the witnesses. I would like to make some clarifications, because we had an outstanding witness by the name of James Pierlot.

[*English*]

He holds degrees in history from the University of Western Ontario, common law, Osgoode Hall, civil law, University of Montreal.

[*Translation*]

And a Masters of Law in Taxation from Osgoode Hall. I would like to remind honourable senators what this witness said.

[*English*]

Bill S-216 amounts to a modest incremental change to insolvency legislation that is consistent with other recent changes to insolvency legislation that provided limited creditor protection for pension plan contributions and unpaid wages.

For Mr. Pierlot, the effect of Bill S-216 on an employer's ability to raise capital is expected to be minimal because LTD claimants tend to be a small minority of an employer's total workforce and because the bill is not intended to affect secured creditor claims. Although the bill may require more employers to obtain periodic valuations of LTD liabilities for purposes of obtaining credit, this bill would not seem to be an unduly onerous task, given that valuations of LTD programs is fairly routine.

For Mr. Pierlot, it is a modest but important first step toward improving benefit security for Canada's most vulnerable workers, those who are unable to support themselves due to the workplace injury, illness or disability.

[*Translation*]

These remarks reflect the opinions of most of the witnesses we heard and the credibility of that witness is worth a great deal. I would remind honourable senators that Nortel once amounted to 30 per cent of the TSX, that is, 30 per cent of the companies listed on the Toronto Stock Exchange. This shows the importance of a company that was a leader in technology in Canada, and one that disappointed us considerably. Shorty before Nortel declared bankruptcy, we learned that its senior executives had given themselves bonuses worth $8 million and we are still wondering what was

going on with the board of directors of that corporation, which submitted incorrect financial statements three times.

I would remind honourable senators that Nortel executives in the United States were prosecuted and received prison sentences for fraud. The same corporation has caused much suffering to these employees with disabilities.

In Canada, in September 2010, an agreement was reached with Nortel's creditors. Needless to say, there was nothing in that agreement for the employees with disabilities. Since then, Bill S-216 was introduced in this chamber. We have learned that Nortel's creditors will share $6 billion, including $1 billion in Canada. It is estimated that, at this time, the amount of money needed to create a fund that would give some hope and dignity to the former Nortel employees with disabilities is about $80 million.

I will use the terms from the report tabled by our Conservative colleagues and point out certain paragraphs that just do not stand up to scrutiny.

First is the question of retroactivity. The last budget, Bill C-9 — which was passed in the Senate to our dismay — contained retroactive measures that went back several years. When it comes to retroactivity, the Conservatives do not seem to get bogged down in details if they are taking money out of taxpayers' pockets.

The second point in the report suggests that Canadian industry would suffer. I would remind the senators that of the 54 countries studied by the OECD, 34 of them protect workers with disabilities by giving them sufficient income, treatment, and necessary medication for their well-being and by not penalizing them and ensuring that funding is available.

The third paragraph in the report is about the impact on the financial sector, in terms of potential future borrowing. The analysts advising us said that there would be very little impact, about 0.002 per cent. I do not think that the Canadian economy will be weakened or that the markets will crash if we pay 0.002 per cent.

I would also like to point out that we are being told that, if Bill S-216 is passed, there is the possibility of a legal challenge. That cannot be serious. The $6 billion will remain frozen until the proceedings conclude, and the creditors who are owed $6 billion will go after 550 disabled pensioners. Really, if the $6 billion were invested and earning interest, I do not understand why they would still go after people living in extremely deplorable financial and physical situations, and lose hundreds of millions of dollars in interest while the courts deal with this issue. I do not think that we are very realistic when we talk about this issue.

Then there are legal challenges. Those of us with legal knowledge are confident that the creditors forgot to put some money aside in their regulations. I do not think that contributing $80 million of the $6 billion would really reduce the financial rating of Canada's businesses.

No senator worth their salt could support this report. In light of the evidence, it seems clear that Bill S-216 has to be passed under the silence, inaction and vague policy of the government that has not

proposed anything — as we saw today in Question Period — to give hope to these disabled workers. I wonder who will have the heart and the courage to face these people who will lose everything on December 31, knowing that on November 30, we still have not found a solution even though the issue was brought before the Senate in the spring.

Honourable senators, you will understand that it is impossible for me to support this, and I expect a response as soon as possible.

At the request of my colleagues, I have prepared a letter to the minister asking him what his solution is to this. I look forward eagerly to a solution, which should be imminent, because when people are sick and living in uncertainty, we know that this affects their health. Some colleagues from both sides of the chamber have been sick and they know full well that concern contributes to the problem, while security helps in recovery. I invite honourable senators to reject this report.

(1710)

[*English*]

Hon. Art Eggleton: Honourable senators, this committee report is not an appropriate answer to people who are in very a desperate situation, and it is not supported by the expert evidence that was given at the Standing Senate Committee on Banking, Trade and Commerce.

I will ask all honourable senators not to support this report from the committee, as Senator Hervieux-Payette has also stated, and to, in fact, allow us to then go back to Bill S-216 so that we can properly deal with the matter. I have an amendment to Bill S-216, and if we get to that stage, I will want to move for further clarification on the transition clause number 8.

I will deal first with the arguments that come up in the report. The first argument against Bill S-216 is the retroactivity. The retroactivity in this particular case is a very limited one because the proceedings are still before the court and are not completed. There has been one part of it that has been the result of a recommended settlement by the court on the basis of the law as it presently stands, which makes the long-term disability claimants unsecured creditors, right at the bottom of the barrel. However, if they are moved up into a preferred status, which is about a middle-rank status, not the highest by any means, then the court would take that into consideration. On the transition clause in this bill it would require that they do that, and then could provide for the appropriate benefits to which these people are really entitled and to which they have seen their health and welfare trust diminished to the point where it cannot presently provide them, even though the company has the assets to do so.

It is a limited application of retroactivity, which is something that happens all the time around here. Bill C-39, Bill C-33 and Bill S-7 have all been adopted and each one includes one or more retroactivity clauses. We find retroactivity in terms of budget bills when they are ultimately adopted and taken back to an earlier stage when the provision was put into effect.

There is nothing unusual about retroactivity. You would have trouble if you were getting into criminal law in dealing with that, but this is hardly that kind of thing. This is dealing with commercial

transactions involving bondholders and others and is simply saying that the employees deserve to be at a higher rank.

Honourable senators, this government has recognized that because it brought in the Wage Earner Protection Program Act in 2007, and it said there should be super-priority status. That is more than what my bill asks for. That is a higher ranking. Super-priority status is for wages outstanding when it comes to bankruptcy proceedings. The Leader of the Government in the Senate cited that the other day in one of her answers.

It is hard to understand why it seems fine in one instance and does not in another. It did not create all the havoc or problems in the markets in that case, as it has in so many other countries, yet somehow they think it will be here.

Mr. Pierlot, who has previously been mentioned, who is a legal expert in this area and deals with pensions and disability plans, et cetera, says that does not hold water at all in his comments. He says it is quite acceptable and has adequate precedent to be able to do that. The next argument is that it could result in litigation. You could make an argument that almost anything could result in litigation.

Again, that same witness said that he did not see the cause for action and did not see a basis in law to be able to do that. He said that surely they are not going to sue the disabled employees. Will they sue the government? What basis would they have to do so? He says there is no basis. He went through the Constitution and other factors and said there was no basis in law to do it.

The other argument mentioned was the time factor, that the people who have most of the money perhaps are the secured creditors. They would not have a reason to do it. They are better off to start with than the preferred status that I am recommending. They are better off. Others, well, time is money and it would take a lot of time to go through these kinds of processes, presumably, and to what end?

Here we are talking about less than $100 million out of a company that worldwide, has assets of $6 billion, $1 billion of assets in Canada. We are talking about a very small amount of money by comparison, and it is not something that anybody would find in their interest to tie up in the court for a long period of time, tie their own possibility of getting funds out of the liquidation of the company, which is well on its way to happening.

Again, the expert advice that we had before our committee quite clearly indicated that there is not a basis, a case in law, for doing that.

Honourable senators, they go on to talk about conferring super-priority status on similar claims under the bankruptcy. Again, super-priority status does not, in the CCAA, pertain, and I am not asking for it under the Bankruptcy and Insolvency Act, but the government, under the Wage Earner Protection Program Act, did bring in something to that effect for outstanding wages.

The final argument they come up with is increasing risk for investors and financing costs for bond-issuing companies. Again, the evidence does not support that. The financial analyst who was before

our committee cited numbers down to the one hundredth of 1 per cent level: miniscule, absolutely negligible.

A study done in Australia further supports that. This is a study done by a couple of economists there, Anderson and Davis. They examined the effect of employee entitlements on bond credit spreads in Australia. They used an analytical credit risk model. They actually added in more than just things like long-term disability. They added in other employee-type benefits, and again said it was a negligible, extremely small impact.

Those witnesses and those pieces of information that the committee had before it simply do not support this idea that it might hurt the markets.

There are so many countries that already do this. Thirty-four out of 54 countries surveyed by the OECD and the World Bank already have either super-priority status or preferred status: France, Germany, Belgium, the Czech Republic, Italy, Spain, Sweden, Switzerland, the U.K., Norway, Australia, New Zealand, Korea, Brazil, Israel. I could go on and on. Those countries already have the amendments to the bankruptcy protection for those people.

(1720)

On top of that, we have all sorts of other provisions in countries such as the United States or the U.K. At least 12 countries, including Germany and the United Kingdom, require the payment of insurance premiums by their corporations to fund their public pension plan and disability income insurance programs. In the United States, LTD employees have disability protection for pensioners through the Pension Benefit Guaranty Corporation. Also, employees have legal recourse to go after LTD benefits after bankruptcy provided by their federal Employee Retirement Income Security Act legislation. There is no such avenue for Canadians. They also have a more generous social security disability program, which actually pays more than twice what the CPP disability pays for similar people in Canada. Every major trading partner, every country we deal with, has something more than what we have. Most of them have the kind of protection in bankruptcy proceedings that I am asking for in this bill.

Colleagues, the evidence quite clearly supports us not adopting this single-page report from the committee and instead reinstating Bill S-216. If we do not do that, we are letting Nortel off the hook. We are letting them walk away from their obligations. They managed to find money to pay seven executives $8 million in bonuses a year ago. They have assets of $6 billion, $1 billion of which is in Canada, and they are just going to download this obligation onto the taxpayers. There is not enough money in the health and welfare trust to deal with Nortel's responsibilities. They raided the fund. It is down to 35 per cent of what it would require. Therefore, at the end of the year, these people will be cut off their medical benefits, and their income support benefits will be cut down to about 20 per cent of what they are now, which in turn is only 50 per cent of what they had as income when they were employed by the company.

How will this then affect them? Honourable senators, we have a number of impact statements that a number of them have signed. Over 400 people are in this circumstance, and many of them have signed impact statements. Let me give you some examples.

One woman says she is 55 years old, with primary progressive multiple sclerosis. She currently uses a cane. She has worked in Canada for over 40 years. She says:

The situation my husband and I find ourselves in is not only frightening but it's alarming. We have both worked all of our adult lives and, while ensuring a good education and providing for our sons, we also managed to diligently save for our retirement. I am sure it's everyone's dream to enjoy a comfortable retirement. This has all changed. Not only does my illness cause a considerable change to our plans, our financial stability that we have worked tirelessly for is all gone. Due to my husband being self-employed, we will be without benefits after December 31 of this year. The cost of medication alone, combined with my lack of income, will no doubt deplete our savings in the short term, causing us ultimately to sell our home, which currently has little equity due to remortgaging.

Another person says:

I am the mother of a nine year old child. I survived to this point severe cancer, which has left me disabled. I have fought extremely hard for my life, and now the perspective of losing my long-term disability benefits by the end of December causes me and my family a tremendous amount of stress. Time is quickly running out for us.

Another one says:

My wife was diagnosed with a brain tumour one month after the birth of our second child in 2008. As of December 31, our lifestyle will drastically change. We will no longer have the means to save adequately for our children's education, to invest in our retirements or take family vacations. There is also the risk that we will have to sell our home. I anticipate the additional financial burden would significantly impact the well-being, mentally and physically, of my life.

Another person says:

My income under disability has dropped by 50 per cent. If there is nothing after December 2010, we will well go into poverty. I will not have enough to cover basic living expenses and definitely not enough to pay for the medication that I need to just survive. My medication is over $5,000 a year. I am uninsurable by new insurance unless I pay over $3,000 a year in premiums. Without the medical treatment, the cancer will spread quickly. The impact of no income from the LTD benefits in my situation is not just one of inconvenience, it is in fact life threatening.

Another one says:

There are no words to explain the stress that this bankruptcy is putting all of us in.

Another one with a stroke says:

I am not able to talk, write and read due to a stroke while I was working in the office. This statement was written by my wife, with help. The stroke was caused by a blood clot, et cetera. To help look after me, my wife has quit her job, and without the medical benefits, we don't know how to pay for my essential medications, annually costing some $5,000, over and above medicare. Without disability

benefits, we are not sure how to pay our rent, our household expenses and help our children with their education.

Let me go to one more.

The Hon. the Speaker: I regret to advise the honourable senator that the 15 minutes is over.

Some Hon. Senators: Five more minutes.

The Hon. the Speaker: Agreed.

Senator Eggleton: This one says:

To end up disabled and in utter poverty after all the years of studying and hard-working is much for one in life. When I was thinking about all this, I decided to commit suicide, and I did it. At the end of this March, when the judge was deciding when to stop our life support, immediately or December 31, 2010, like it would make a difference, I wrote a last note, asking my mum to teach my children, live on rice and potatoes, and took a huge overdose of my pills. I already was far from here, not feeling anything. Fortunately, or maybe not so, my son found me breathless and called 911. At that time, my life had been rescued. I spent a month in hospital, in bed, not wanting to see the spring. Do I have to continue?

There are so many more who are like that. These people are in a desperate situation, and the end of the year is fast approaching. Some of them may survive with the taxpayers' social assistance programs, but many others may be like that lady and maybe not. Something has to be done about this. As I said earlier, if it is not this bill, what will it be? Time is running out. These people are desperate and very stressed out at this moment and will get more stressed out every day.

The arguments put forward in this report are not sustainable. We have adequate evidence from the expert witnesses that were before the committee and from the fact that so many other countries provide this kind of support and do even more that we should not accept this report but go back to Bill S-216.

Some Hon. Senators: Hear, hear!

Hon. Grant Mitchell: Honourable senators, I rise to agree with exactly that sentiment. Let me tell you why I have a great deal of difficulty with the way things stand now. I had the pleasure, certainly the challenge, of sitting in on the Bill C-10 review with the Standing Senate Committee on National Finance earlier this year. Of course, we reviewed the Nortel situation. We had a number of witnesses, as we always do about issues like that, and, as the discussion progressed, I began to wonder why it is that pensioners, and in this case disability pensioners, would be so far down the list of priorities when it comes to credit or ranking, particularly given that the government itself had, just several years before, established the Wage Earners Protection Act, which moved wage earners up the ranking so that, in the event something like this occurred, they would have greater standing and a greater chance of getting paid. If it is good enough for wage earners, who would still have a chance to get another job, if worst came to the worst, and protect themselves and their families, surely pensioners who live

on their pensions, just as wage earners live on their wage, and disability pensioners would have an even greater argument for being raised up the list or the ranking of creditors.

(1730)

I asked one of the private sector experts, I believe from a national accounting firm, why it would be that pensioners would be subordinated in ranking, in line for getting paid in the event of a bankruptcy, behind much more powerful interests, like the banks? What they said was very telling and striking to me. They said that if the pension liability was moved up the ranking ahead of secured creditors, like the banks, then the cost of borrowing for companies would go up. It would go up, of course, because the banks would not have access to that money now going to pensioners or disability pensioners. Therefore, in the event of a failure, they would not stand to recoup as much money. The implicit cost is greater. They therefore would charge higher interest rates if that ranking were to be readjusted in favour of pensioners.

I said to myself, how can that possibly be fair? Why would we in this country ask pensioners to subsidize the cost of borrowing for big companies? It seems surreptitious. It seems unfair and behind the scenes. It is complicated, of course, so perhaps it is easy to slip by, but that is exactly what this issue is about. It says that the banks are more important, and the company's interest in being able to pay not quite as much money in interest on its borrowings is more important than the basic livelihood of people who simply cannot recover if they lose the benefit. They do not have another chance.

It seems very straightforward to me, why would we not put a priority on people who are disabled? Why would we not put a priority on people who rely on their pensions to live?

One of the very powerful things that I appreciated about what Senator Eggleton said was how he brought this issue down from the abstract — people out there, pensioners — to real people who have families, lives, fears and hopes, and who confront a future without much security at this time. I am very glad of that, and I would hope that we could think about those people as people and not as some abstract issue.

Also, I was encouraged, tentatively hopeful, when I heard the leader say today that she could not talk about it because they actually were doing something. I will put all kinds of hope in the thought that she meant that they are doing something for these people. I would ask that perhaps they could do it before Christmas so that these people, who are real people and who are suffering, will be able to enjoy that period of the year as well.

Point of Order—Speaker's Ruling Reserved

Hon. Sharon Carstairs: Honourable senators, I rise on a point of order. I am extremely concerned throughout this debate that we have something before us that was not properly put before us. I look at rule 96(7.1) of the *Rules of the Senate*, which states:

Except with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill.

I was not at the committee meeting, but I understand that the government side decided that they did not want to proceed with clause-by-clause consideration. They moved a motion to that effect and, therefore, dispensed with clause-by-clause consideration of the bill. In fact, the *Rules of the Senate* do not allow us to dispense with clause-by-clause consideration unless there is unanimous consent. They proceeded to write a report on a bill that they had not dealt with in clause-by-clause consideration, which only the government side approved. It would seem to me that this entire report is not appropriately before the house and that this bill should be referred back to the committee for clause-by-clause consideration, which they should have done when it was in committee in the first place.

Hon. Gerald J. Comeau (Deputy Leader of the Government): I believe that I heard Senator Carstairs indicate that she was not at the committee. Therefore, she is reporting on what I presume she was told had happened at committee. Be that as it may —

Senator Mitchell: So?

Senator Mercer: Your point is?

Senator Comeau: Do you want to get into the act, Senator Mitchell, as usual? I would stick to your own defences.

The committee is the master of its own house. The committee duly presented its report last week, and with serious reservations today it was moved for adoption by Senator Hervieux-Payette. I do not see anything out of order at all with the fact that we have the report of the committee before us for consideration. Senator Carstairs gave it a good try, but I do not think it is going anywhere.

The Hon. the Speaker: Honourable senators, may I ask Senator Carstairs to repeat the rule she cited?

Senator Carstairs: Yes. I cited rule 97(7.1)

Senator Cools: It is rule 96.

Senator Losier-Cool: It is rule 96.

Senator Carstairs: I am sorry, it is rule 96(7.1), on page 97, of the *Rules of the Senate.*

The Hon. the Speaker: Thank you, senator.

Hon. Céline Hervieux-Payette: Honourable senators, I want to ensure that honourable senators understand that the clause-by-clause matter is not before the Senate as hearsay. I mentioned in my speech that I tried to introduce clause-by-clause. Maybe my honourable colleague was not listening. I even suggested that the committee proceed to clause-by-clause consideration of Bill S-216, as per usual. Of course, at that time, the Conservative senators opposed the vote and voted on the fact that we could not vote.

I have just learned that, although I am not an expert in procedure, it is not proper procedure in committee. Had I known that rule, of course, we would have used it. We have to return to our rules of procedure. As far as I am concerned, we have no choice but to return to clause-by-clause consideration at committee.

Hon. Anne C. Cools: Honourable senators, I rise to support Senator Carstairs' point of order. The sixth report of the Banking Committee in regard to Bill S-216 is out of order. At times I feel terrible that I see these flawed procedures very quickly. I am often bothered that we have become very slipshod in our practices and inattentive to the rules. Sometimes, honourable senators, I tire of being the one who notices.

Let us roll back in time. Senator Carstairs has put on the record very appropriately rule 96(7.1), and I will read that clearly for the record. It states:

Except with leave of its members present, a committee cannot dispense with clause-by-clause consideration of a bill.

For those honourable senators who do not understand, "leave" is that which is required to waive or to suspend a rule of the house. It is otherwise called "unanimous consent." It means that there must not be a single dissenting voice. The rules intend that clause-by-clause consideration of a bill be a serious part of committee consideration.

I find some support for that, honourable senators, in *Erskine May's Treatise on The Law, Privileges, Proceedings and Usage of Parliament*, twenty-third edition, at page 600, under the title "Functions of a committee on a bill." It states:

The function of a committee on a bill is to consider the bill clause by clause and, if it wishes, word by word, and to approve the text or to modify it to reflect the committee's legislative intentions.

Erskine May is also replicated in the new *House of Commons Procedure and Practice*, Second Edition, 2009, by Audrey O'Brien and Marc Bosc. At page 757, under the title "Role of a Committee on a Bill." It states:

The role of a committee is to consider a bill clause-by-clause and, if necessary, word by word, and to approve the text or to modify it.

Therefore, honourable senators, clause-by-clause consideration is important. It is unfortunate that the chair of the committee did not know this rule. It is also unfortunate that the committee members did not know this. However, this is a fact of our parliamentary life in terms of proceeding to clause-by-clause consideration, and this has been a fact of the rules for quite some time.

(1740)

I would like to caution again about the current practices of simply proceeding in what I consider to be very shoddy ways. However, let us move on to the point.

Honourable senators, if the committee chair had known this she first could have insisted that all committee members be asked for leave. Every single member would have had to dispense with clause-by-clause consideration. However, the chair had another option in her hand, as well. I want to put this on the record and I have used this often in support of the Speaker of this place. If the chair has any doubts whatsoever about the probity, the propriety, the properness, the morality, et cetera of any question, the chair is bound not to put the question. If the chair was dubious, she should not have put the question for a vote.

I can support that, honourable senators, by citing *The Chairman's Handbook* of 1933, written by Sir Reginald Palgrave. It is a very famous book. You can find support for what I said at page 5:

A Chairman is bound to decline to put from the Chair a Motion or Amendment which is out of Order, . . .

Honourable senators, I have known this for a while. I was not planning to speak but I had looked up some authorities to see if my recollection was correct. I have so verified it all.

Honourable senators, there is no doubt about what the committee record says, and I have the committee transcript in my hands. It does not have the issue number. It says "unrevised," and the date is not on it, but there is a number — 48482 Bank, page 1030-49. All that is on it, and we recognize it as the committee blues.

I shall quote the committee blues on page 1030-50. The deputy chair was speaking and she was cut off. Senator Greene states:

I would like to make a motion. I move that:

We not proceed to clause-by-clause, and

That we proceed in camera to consider two draft reports.

Then there is an exchange back and forth. Then Senator Greene later on said again:

We are not suggesting a postponement.

This is at page 1030-51.

We are not suggesting a postponement. We are suggesting we go in camera. We would like to go in camera to consider two draft reports.

Honourable senators, there is nothing at this point in time that needs more examination in this Senate than the phenomenon of committees working in camera and often without a record. We need to study this, because one particular committee that I am on is having many problems operating as it does in camera and without records. This debate proves the importance of records.

Honourable senators, I sincerely believe that Senator Greene had no bad intentions. He was doing his best and he sincerely believes in what he is doing. He is a good man.

In any event, honourable senators, I want to continue citing the committee blues At page 1030-54, Senator Greene said:

No, Madam Chair, we do not. We would like to dispense with clause by clause and to consider a draft report.

Honourable senators, I have placed the committee blues before His Honour.

Finally, Senator Greene at page 1030-54 says:

I agree with that. I would like to move that we do not proceed with clause by clause.

The deputy chair then put the question, which she should never have done.

Honourable senators, I wish now to speak about a committee report and the meaning of the word "report." Perhaps I can attempt a definition of a "report." A committee report is the means by which a committee expresses the opinion, or the conclusion it has reached after it has obeyed the reference of the Senate to study a particular matter or question.

Honourable senators, the committee report is that document that records the opinion of the committee after it has reached its opinion. In this case, no opinion was reached on Bill S-216. This is very important, and I am not splitting hairs. First of all, a committee decides yea or nay. It decides it is for or against or "maybe." It is after that decision has been taken that a member says "Let us report this conclusion to the house." Usually it is by a motion, and then the committee report, a formal document called a "report," is put for a vote and then presented in the Senate.

Honourable senators, what happened here is very unusual. Senator Greene simply appeared with these two things called "reports." It was by his moving the adoption of his report that the committee formed its opinion that is now before us. There was no real discussion in the committee and no expression of a considered opinion or conclusion.

Honourable senators, many of these irregularities occur and now many senators think they are normal practice. Some senators even think they are correct, but they are not. A committee decision has to be taken before the committee report can be adopted or even assembled or put for a vote. It seems these two documents suddenly appeared before the committee were moved and then voted on, as other senators have said.

Honourable senators, I really think we can do better. I am not debating the merits of the bill. I am not giving a speech here about the individual LTD claimants who are suffering. We have all received the correspondence. I am told there is incalculable and unspeakable suffering. I am speaking about a parliamentary point here, all the more important because, when senators set out to defeat a bill, or to recommend such to the house, as the committee report recommended that the bill not be proceeded with, it is extremely important that that decision be a clear decision of the committee, and that it

represents the opinion of the committee after considered debate and considered discussion. That did not happen.

Your Honour has been put, as usual, in a very difficult spot. I believe that the report is not properly before us. We had a similar situation a couple of years back where there was another report which was not properly before us, because the circumstances of its adoption were questionable and dubious. However, the proceedings around this committee report are flawed enough and impure enough as to make it a corrupt proceeding. Corrupt has nothing to do with graft or money; "corrupt" means rendered impure, imperfect, spoiled and so on.

I do not know how the Speaker will handle this one, but he will do his best. In a debate as critical as this, I do not think it does any good for either side to paint each other as less than human.

(1750)

I do not think there is a single senator in this place who is not concerned with the health and the welfare of the several claimants — as Senator Eggleton has called them, the LTD claimants.

Honourable senators, I am sorry that I am not more prepared, but I do ask His Honour to look at the facts and consider whether this committee report was adopted in accordance with the rule of the law, and in accordance with the due process here that we call parliamentary procedure. At the same time the Speaker must determine whether this committee report should be sent to committee so that the committee can complete its study, which I would say right now stands incomplete. This committee report is out of order.

Hon. Wilfred P. Moore: I would like to give His Honour a little bit of information that he should also have when he is considering this matter.

When it was moved by Senator Greene that we go in camera, I asked for the floor and was recognized by the chair. I made the point that we were in agreement that we would go in camera, and when we came out of the in-camera meeting, we would go to clause by clause. That is a matter of record.

On the vote, the government benches had more members in attendance and they moved and voted not to go to clause by clause. However, that is what the agreement was; and the agreement was in the committee the week before, so it is consistent with what the intention of the members were.

I, too, regret not having that rule book there with us. The clerk did not mention it. Nobody mentioned it, but clearly it should have been dealt with then.

Senator Comeau: I do not know how long we will be going on with this, and in no way do I wish to stop the debate at this point. I did note that Senator Banks wants to makes some comments.

However, I do want to come back to the issue that this point of order should have been raised at committee. That is the proper place at which such points of order should be raised. I wonder why it was not done at committee. Essentially, this is where it should have been done.

I have a Beauchesne's 6th edition here, page 222, which states:

The Speaker has ruled on many occasions that it is not competent for the Speaker to exercise procedural control over the committees. Committees are and must remain masters of their own procedure.

The reference for this is the Journals, December 4, 1973, pp. 709-10.

Having said that, I know a number of very important arguments have been raised this afternoon, so if His Honour wishes to take this under advisement to give it further consideration, I have no problem with that whatsoever. I know some very important comments have been raised this afternoon.

Senator Carstairs: There have been some very important points made, and, yes, the point of order should have been made in the committee. It is one more example, as Senator Cools has pointed out, that we are not as familiar with our rules as we perhaps should be, and that those who are assigned to help us sometimes do not have all those rules at their fingertips either.

However, the reality is that the report is now before the entire Senate, and it is before the entire Senate inappropriately because the bill has not received clause-by-clause. Therefore, the only appropriate action, in my view, is to send it back to the committee for clause by clause, after which point it can then be returned to the chamber. However, we cannot be dealing with a report on a bill which has never had clause-by-clause.

An Hon. Senator: Yes, you can.

Hon. Tommy Banks: I call to the attention of honourable senators who might not have been here — and I was reminded of it by Senator Cools' remarkable grasp of Senator Carstairs' point — that Your Honour found, in the instance to which Senator Cools referred, that there was a prima facie case of privilege involved in the case of the proceedings of a committee of which I was the chair at the time. Some of my colleagues will remember that.

In that case, I want to remind honourable senators that clause by clause was done. The question on which Your Honour ruled at that time was who was there and who ought to have been there. However, clause by clause reading and approval of that report was done at that time, and I thank Senator Cools for reminding me of that.

Hon. Consiglio Di Nino: Would rule 100 of the *Rules of the Senate of Canada* be of some use to His Honour? Rule 100 reads:

When a committee to which a bill has been referred considers that the bill should not be proceeded with further in the Senate, it shall so report to the Senate, stating its reasons. If the motion for the adoption of the report is carried, the bill shall not reappear on the *Order Paper*.

That may have a bearing on this, as well.

Senator Tkachuk: That is exactly what happened.

The Hon. the Speaker: Let me thank all honourable senators for their intervention on this point of order. I do not find the point of order particularly difficult to deal with. I think our rules are clear. However, it has been suggested that I should sleep on the matter at least, and I think that was wise counsel. I will attempt to report and rule on this matter tomorrow.

Hon. Terry M. Mercer: I would urge His Honour to act with as much haste as possible. The urgency of this bill has been outlined earlier by Senator Eggleton and others. The clock is ticking and there are people who will suffer if we do not get to our job and get this bill taken care of.

The Hon. the Speaker: If the honourable senator thinks it is really urgent that I rule now, I am prepared to do so. What I said to the house is I would be more comfortable in looking up some of the references that have been cited, and that I would rule tomorrow.

Therefore, honourable senators, I take the matter under advisement.

(The Senate adjourned until Wednesday, December 1, 2010, at 1:30 p.m.)

Proceedings of the Standing Senate Committee on
Banking, Trade and Commerce
Issue 14 - The sixth Report of the Committee

Senate Banking Trade and Commerce, Thursday, November 25, 2010

The Standing Senate Committee on Banking, Trade and Commerce has the honour to present its

SIXTH REPORT

Your Committee, to which was referred Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans has, in obedience to the Order of Reference of June 17, 2010, examined the said bill and now reports as follows:

Your Committee recommends that this Bill not be proceeded with further in the Senate for the reasons that follow.

Your Committee notes that Bill S-216 attempts to retroactively enhance the priority of claims for unfunded long- term disability liabilities in proceedings commenced pursuant to the Bankruptcy and Insolvency Act before the coming into force of the amendments contained in the bill, which may generate claims that conflict with court-approved settlement agreements already in force, resulting in litigation that would be detrimental to the interests of long-term disability claimants including the former employees of Nortel.

Your Committee believes that Bill S-216 would cause companies to prefer liquidation to restructuring, because it would confer preferred status on claims for unfunded long-term disability

liabilities in liquidation proceedings, while conferring super-priority status on similar claims in restructuring proceedings under the Bankruptcy and Insolvency Act; and

Your Committee notes that Bill S-216 would reduce the amount that some creditors would otherwise hope to recover in bankruptcy proceedings, increasing risk for investors and financing costs for bond-issuing companies, which your Committee believes would be detrimental to the currently fragile growth of the Canadian economy.

This report was adopted in committee on the following vote:

YEAS — The Honourable Senators: Ataullajhan, Dickson, Greene, Kochhar, Mockler and Plett (6).

NAYS — The Honourable Senators: Eggleton, Harb, Hervieux-Payette, Moore and Ringuette (5).

Respectfully submitted,

CÉLINE HERVIEUX-PAYETTE

Deputy Chair

Senate Banking Trade and Commerce, Thursday, November 25, 2010

The Deputy Chair: I call the meeting to order. Now that we have reached the end of our examination, we should go to a clause-by-clause study of Bill S-216, an Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long-term disability benefits plans. Do you agree to do that clause-by-clause examination.

[*English*]

Senator Greene: No, Madam Chair, we do not. We would like to dispense with clause by clause and consider a draft report.

The Deputy Chair: Do the members agree with that?

Senator Harb: I recommend you make two motions — first, that you do not want to proceed with clause by clause. We vote on that, and then you move your motion to present the report.

Senator Greene: I agree with that. I would like to move that we do not proceed with clause-by-clause consideration.

The Deputy Chair: Are there any questions?

Senator Ringuette: We want a recorded vote on this.

[*Translation*]

We are going to have a recorded vote. The clerk of the committee will call the members by their name, starting with the chair and by alphabetical order, senators will have to state verbally if they vote for or against, or if they abstain. We are following the code of procedure of the Senate. I am against the motion.

Lyne Gravel, Clerk of the Committee: The Honourable Senator Hervieux-Payette.

Senator Hervieux-Payette: Against.

[*English*]

Ms. Gravel: The Honourable Senator Ataullahjan.

Senator Ataullahjan: No.

Senator Plett: Are we voting for the motion or against clause by clause?

Senator Greene: We are voting against clause by clause, which is for the motion.

Senator Harb: So you are supposed to vote yes if you are voting.

Senator Ataullahjan: I think the question was not well worded; my vote is yes.

Ms. Gravel: The Honourable Senator Dickson.

Senator Dickson: Yes.

Ms. Gravel: The Honourable Senator Eggleton.

Senator Eggleton: No.

Ms. Gravel: The Honourable Senator Greene.

Senator Greene: Yes.

Ms. Gravel: The Honourable Senator Harb.

Senator Harb: No.

Ms. Gravel: The Honourable Senator Kochhar.

Senator Kochhar: Yes.

Ms. Gravel: The Honourable Senator Mockler.

Senator Mockler: Yes.

Mr. Gravel: The Honourable Senator Moore.

Senator Moore: No.

Ms. Gravel: The Honourable Senator Plett.

Senator Plett: Yes.

Ms. Gravel: The Honourable Senator Ringuette.

Senator Ringuette: No.

Ms. Gravel: Six yeas and five nays. We do not proceed with clause by clause.

The Deputy Chair: It is my duty as chair to declare the motion carried.

Senator Greene: Madam Chair, I would like to put forward another motion, if I could. I move that we take up the draft report submitted to the session in camera.

Senator Eggleton: What other alternative is there but to look at it?

The Deputy Chair: Do honourable senators want to have this tabled, just read, or do you want to ask questions?

Senator Eggleton: It will be made public, so it has to be put out there.

Senator Greene: Would you like me to read it?

Your committee, to which was referred Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect the beneficiaries of long-term disability benefits plans has, in obedience to the Order of Reference of June 17, 2010, examined the said bill and now reports as follows:

Your committee recommends that this bill not be proceeded with further in the Senate for the reasons that follow.

Your committee notes that Bill S-216 attempts to retroactively enhance the priority of claims for unfunded long-term disability liabilities in proceedings commenced pursuant to the Bankruptcy and Insolvency Act before the coming into force of the amendments contained in the bill, which may generate claims that conflict with court-approved settlement agreements already in force, resulting in litigation that would be detrimental to the interests of long-term disability claimants including the former employees of Nortel;

Your committee believes that Bill S-216 would cause companies to prefer liquidation to restructuring, because it would confer preferred status on claims for unfunded long-term disabilities

liabilities in liquidation proceedings, while conferring super-priority status on similar claims in restructuring proceedings, under the Bankruptcy and Insolvency Act; and

Your committee notes that Bill S-216 would reduce the amount that some creditors would otherwise hope to recover in bankruptcy proceedings, increasing risk for investors and financing costs for bond-issuing companies, which your committee believes would be detrimental to the currently fragile growth of the Canadian economy.

The Deputy Chair: Are there any comments or questions?

Senator Eggleton: This is extremely disappointing. There are over 400 Nortel employees who have been hanging by a thread for some time now. Remember this bill was introduced in the spring and was given second reading on June 17. These people are running out of time. Some of them are here today.

It is the end of the year that they are going to be officially terminated as employees, their incomes dropped substantially — they are already dropped substantially — and their medical benefits cut off.

The arguments that are presented in here are weak at best. It ignores what has been said by expert witnesses here, by people who are expert in financial matters and in legal matters.

It starts off by talking about the retroactivity of this. Yes, we know that there is some retroactivity here in the sense that there is a procedure already before the courts. It is not a procedure of the distant past where everything was finalized, but there is a procedure presently before the courts; and there clearly needs to be an amendment to this bill, which I am quite prepared to move, that makes it abundantly clear that it needs to apply to proceedings that are currently ongoing.

Are the Conservative members objecting, in principle, to the word "retroactive"? If they are, they must bear in mind that they have brought in three bills so far since they became the government that have such clauses in them. This is not retroactive in the sense of going back before the present proceedings, but it is to make clear that they would be part of the present proceedings.

It says "result in litigation." The one lawyer we had here, who is an expert on the subject, said he could not see a basis in law for there to be litigation, that there was not a cause for action. As Mr. Pierlot said, what will they do, sue the Nortel sick and disabled? Hardly. Will they sue the government? The government has every right to do this kind of legislation.

Who would want to take it through a court procedure? Certainly not the people who are in the secured or the super- priority status — the banks and the financial institutions that have got into those ranks; they are already protected. We are just talking about moving these people up to a middle rank from the bottom of the barrel.

It is ironic that the Conservative government brought in a bill in 2007, which the leaders talked to the other day — the Wage Earner Protection Program Act. Do you know what that did? That protected people's wages in a super- priority status. Was there a lot of litigation on that? No. Did people howl

and scream? Did they say the markets are affected, that the costs of financing are affected? No, they did not say any of that.

Super-priority status is just a higher status than what I am suggesting in this bill here.

Regarding this concern about litigation resulting, in any country at any time on anything, you could get people to litigate, but you cannot make a case for it. That is what Mr. Pierlot told us. Furthermore, there is the time factor. Time is money. If people are thinking of going to litigation, it depends how much money they are looking for versus what the assets are. Is it worth spending all that time and all of the costs involved in going through a court procedure? I think quite clearly the case has not been made. This is a very flimsy argument.

Then we have people preferring liquidation to restructuring. No. Remember, the people going through the Companies' Creditors Arrangement Act procedure get the opportunity to vote on a plan of arrangement. They would be required by the court, though, to get this cleaned up before they would move on to that final vote.

They said it would be conferring super-priority status on similar claims in restructuring proceedings. No, there is no such thing as a super-priority status under the Companies' Creditors Arrangement Act. Again, I would point out that if super-priority status is so objectionable, why did the government bring in the Wage Earner Protection Program Act in 2007, which did exactly that?

The final argument in the final paragraph is increasing risk for investors and financing costs for bond issuing companies. Again, that does not stand up. You have to remember that most of the countries we deal with on a trade basis already have similar provisions in their bankruptcy and insolvency laws. Of the 54 countries the OECD canvassed, 34 countries plus all the OECD countries virtually have this kind of a provision already. Some of them even have super-priority. Some of them in fact have the pensions there. This is not the pensions; this is just the long-term disability.

Financing costs, bond issuing companies, et cetera — those kinds of concern about the market conditions have been disproven as well.

Interesting enough, when we were talking about Bill S-201, there was some questioning about Australia. Australia did a study. A couple of economists, Anderson and Davis, did a study. They used an analytical credit risk model. They found that in fact the employee benefits — and here it was more than just long-term disability — were miniscule, far less than half a per cent; we are talking about miniscule amounts, negligible amounts, in terms of any impact on the economy.

It just does not stand up. These arguments are weak, at best. They are flimsy. They are just an excuse for not proceeding.

It is ironic that if you vote for this, you are letting Nortel off the hook, the same company that managed to give $8 million to seven top executives a year ago, and Nortel has assets far in excess of what is needed in this particular case. It can meet many of its other creditor obligations. However, you are letting Nortel off the hook and dumping it on to the taxpayer, because the social services will have to pick it up.

Senator Greene: I would like to call the question.

The Deputy Chair: We are a few minutes over our time. I do not think any more comments are needed. The evidence is public. Everyone can look at it. Personally, I am very sad about the outcome of this study. I had to chair because the usual chair could not do it, being in a conflict of interest situation in this matter. Personally, I am extremely disappointed that we could not come to a fruitful and hopeful conclusion. I guess we will have the vote on this report.

Senator Moore: I want to speak for one minute.

An Hon. Senator: Question.

Senator Moore: I am sitting here listening, and I want one minute.

The Deputy Chair: I think we should conclude. I do not think there is much to add, especially when people read the report.

Do you want a recorded vote?

Senator Eggleton: Yes.

Ms. Gravel: The Honourable Senator Hervieux-Payette: Should the report be adopted?

The Deputy Chair: No.

Ms. Gravel: The Honourable Senator Ataullahjan?

Senator Ataullahjan: Yes.

Ms. Gravel: The Honourable Senator Dickson?

Senator Dickson: Yes.

Ms. Gravel: The Honourable Senator Eggleton?

Senator Eggleton: Against the report.

Ms. Gravel: The Honourable Senator Greene?

Senator Greene: Yes.

Ms. Gravel: The Honourable Senator Harb?

Senator Harb: No.

Ms. Gravel: The Honourable Senator Kochhar?

Senator Kochhar: Yes.

Ms. Gravel: The Honourable Senator Mockler?

Senator Mockler: Yes.

Ms. Gravel: The Honourable Senator Moore?

Senator Moore: No.

Ms. Gravel: The Honourable Senator Plett?

Senator Plett: Yes.

Ms. Gravel: The Honourable Senator Ringuette?

Senator Ringuette: No.

Ms. Gravel: Five nays; six yeas.

The Deputy Chair: I declare the report adopted.

Senator Eggleton: We will fight it in the Senate.

Senator Greene: I would like to recommend that the committee send a letter to the minister urging him as soon as possible to come up with a plan or a piece of legislation that effectively will satisfy and deal with this issue.

Senator Mockler: If we agree with that, there is a motion.

The Deputy Chair: That is the third motion that we did not have when we started.

Senator Mockler: Is there consensus to accept the motion, Madam Chair? Is there a consensus to accept the motion?

Senator Eggleton: Why would we not? We want something done for these people.

Senator Mockler: Let us have a consensus.

Senator Eggleton: It is better than nothing. I still want to debate my bill in the Senate, but for the moment, better to have that than nothing.

Senator Mockler: Can we send it to the Senate today?

Senator Harb: Can we report it today?

The Deputy Chair: Do you agree that we report today? Have you talked to your leadership?

Senator Greene: I am fine with that.

Senator Harb: Can I ask for a friendly amendment, to put the senators who voted as "yea" and "nay" as part of the report? We will not have time to do a minority report.

An Hon. Senator: We are going to do that.

Senator Mockler: Is there is a consensus that we send a letter to the minister?

Senator Eggleton: It is not a replacement, though. That is not a replacement for our position, but in addition. Something is better than nothing.

(The committee adjourned.)

November 24, 2010

Senate Banking Trade and Commerce

The Acting Chair: Senator Moore, you have the floor.

Senator Moore: Thank you, chair. Last week at our committee it was clearly the understanding that we would be dealing with Bill S-216 this week. It is not on the agenda anywhere, so I want to make a motion and I want to have a recorded vote on it.

I move that at its meeting tomorrow, November 25, 2010, the committee proceed to clause-by-clause consideration of Bill S-216.

Senator Ringuette: I second that motion.

The Acting Chair: You do not have to second it. Senator Moore, do you have that in writing so I can read it to everyone?

Senator Moore: I can read it to you again.

I move that at its meeting tomorrow, November 25, 2010, the committee proceed to clause-by-clause consideration of Bill S-216.

The Acting Chair: It has been moved by Senator Moore that at the meeting of the Standing Senate Committee on Banking, Trade and Commerce tomorrow, November 25, 2010, the committee proceed to clause-by-clause consideration of Bill S-216.

Honourable senators, are you ready for the question?

An Hon. Senator: Question.

Senator Massicotte: Could I ask a question? I am not on the steering committee. Can I ask where the delay is? Where is it at?

The Acting Chair: Is there anyone here from the steering committee?

Senator Greene: That is the problem. The chair and the deputy chair of the committee are both absent. Senator Mockler is part of the steering committee, but he was not at the last steering committee meeting: I was. We have a problem. It is a good question. There is no one here from the steering committee.

Senator Massicotte: How about next week? Can we agree to make it next Wednesday?

Senator Greene: I had a conversation with Senator Hervieux-Payette this afternoon. I caught her at the airport.

The Acting Chair: She is the sponsor of the bill.

Senator Greene: No, Senator Eggleton is.

The Acting Chair: Sorry, I had the wrong bill.

Senator Greene: I had a conversation, and I cannot reveal the contents of it, unfortunately. However, the conversation was certainly not along the lines of having clause-by-clause consideration tomorrow. I cannot reveal what the conversation was about.

Senator Harb: I think, in fairness to everyone, I was with my colleague, Senator Greene, last week when we all agreed that we would deal with the bill this week. This will allow cool heads to prevail, reflect on it and come back. It is not a complicated bill.

This committee works through consensus all the time, and that was the consensus. We even put pressure on our colleague, Senator Eggleton, who wanted to have a call for "yeas" and "nays," and we gently persuaded him that it will come this week.

I know the chair and the deputy chair are not present. We are grown boys and girls here. I think, in fairness, if Senator Ringuette would defer her bill until next week, it should not take very long. That bill is only three or four clauses long. We should be able to deal with it quite quickly. We can dispose of it tomorrow very quickly. With all due respect to the chair and the deputy chair, we love them dearly, they are not here, and unfortunately there is a time issue, and great representations by those involved. Lots of hard work is being done on both sides of the equation. Actually, we are all on the same side of the equation.

To be honest with you, colleagues, it will be a black eye and a terrible thing for the committee not to deal with the bill tomorrow, because that is what we agreed to last week.

If Senator Ringuette will agree to defer hers, so we can deal, in the first few minutes, with the clause-by-clause, I think that will solve our problem.

Senator Ringuette: Chair, I agree with Senator Harb. Bill S-216 has a timing aspect. This bill has to go through third reading in the Senate and three readings in the House of Commons before Parliament adjourns for Christmas. This is the bill's second birth. It has been in the Senate since last April.

As adamantly as I feel that Bill S-201, in regard to credit card fees and charges is important, I certainly understand the deadline that is looming for the people who will be affected by Bill S-216. Therefore, I absolutely agree that Bill S- 216 should go before my bill tomorrow.

Senator Moore: There is ample time on the agenda tomorrow to deal with this bill. Everyone has spoken about the time considerations and all the rest of it. I have made a motion, and I prefer a vote. I want a clear decision of the committee today.

Senator Greene: You all have some really terrific arguments. In the interests of the affected workers, we will do it. We will move your bill to next week.

Senator Ringuette: We could do it tomorrow. There are not a lot of witnesses.

The Acting Chair: You said "we will do it" and I do not know what that means. I want Senator Greene to explain. What will happen tomorrow under "we will do it"?

Senator Greene: We will do the clause by clause on Bill S-216 tomorrow and we will move Bill S-201 to next week.

Senator Moore: Please put the question.

Senator Mockler: I have a question for the chair regarding the motion. Can we not wait until Senator Hervieux- Payette is back, or do we know when she will be back?

The Acting Chair: She will be here tomorrow. Senator Moore is insisting upon a vote. Is that the will of the committee?

Senator Harb: Unanimous, anyway.

Senator Moore: Let him put the question.

Senator Greene: I do not mind a vote, but we did not have one last week. We agreed by consensus. There is a consensus.

The Acting Chair: Senator Moore, you have heard what the honourable senators have said.

Senator Moore: I would like you to call the vote and we can do it. If it is verbal and it is unanimous, so declared by the chair, I will be happy.

The Acting Chair: Senator Greene, on behalf of the steering committee and on behalf of the government, has said it is unanimous.

Senator Greene: I said there is a consensus. I cannot speak for everybody around the table.

Senator Moore: I want a vote, chair. That was my motion.

Senator Mockler: We can still debate the motion. If we look at the spirit of the committee and we look at the spirit of other committees, they work by a consensus. I object to the idea of the mover of the motion wanting a vote on it. I object to that. We have worked as a consensus, so we should have a consensus. Senator Greene, who is on the steering committee, is accepting that it is a consensus and we will move in the spirit of the motion that the honourable senator is asking for.

I am not finished.

Senator Moore: I would like to help you out. I withdraw my request for a vote on division. I would like you to call it, though, and we can declare. It is treated as in the Senate and is a verbal vote.

The Acting Chair: Honourable senators, is there consensus that tomorrow we will go to clause-by-clause consideration of Bill S-216?

Hon. Senators: Agreed.

(The committee adjourned.)

Proceedings of the Standing Senate Committee on
Banking, Trade and Commerce
Issue 13 - Evidence - November 18, 2010

Senate Banking Trade and Commerce, Thursday, November 18, 2010

The Standing Senate Committee on Banking, Trade and Commerce met this day at 10:30 a.m. to study Bill S-216, an Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long-term disability benefit plans.

Senator Céline Hervieux-Payette (*Vice-Chair*) in the chair.

[*Translation*]

The Deputy Chair: I call the meeting to order. I would like to welcome this morning's witnesses. I am Senator Céline Hervieux-Payette and I am pleased to be chairing this meeting.

The first thing I would like to do is to introduce my colleagues. We have some new faces, including Senator Yonah Martin from British Columbia.

[*English*]

Next we have Senator Don Plett from Manitoba, Senator Kelvin Ogilvie from Nova Scotia, and Senator Wilfred Moore from Nova Scotia. These are my regular colleagues in this committee.

From Ontario, we have Senator Vim Kochhar and Senator Art Eggleton; Senator Pana Merchant from Saskatchewan; Senator Elizabeth Marshall from Newfoundland and Labrador; Senator Stephen Greene from Nova Scotia; and Senator Mac Harb from Ontario.

This morning, on the first panel, we have Ms. Susan Kennedy, Ms. Josée Marin, Ms. Diane Urquhart, Mr. Peter Burns, and Mr. Jim Derkson by video conference. Welcome.

Susan Kennedy, Court-appointed Representative, Nortel Disabled Employees not represented by CAW Canada: Honourable senators, I represent about 280 of the Nortel disabled employees in the Companies' Creditors Arrangement Act, CCAA, and the Bankruptcy and Insolvency Act proceedings. I would like to thank 38 of the disabled employees and their family members who wrote impact statements in a document that you may have picked up over there. Thanks to the committee clerk, Line Gravel, for getting that set up in time for today.

I asked people to explain how their lives would be affected if Bill S-216 was not passed. Today I would like to share a little bit of their stories with you. One lady finished breast cancer treatment in September 2009. She actually went back to work and then in January 2010 found out that the cancer had spread to her lungs. She says:

I am still undergoing treatment and the cancer is just starting to show signs of slowing down. . . . I will have this for the rest of my life and will be walking the tightrope between treatment and waiting to see if the treatment is still working!

. . . My cost of medication is over $5,000 per year . . . . I have no idea how I'm going to cover this. . . . Without the current medication for treatment, the cancer will spread rapidly. I will lose my home . . . . I have been trying to figure out a way to cover basic living and have been unable to come up with anything other than welfare — which is unthinkable to me.

. . . Constant worry about what will happen when the disability payments stop on December 31, 2010 is a nightmare.

As might be expected, the majority of the letter writers were worried about being unable to pay their medical expenses after December 31. Ten people mentioned that they thought they would have to sell their homes that they had lived in all their lives; five said they would be unable to pay their rent; some just did not even know what they would be able to afford after that because they do not know how much money they will have. Here is quite a different story:

On Thursday May 27 2010, an orange sun was setting along the railway tracks from Ottawa to Carp and a beautiful doe had just crossed my path. Thank God for such an idyllic setting in which to end my life. I tried to help my kids mow a couple of lawns for tuition money, given Nortel's bankruptcy, but it had been too much.

Somehow, I'm still here, still "recovering" from depression.

. . . My wife and toddlers lost their father to three-day sleeps and suicidal escapades. Often I do household chores. Sometimes I walk the railway tracks.

I literally gave my life for this third-world Canadian company. Will the loss of income affect me? More than once, it's nearly tripped me off the tightrope.

Actually, five people mentioned suicidal thoughts in their stories, and one person described an actual suicide attempt, and I bawled my eyes out when I read these. I know it is a rough situation to be in, and it hits everyone differently. The fact that people are giving this kind of reaction tells me that it is really important to give disabled employees some hope, give them feedback, if possible, about where we are getting with Bill S-216. It is making progress, and we want people to have hope and not to give up.

Many people mentioned their children in their letters, and there were a total of 36 kids around 35 people who wrote letters. Those kids will also be impacted by the loss of the long-term disability, LTD, benefits in ways that I had not quite imagined for all of them. Twenty of the kids' parents mentioned they would no longer be able to contribute to their children's university expenses. Other parents were more worried about the loss of medical benefits for their children. One mother's story was this:

. . . I went on long term disability. At that time and within a few short years of each other, both of my children were diagnosed with life threatening diseases. My youngest child, at birth was diagnosed with a Multi-Cystic Dysplastic Kidney disorder, and lost a kidney to this congenital disease. His remaining kidney continued to have problems and we spent a great deal of time at CHEO. Then about a year and a half later my then five year old child was diagnosed with Leukemia.

I cannot tell you how terrifying it feels when you are sick to find out that your children are sick too. All you can think of is protecting them and caring for them above all else. Throughout those years of caring for both my sons, sometimes I felt like I was holding their hand, as hard as they were holding mine, every time we walked towards the hospital doors. . .

I always feel that we, as Canadians citizens, are just a reflection of how we care for and take responsibility for our most vulnerable. This is why this bill is so important.

Six of the disabled Nortel employees' children were also disabled or suffering from serious illnesses themselves. This is just out of the 35 who wrote letters. It would probably be impossible or expensive to get replacement health care plans for these children, partly because of the cost and partly because they are disabled, but Bill S-216 I believe would provide this, and that would provide a lot of relief to their parents who are so worried right now.

Many people described the stress they are feeling right now, as we approach December 31, 2010, when their LTD benefits will end, and they are very scared. Here are a few examples:

This loss of income is devastating to my husband and I. The stress this situation has put on me personally has adversely affected my health even further, with blood pressure problems, lack of sleep and other health related problems. My quality of life has worsened because of the fear of losing this income.

Another example:

I find it urgent to tell you how I personally will be affected as a result of Nortel's Insolvency UNLESS Bill S-216 is passed. I am not married. I live alone in an apartment that likes their rent on the 1st of every month. I am expecting my final cheque from Nortel on November 26. I don't know how I will make sure my rent is paid in time. I am afraid of being evicted. Thoughts run through my mind that I may have to become homeless and live on the street. I live from paycheque to paycheque and have no RRSPS or money saved.

An important advantage of Bill S-216 is that it protects both the wage replacement benefits and the medical benefits. Some of the impact statements showed that people really do need both of these protected, and Bill S-216 is one of the only ways I have seen that does that. A stroke survivor said:

To help look after me, my wife has quit her job. Without the medical benefits, we don't know how to pay for my essential medications . . . Without the disability benefits, we are not sure how to pay for our rents, household expenses and help our children with their university tuitions.

A sister of a person on LTD, who happens to be an occupational therapist who works with disabled people all the time, said:

. . . I do understand the effects of stress on people who have illnesses and disabilities. One thing that is clear, is that if the disability income and medical coverage stops suddenly as is planned, this will have far reaching implications on these affected individuals' health and welfare, relationships, families and most importantly their ability to cope and make decisions.

People are already struggling to make decisions. I see this every day in the emails I receive. They are wondering when to retire, what to do with the lump sum payment from the health and welfare chest, will it be taxable or not, will they be able to enrol in the Manulife health care plan or not.

A brother of a disabled person said:

I am the Power of Attorney for my sister, a 50 year old woman with MS and Diabetes. . . . She is residing permanently in a full pay retirement home. She needs ongoing support with basic needs and must live in assistive housing. With MS and Diabetes she has significant medical expenses that must be met. Without her ongoing wage and benefit support she will not only lose the ability to meet these expenses she will lose the ability to financially support her three school-age children. Additionally, she will lose the ability to provide medical and dental benefits for her children. Her former husband does not have benefits. This is an impossible situation! She has no ability to go out and find another

job. She can't work. She is prone to depression and the prospects for the future are frightening for her, her children and her aging parents. . . . As a family we are doing all that we can but our Government must protect the most vulnerable in society. That is what Canada stands for.

Senator Eggleton, in my opinion, Bill S-216 provides a safety net that will help disabled employees and their families in the event of a bankruptcy like Nortel's. Please, senators, support Bill S-216 to help Nortel's disabled employees and to prevent other disabled employees in the future from ever having to go through the stressful and frightening process of being unsecured creditors in a bankruptcy. It allows us to continue our lives as they were before the bankruptcy process started and does not require disabled, stressed out and depressed people to make difficult and frightening decisions about their futures.

Josée Marin, as an individual: I am Josée Marin. I am one of the 400. I suffer from scleroderma and Crohn's disease, which are both autoimmune diseases. Scleroderma will slowly turn me into a stone while I am still alive, until I die from organ failure. Crohn's is attacking my bowel and my spine right now. I also have to live with anaphylaxis, severe allergies that can be triggered at any time and kill me. My prospect of survival is really grim; I know that. I can feel it every day. I wish I could live the remainder of my life decently, instead of living in stress and holding my breath, because in the end this bill might very well decide if I live or die.

The most important point I want to make is that I, and other disabled workers, need our disability just to survive. Now that every other recourse has failed, our only hope is Bill S-216. Other workplace benefits do have strong legislative protection, so in the future, maybe government should consider the same for a disability plan. For us now, it is only Bill S-216 that can help, and I hope and pray that you will enact it as soon as possible, because for me and other disabled workers, time is of the essence.

We do not know what will happen with Nortel. There is no certainty yet. I know that on December 31 I am fired and I am financially ruined.

In the CCAA process, there was supposed to be a government agency looking over things. That government agency is called the Office of the Superintendent of Bankruptcy Canada. It had no force of law when Nortel went under, because the act was amended only in September. Our interests have never been represented well by the monitor, Ernst & Young. I know we are few and have no political or financial power, but I do not think we deserve to die.

I have the disability plan from Nortel here, and I would like to table it.

I heard yesterday that these plans cost a lot of money. I would like to remind you that it is the government that encouraged the establishment of health and welfare trusts, and to do so they give a generous tax deduction to employers, which are subject to clear rules. Nortel did not comply at all with these rules, and there is no consequence to them, only to us.

On top of that, we had a trust agreement that I will table also, and the trust was not protected by the trustee, neither before nor during CCAA, with the result that the trust is almost drained today. In 2005, the trust was fully funded.

As a result of that, like Massey Combines Corporation 20 years ago, and Eaton's, we face the loss of our disability benefits.

[*Translation*]

Bill S-216 is an emergency measure, a first step to better laws that will ensure sick and dying people will never again be subjected to such a process.

The CCAA process is unbearably long and offers no certainty and little hope. Indeed, if Nortel were ever to go bankrupt, it could take years for the money to start to flow, and in small amounts when it may no longer matter because it will be too late. Sick people need financial security. Without it there is no quality of life left.

Losing your health and ability to work, earn and contribute is never acceptable. However, the supreme injustice is when you learn that after all, it might not be your illness that extinguishes you but your employer's broken promise because you can no longer support yourself, meet your own needs, buy what you need or travel to see your doctor even though you were responsible and protected yourself against this very situation by buying extra insurance — like I did — from the employer in which you had faith.

The day you learn that your income might disappear because you did not have real insurance after all is even worse than the day you learn you are sick. You are now uninsurable for the rest of your life and there is no solution. It is either destitution or death and no matter how courageous and feisty you are, there is no hope.

If you think Nortel is broke. Think again. A lot of evidence points to quite the opposite.

As Sue has said, I am getting increasing numbers of people calling me for help because they now know who I am. They are in tears begging me to help them. They tell me that they are at the end of their rope and do not think they will make it to December 31. While everyone else is celebrating, these people will be on their way out.

The only advice I can give to all those callers I speak to day after day is: hang in there. Something will happen. This situation is not tenable.

I would like to leave you with one last comment. Our fate rests in your hands. We are professionals and took all the necessary steps to avoid this very predicament. This begs the question of how and why we got into this situation. I do not think that we deserve to die because of Nortel's broken promises and failure to properly manage its business.

The Deputy Chair: We will now hear from Ms. Diane Urquhart. She is an independent financial analyst. You have the floor.

[*English*]

Diane A. Urquhart, Independent Financial Analyst, as an individual: Good morning. I am a financial expert, and I have 30 years of experience in the investment field. I am on an unpaid retainer, working for the Nortel dissenting long- term disabled employees.

It is my opinion that Bill S-216 will substantially improve the safety of self-insured, long-term disability wage loss replacement and medical reimbursement. I say this because, in general, self-insured long-term disability benefits are offered only by large corporations, not by mid-sized and small corporations. I have examined Moody's Corporate Default and Recovery Rates for the past 22 years. We can see from this that for the unsecured creditors for all of the companies on average that have defaulted in the world, there is substantial recovery at the unsecured creditor level. As a consequence, if the long-term disability wage loss replacement and medical benefits were given preferred status above the unsecured creditors, while not for certain in all cases, we can say that in general, in large corporations, the bankruptcy estates will have sufficient assets, enough to pay not only the secured creditors but also likely to pay the wage loss replacement, as well as the medical reimbursement for the disabled.

The reason we can say this with such conviction is that the LTD benefits have costs and claims that are very small. In Canada, I estimate that the actuarial liabilities for all of the long-term disabled employees today in self-insured plans would be $5 billion to $9 billion. The data is not good for getting more precise numbers, but I am confident that, on the basis of the methodologies that I have used, this is a reasonable estimate.

You would know that there is also an effort to have preferred or higher status for pension fund deficits. By comparison, the LTD liability of $9 billion compares to $415 billion for the liabilities of the defined benefit pension plans of corporations of Canada.

I will use now the worst case of $9 billion in liabilities for LTD employees. There is no way for us to determine, on the basis of any published information, how much of that is actually not funded. However, if we assume that they are all underfunded to a similar degree as Nortel, which is a 75 per cent deficit, I am confident in saying regarding the long-term disability deficits in Canada, as a whole, that if every corporation that has a plan were to go bankrupt, the amount of deficit in these LTD plans would be no more than 1 per cent of the total capital of all the corporations in Canada that have LTD plans and defined benefit plans.

To put perspective on all of what we heard yesterday from the Canadian Bankers Association and the transportation and communications employer group, that this was a very expensive provision, I am highly confident in concluding, as a financial expert, that if all the deficits of the land are 1 per cent of the capital structure, this cannot be so.

I want to add also, regarding the Nortel Canadian estate in and of itself, that Senator Eggleton gave an estimate of $86 million being required to make this group whole with respect to its wage loss replacement and its medical reimbursement. While there could be some additional actuarial liabilities determined to make this as high of $100 million, I am confident that any amount between $86 million and $106 million is well within the means of the Nortel estate to pay. A number was quoted yesterday of $6 billion in the global estate. You would know there are three different estates. This amount of money will be paid from the Canadian estate. That matter will be the subject of a great deal of

mediation and negotiation, but it would be surprising to me that the Canadian estate would not end up with at least $1 billion. For us to seek something in the order of $100 million from a $1 billion estate is a reasonable expectation that even the Canadian estate is well within its means to pay.

I would like to turn to the matter of whether this could affect the cost of doing business in Canada. LTD wage loss replacement and medical reimbursement are paid only to the long-term disabled. There are 9 per 1,000 workers in Canada. That is the national average for how many are expected to become disabled in the workforce. That is a percentage point of 0.90 per cent. In the numbers I gave you earlier for how many disabled persons are in self-insured plans, my estimates would be that that ranges from 12,000 persons to 23,000 persons. Not only is this a bill with a transition clause that seeks to remedy what I am almost prepared to say is a fiasco, certainly, a human crisis, for the 400 persons at Nortel, I am satisfied that Bill S-216 would also make sure that this would never happen again to the other 12,000 to 23,000 persons who are presently disabled and in these unsafe self-insured plans.

Not all of them, of course, will be subject to the remedy of Bill S-216. Not only do you have to have the first contingency of becoming disabled, but your employer also has to go bankrupt. The cost of this is minimal, as I indicated previously.

It is important to note that Bill S-216 is a provision that does not require a mandatory insurance. It does not require full funding. I think everyone in the room would probably agree it would be good to have a holistic solution. However, a holistic solution is facing a considerable amount of opposition as well, and so we cannot say that we can pass on Bill S-216 and go to some other solution. That other solution cannot help Nortel, and in any case it faces considerable opposition.

On the matter of costs, the beauty of Bill S-216 as a solution, as a start, and almost as a solution that can serve the purpose — and this is what was quoted in the *Toronto Star* editorial — is that Bill S-216 has you pay the piper in the end. You can have long-term disability benefits in the marketplace, which we would say were unsafe, but they are not unsafe until the time that the employer is bankrupt. As long as the employer is operating as an ongoing concern, it is able to pay for the income and the medicines out of the revenues of the business. It is only at the bankruptcy that there is a problem. Bill S-216 says pay the piper in the end for offering a benefit that was unsafe, that no one knew was unsafe until the bankruptcy.

This is a very good solution, in fact, to a problem that afflicts only a small percentage of society in disability in the first instance and, after that, the second contingency of employer bankruptcy. This solution allows no impact whatsoever on the operating costs of Canadian business as a consequence.

On the cost of credit, I gave testimony earlier this week at the House of Commons Standing Committee on Industry, Science and Technology. I believe there is a consensus amongst financial experts, including the Royal Bank of Canada and Towers Watson, that if all the employee benefits of Canada were given priority status above unsecured creditors, the impact on the Canadian bond market, on the investment-grade market, would be 0.20 per cent. That is for pensions, severance and long-term disability benefits, and the bond market would suffer a correction of 1.5 per cent. It is clearly in the case of LTD where you have only an $89-billion liability versus a $414-billion liability that we are a minor fraction. I would estimate that it is 5 per cent of the 20 basis points.

It is almost trivial to say that the amount of impact that there would be on the Canadian debt markets of passing Bill S-216 would be 1 basis point higher cost of credit. Instead of 3.25 per cent, it would be 3.26 per cent. As a consequence, this whole matter of all the issues that have been raised with respect to cost of credit and availability of credit are absolutely not defensible by any of the experts in respect to the LTD.

Those who say that the sky is falling, that the market would have major corrections and that it would be catastrophic for the ability of Canadian corporations to be competitive and do business have not brought numbers. The Canadian Bankers Association apparently has not even read the work of the Royal Bank of Canada, which was given in testimony earlier in the week.

There was a question yesterday about how Bill S-216, with a transition clause, could supersede a settlement agreement signed on March 31. I would like to table the view that that settlement agreement was reached under medical duress. From my perspective as an independent analyst who has sat through many bankruptcy proceedings, that settlement shows that the bankruptcy process is broken and has failed in serving the needs of the disabled because it has turned a blind eye and disallowed a number of people to have access to justice in order to execute the laws that are currently in place. I will leave that to a question. I hope someone will ask me more on that point.

We believe that the bankruptcy court has failed the disabled in the Nortel case and that there are provisions there that led to our not being able to get the remedy that should otherwise have been accessible through litigation.

Finally, I believe there was a discussion about the transition clause yesterday. We are of the view that the current clause arguably does apply to Nortel, but the preference would be that the amendment be made, and the law firm that I am working with on behalf of the dissenting has submitted suggestions there as well.

With respect to this transitional provision, in my opinion — we look at litigation as well in the context of financial examination — I would be hard pressed to conclude that there would be any party that would be willing to litigate against the most vulnerable Canadians in Canada who are about to be pushed into poverty and homelessness. The reputational damage to any plaintiff that sought to do that would be weighed, if any organization were to consider such.

I would also note that as a result of the evidence of the wrongdoing and the withdrawal of the money and the assets of the health and welfare trust, anyone who were to litigate on the transition clause would certainly be dealing with the cross claim of the disabled, certainly the dissenting disabled, who would be expecting to have over $60 million returned to the health and welfare trust as a substitute for the transitional clause. There would be no financial benefit to litigate because we would bring the evidence before the courts again and perhaps with proper adjudication and litigation.

On that point, as far as we are concerned, Parliament is paramount in any case. The decision is in your hands, as Ms. Marin indicated. You have heard the testimony of the severe consequences. I am prepared to say that this is a debacle of the highest order that Canada has not witnessed. If this is to proceed, it will be an immense crisis for the disabled. I would not want to be the party who is making the decision that will cause people to commit suicide or suffer death as a result of the absence of

medicines and certainly would not want to be part of a society that will impose poverty on people through no fault of their own, who were told that they had insurance.

Peter Burns, as an individual: Honourable senators, I am a disabled employee of Nortel. This morning I feel the weight of 375 people sitting on my shoulders. I hope you can feel them, too.

The long-term disabled employees of the insolvent Nortel need your help. Nortel sold me disability wage loss insurance, life insurance, pension accruals, drug plans, dental plans and medical benefits for me and my family. I am here because Nortel will not honour any of it.

I am able to function for only a few hours each day, and I will invest it with you today to speak about Bill S-216. I will return home later, in crushing pain, and hope for sleep.

I need to know that governments care about what happens to properly insured people and their families. We are now caught in a feeding frenzy of corporate bankruptcy greed. When I am fired in 42 days, I will lose my benefits and I will not be able to support myself or my dependents.

I am an engineer with two master's degrees, one in astrophysics and another in control systems engineering. I was awarded a patent while at Nortel, which saved them nearly $1 billion. Prior to Nortel, I worked in the nuclear power stations that light this room.

One day, a tumour was found on my spine. My scientific and engineering career came to an end. I have a spinal cord injury, brain injury, severe chronic pain, spasms, short-term memory loss and an auditory processing disorder. My rising medical costs exceed $30,000 each year.

To have clarity and defend myself here, for instance, I must reduce my medication and suffer the consequences later. Then comes the worst part: My loved ones are forced to watch.

It is in my nature as a scientist still to observe and understand. I have three key points from those observations. First, everyone understands the need, purpose and importance of insurance for our families. In 1990, I got cancer and I nearly went bankrupt. When I became cured and I joined Nortel, I took all the insurance I could find. I will also let you know that I got a mortgage at one point and I turned down long-term disability insurance on that mortgage because Nortel's plan was so good.

Second, this Nortel insolvency does not add up to me. There are contradictions, and here is what I learned: During bankruptcy protection, Nortel scooped $500 million in bonuses and incentives. When asked to return the $59 million missing from our trust, they said they were broke. Insolvency must be the wrong term for Nortel.

Nortel realizes that self-insurance is unsafe because now it provides real insurance for its working employees, but of course sees no obligation to us.

Third, the disabled like me live in bodies that are a nightmare. Can you imagine this nightmare? You worked for Nortel.

There is no doubt in my mind that a country is measured by the way it allows its citizens to be treated. The disabled are now bracing themselves for the worst. Some have already perished. Many of us will soon be alone, and not just a few will prepare for a quick end.

This insolvency is just about greed. This greed is allowed to impoverish and kill people who insured themselves properly. We also trust that the government will make sure that this bill is relevant to us and also make sure it will help us.

Please, imagine yourselves in our shoes this morning and help us live by passing Bill S-216.

Jim Derkson, Consultant, Council of Canadians with Disabilities: Thank you very much on behalf of CCD, the Council of Canadians with Disabilities, for inviting us to this table. We are an organization of organizations of people with disabilities. There are nine organizations in nine provinces, another in a territory, which have chapters throughout their regions of people with various kinds of disabilities. We also encompass six national organizations that, again, have chapters and member groups throughout the country. We are a human rights organization of persons with disabilities. As such, we have many concerns. Of these, poverty is one of our central concerns.

Senate committees do important work. Last year, the Standing Senate Committee on Social Affairs, Science and Technology, chaired by Senators Eggleton and Segal, gave us an excellent report on poverty with many exemplary recommendations. Many of these, in turn, were reflected in yesterday's report of the House of Commons Standing Committee on Human Resources, Skills and Social Development and the Status of Persons with Disabilities.

This committee today is addressing another important aspect of the systemic structure of persistent poverty among people with disabilities in Canada. It is a great concern to us that 5.6 million, or 32 per cent of Canadian workers, are without any long-term disability income benefits in the workplace according to the Canadian Life and Health Insurance Association. We think that represents an unacceptable risk of the impoverishment that often comes with disabilities.

It is also of great concern that 1.1 million, or 7 per cent of workers, have what is now demonstrated through the bankruptcy of Nortel to be an unsafe self-insured form of long-term disability income benefits. We appreciate that your committee has Bill S-216 to address this risk.

We are currently researching poverty among Canadians with disabilities. In a just released report by the Caledon Institute of Social Policy, we find, using data from 2006, that 27.1 per cent of people with severe disabilities lived on low incomes compared to 15.9 per cent of persons with mild or moderate disabilities and 10.7 per cent for those with no disabilities. Of course, these rates are a great deal higher than they would be for non-disabled persons.

Another report shows us that these low income levels are deceptively low because the low-income cut-offs used do not take into account the out-of-pocket cash value of non-insured disability-specific expenses, such as the costs of aids and devices for mobility, such as my wheelchair; communication, voice amplifiers, keyboard devices; learning; Braille output or speech access devices for computers; medications, as we have heard in testimony today, for psychological well-being or pain management; or services such as attendants, tutors, note takers and so on.

Nearly half a million working-age people with disabilities — 499,960 or 20.5 per cent of all those with disabilities in Canada — live on low household incomes. This demonstrates the association of disability and poverty.

Many of us in the Council of Canadians with Disabilities were disabled early in life. We grew up being used to our disability and often the poverty that went with it. For those who are disabled later in life, there is the trauma of the disability and then the new trauma of the poverty that comes when income sources like long-term disability are no longer available.

As I said, we are a human rights organization. As such, we have promoted and participated in the development of human rights instruments at the international, national and provincial levels.

I do not want to read black letter law; I do not intend to approach it that way. However, the spirit of these instruments carries with it a consensus about our values in society. Canada ratified the UN Convention on the Rights of Persons with Disabilities on March 11, 2010, this year. I will read from Article 1:

The purpose of the present Convention is to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity.

Under "General obligations" in Article 4 we find the following:

a. To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention.

This UN convention goes on to address adequate standard of living and social protection in Article 28. I would only add a brief quote from our own Charter of Rights and Freedoms. Section 15 reads:

(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.

It is this protection of the law that we would look to this committee for, especially in regard to breaking down another aspect of the comprehensive structuring of disability together with poverty in our society.

The Deputy Chair: Thank you, Mr. Derkson.

Senator Kochhar: Thank you all very much. You made compelling presentations.

They were compelling arguments, and I believe what Nortel did was not right. I, too, am disturbed with the plight of disabled Nortel employees. I am very sympathetic. I am prepared to support the bill if for one minute I could be convinced that this bill will have the desired results. I am convinced that this bill will do more damage than good for the Nortel disabled employees.

If this bill were to proceed and litigation resulted because of our actions, what would that mean for those waiting for LTD? What would happen to those other Nortel employees' pensions? How long could this be before the courts? Estimate the short or long range of it. If this issue were to go before the Supreme Court, as a witness testified earlier is a possibility, how long would that take? Could our actions create more uncertainty and more chaos for those who are involved?

Thinking about these long-term things, I think this bill will do more damage than good. That is my personal opinion.

The Chair: Does anyone want to reply?

Ms. Urquhart: First, the bill can have the amendment that was proposed, and Parliament is paramount. If the wording is clear, the paramountcy would not give opportunities for litigation. The issue would be who would do the litigation and against whom.

On the basis of the evidence that there has been a withdrawal of money from the health and welfare trust, and because of the consequences of the decisions to date, which are that this disabled group is going in poverty, it is my opinion, based on sitting in the courtroom and having dialogue with the various parties, that certainly the bondholders would not want to be litigating this for the sake of $59 million when there is evidence that it was wrongfully removed; but for the fact that we did not have the opportunity to litigate, that has not been proven. They would have to be prepared to take reputational damage, and I would say no financial institution on earth would want to litigate against 400 people who are being placed in poverty when the evidence is that the prior management of a corporation, which by the way has had eight executives take securities violation settlements in the United States and for which three executives have gone through the court system for criminal charges, and for which the withdrawal of the money relates to the trust, comingled the money. In my opinion, it would be unlikely that there would be litigation, and if there would, that it would be cross-litigation.

The next point I would make in that regard is that, as I noted, there is $1.1 billion likely in the Canadian estate. I cannot speak for the legal counsel, but based on my knowledge of how they think, they would be going to the court to seek that there be a carve-out of money in order for this matter to be properly executed. What we are dealing with now, without Bill S-216, is certain poverty — certain death in some cases. It would not be appropriate, I would think, to take the position that if parties were to litigate that the consequence of that would be that the others could not come to some financial resolution. The pension fund will wind up no matter what. It is already out of the hands of the estate, for which there is a settlement outside of Ontario of 65 cents on the dollar, and the average settlement for pensioners in Ontario is 90 cents on the dollar. The vast majority will be made whole. We are okay on the pension side.

We are then dealing with the severed workers. They are a small group, and for the most part they have had to get back to work. I do not see that they are an activist group.

In the case of the bondholders, again, no financial institution in its right mind would litigate against 400 suffering Canadians when it was their management team who caused the wrongful removal of the money.

Parliament is paramount, and in any case it is worth noting that the dissenting long-term disabled are filing an appeal as well with respect to the last health and welfare trust decision. There is litigation going on anyway. I would disagree with the conclusion that you have reached with respect to the litigation matters because I think this is of sufficient public opinion and awareness through media that it is what people speak about in the Tim Hortons coffee shops; people talk about those poor Nortel people and what the court system and the Nortel management have done, so it would be difficult for people to litigate and to hold their heads high regarding their objective.

Senator Eggleton: I want to pick up on that because I think that is an excellent response. No one who was here yesterday indicated what kind of cause for action there would be to take a matter to court. You can always say that you can take anything to court at any time, but there is no basis for cause of action. If this becomes law and with the amendment that I will propose in the transition clause, clause 8, will you sue the government for passing a law? They are not likely to get very far. There is no basis in law for them to do this. It is a flimsy, weak argument and excuse that we have heard. There is no basis for it.

The point that the witness is making, and maybe we can expand on it, is that we are talking about $100 million as an absolute maximum, and it could be as low as $68 million, to satisfy the claims that the company should be living up to that it promised its employees, and that is out of assets that are $6 billion or, as Ms. Urquhart says, $1.1 billion in the Canadian context. You could take this into a court and spend an awful lot of time. Some of those junk bondholders might well decide they want to take a bit of a haircut — they may even have insurance on their bonds — for the sake of the time factor, because the time will cost them an awful lot of money as well. As Ms. Urquhart says, these people want to stop something that is for 400 sick and disabled people, particularly when all sorts of countries in the world, all our major trading partners, do at least this, if not more. They do it already. Have their markets fallen apart? Were they taken to court and sued on it? No.

The Deputy Chair: I think that was more a reply to Senator Kochhar. I understand that you have good arguments but, in all fairness, we have three more witnesses. I would like to change the panel and then address the whole question. I thank our witnesses for coming here this morning. I hope that we will find a proper solution to this dramatic question.

[*Translation*]

I am pleased to welcome Mr. Jeremy Bell, who will speak first, as well as Mr. James Pierlot and Mr. Frank Swedlove. Welcome. Mr. Bell, you have the floor.

[*English*]

Jeremy Bell, Chief Actuary, Chief Investment Officer, Actuarial Services, HealthCare Benefit Trust: Thank you for inviting me. I am honoured to be here in front of your committee. I am the chief actuary of the HealthCare Benefit Trust. We are a health and welfare trust that resides in British Columbia. We are within the public sector and provide long-term disability benefits to everyone who works in the health care industry in British Columbia, as well as to some employees of the community and social services industry of British Columbia.

We are one of the largest plans, with about $1 billion in assets and liabilities. Almost all of that is LTD, long-term disability, assets and liabilities. I have 6,400 active claimants who exist inside of my plan for long-term disability right now. This is not the most popular place to be talking about being a self-funded plan right now, but we are distinct from the way Nortel did things in that we voluntarily apply pension funding rules to the way we administer our plan. We are funded by the government, so bankruptcy is a bit more of an abstract issue that could be affecting us; we are on different terms.

I also come with experience from the Canadian Institute of Actuaries. I am on the group insurance committee and just chaired the task force to respond to this same issue on the public policy issues for administrative services only or self-funded LTD plans. That is going through or has been approved and will be coming out soon.

In general, self-insurance makes sense, but it can be dangerous. I think everyone here would agree with the danger because we have seen how it shows up in real life. There are cost savings associated with self-insurance in certain circumstances, such as large employers where bankruptcy is remote, in particular. I would point out that you can provide flexibility in cost savings to yourselves by being self-insured. It does not make any sense whatsoever for the smallest types of employers. Only jumbo employers can handle the volatility associated with being self-insured for these sorts of benefits. In general, you would be pointing to organizations the size of Nortel or larger when you are talking about this.

My first comment on Bill S-216, and I think this has been referenced a few other times here, is that it is not enough in general to fix the system. There still can be issues associated with disability or with bankruptcies where there is not enough money that reaches that level or that tranche of creditor. Something more needs to happen afterwards, whether that be required funding along the lines of a pension system or mandating insurance. These are the same sorts of options as the Canadian Life and Health Insurance Association and the Canadian Institute of Actuaries have talked about. Something in one of those directions needs to happen as a follow-up to this. This is an interim step as opposed to a final step to be considered in the LTD system.

Given that, though, it is extremely important to note that Bill S-216 does not impair either one of those two things from happening further. This is an interim step where you take this step and either one of those two things could still happen extremely naturally as a follow on. Bill S-216 is a good stopgap measure, because either one of those two solutions requires provincial and federal coordination in order for those things to happen. I do not know whether anyone will go bankrupt in the next year or two, but it is important that, if you can have something in place that provides a certain level of protection between now and then, you can get there through the passing of Bill S-216.

Required funding is largely my preference, as opposed to mandating insurance, but either one is valid to protect the benefit security of people who are disabled. Required funding actually enhances that solution, sitting on top of that. The unfunded portion would be treated that way.

On the retroactive application in the Nortel case, you always have to pause for consideration on that. It is not a natural thing to have retroactive application of laws. In this instance, however, it does correct a subsidy that exists between the LTD beneficiaries and the existing creditors. From my understanding of the way that the trust was funded, it was not funded on a sound actuarial basis, as

was required in the documents. This actually corrects a particular issue. In general, I do not think that retroactive application makes sense, but in this limited case I think it does make sense.

There are two things from yesterday's testimony that I wanted to touch upon. One is the credit market issues. I am a small but I guess not trivial player in the investment world. I am in charge of investing $400 million of bonds for us, and I am an external investment committee member to a large public sector plan in Alberta that is in charge of investing about $1 billion in bonds. I have just been appointed, because of investment expertise, to British Columbia's Municipal Investment Plan, which invests about $6 billion in bonds.

After hearing the discussion yesterday, I can say I was unmoved. I do not think there will be any implication of any real note associated with passing Bill S-216 on bond yields at any level of tranche sitting inside there. That is just my understanding and based on listening to that. There is academic evidence and all the rest, but my pulse on touching people in that industry is that it will not particularly matter because the dollar amounts are not significant enough to really do much.

Then the other point was that fewer people are covered by LTD plans. Whether that will be the case if this bill passes, I think that is a non-issue. Self-insured plans cover only absolutely jumbo employers. Jumbo employers will always be offering LTD plans, and this does not affect the cost for the smaller employers.

James Pierlot, Pension Lawyer and Consultant, as an individual: As senators are aware, beneficiaries of a long-term disability plan of an insolvent or bankrupt employer are generally unsecured creditors under the Bankruptcy and Insolvency Act and the CCAA. This lack of creditor protection can, and does, mean loss of benefits if there are insolvency and insufficient assets to provide the LTD benefits.

My expertise is primarily in the area of pension plans and pension funding, which are similar. Pension plans and LTD plans are similar in the sense that both are intended to provide income replacement to workers during periods when they can no longer engage in gainful employment, either due to old age or due to disability that could have arisen because of accident, illness or some workplace incident, which is often the case.

In the case of pension plans, there is a requirement to fund them. There is a rigorous federal and provincial regime for federally regulated companies. There is the Pension Benefits Standards Act, and each province, with the exception of Prince Edward Island, has legislation that requires funding of pension plans to a solvency standard, which means that if the pension plan winds up there will be enough money there to pay for the benefits, irrespective of the financial situation of the employer.

On the other hand, with LTD plans, there is no funding requirement. There are three kinds of plans. You can have administrative services only; you can have an insured plan; or you can have a plan backed by a fund. It is the employer's option to choose.

Given the similarity between these two kinds of plans, that both are there to provide income insurance to people who are unable to earn for themselves, it kind of begs the question: Why the double standard between the two kinds of pension plans? Mr. Bell touched on that in his testimony.

This is an area that cries out for additional provincial regulation. It is a matter of provincial responsibility.

However, what faces us right now is a situation with a small number of extremely vulnerable people, and there is a solution here that provides a way of dealing with this situation and also of providing a level of security going forward for other employees who are in this situation.

Bill S-216 is a modest incremental change that is consistent with other recent changes to insolvency legislation that provided limited creditor protection for pension plan contributions and unpaid wages. As Mr. Bell has testified and others more competent in the area of finances than I have testified, the effect on an employer's ability to raise capital is expected to be minimal. This is intuitively obvious, given that out of the 30,000 employees that Nortel had at its peak in Canada, there are 400 disabled.

I support Bill S-216. It is an important first step to improving benefit security for Canada's most vulnerable workers. I have also made a submission to the committee that addresses some technical issues associated with the bill. They are really quite minimal; I would describe this bill as having good bones. It is clear to me what its intent is. I believe it is quite workable. The submissions I have made to the committee are in the spirit of moving it forward closer to something that it would look like in its final version.

Frank Swedlove, President, Canadian Life and Health Insurance Association: I am pleased to have the opportunity to be here today on behalf of the Canadian Life and Health Insurance Association to comment on Bill S-216.

[*Translation*]

The Canadian life and health insurance industry understands the critical importance of ensuring that employees on Long-term Disabilty or LTD are protected in the event of a plan sponsor's financial stress or insolvency. The life and health insurance industry has a longstanding role in providing safe and reliable LTD plans to Canadians.

In September, the CLHIA prepared a policy paper on Protecting Canadians' Long Term Disability Benefits in which we present our analysis and recommendations for addressing this important issue. We have provided copies of this paper to the Committee.

[*English*]

Senator Eggleton stated in his March 30, 2010, speech on the second reading of Bill S-216 that the purpose of this bill is to protect employees on long-term disability. The life and health insurance industry is 100 per cent supportive of this goal. History has shown that when an employer becomes insolvent and its LTD plan was uninsured, disabled employees can lose their benefits. This creates a severe financial and emotional burden on some of the most vulnerable people in society, since they often have few, if any, prospects of returning to work in the future.

We recognize that this bill attempts to address this issue. However, in many bankruptcies, there are insufficient funds available, and so such an approach may not ultimately protect those with

underfunded LTD plans. Providing preferred status to those on LTD in the event of their employer's bankruptcy is an after-the-fact solution. It fundamentally relies on there being adequate funds available in bankruptcy to cover all future liabilities for those on LTD.

Currently in Canada there is little regulation on self-insured plans, which was the case with Nortel. There is no requirement that employers set aside adequate reserves to cover future liabilities arising from these plans. If reserves are set aside, there is no restriction on how those funds are invested. There is also no obligation to keep funds in trust to protect them from other creditors.

As a result, there are no protections in place to ensure there are adequate funds available to support ongoing LTD claims in the event of an employer's bankruptcy.

Broadly, there are two ways to address this issue. One approach is to require a plan sponsor to establish reserves under a separate disability fund, which is substantially the same actuarial requirement as insured plans. However, there is no regulatory structure in place to insure sufficient funds have been allocated. At the end of the day, there is no guarantee that sufficient funds will be available.

Alternatively, requiring that LTD plans be offered on an insured basis provides the maximum protection for disabled employees and ensures they are paid regardless of their plan's financial status. We believe that this is ultimately the best route forward to address the protection of those on LTD.

I will provide you with an overview of how insured plans work and the protections they afford to those on long-term disability. With insured plans, the risk of financial liability for providing the LTD benefits is transferred to the insurer. In order to meet expected future payment obligations, the insurer sets up a reserve fund that requires actuarial evaluation and reporting. As an added level of protection, insurers are required to hold a capital cushion to support their obligations. This capital can be drawn upon in the event that more workers than expected experience disabilities.

The key point is that the insurer's responsibility with respect to disability benefits continues even when the plan sponsor experiences financial difficulty or after the plan is terminated. Indeed, after a plan sponsor's bankruptcy, the insurer will continue to receive benefits for disabilities that began when the group policy was in force.

Government regulators monitor insurance companies to ensure they maintain sufficient assets to meet their liabilities. In the extremely unlikely case that a Canadian insurance company becomes insolvent, the relevant prudential regulator would step in to ensure an orderly windup or restructuring process with a minimal impact on policyholders. In such cases, the full asset base of the insurer is available to support disabled employees. In fact, disabled employees and other policyholders rank ahead of other creditors in such situations. Should the assets of the insurer be insufficient to cover all claims, long-term disabled employees would be covered by Assuris, which would continue to insure that payments of up to $2,000 per month or 85 per cent of the monthly benefit, whichever is greater, are made to such employees.

[*Translation*]

In order to protect those on LTD, it is crucial that there be funds available to support all ongoing disability liabilities even if the employer is bankrupt.

The most effective option to achieve the public policy objective of fully protecting individuals on LTD, with minimum administrative cost and complexity, is clearly to require that LTD plans be offered on an insured basis.

[*English*]

The life and health insurance industry's fulsome policy position on this issue is included in your package for your information.

Thank you for your time. I would be pleased to respond to any questions.

The Deputy Chair: I have a little clarification from Mr. Pierlot. We can make amendments at the committee level, but we can also do them when we report to the Senate.

Did you make some specific recommendations about possible amendments that would fine-tune this bill that we could introduce at the next stage? We would like the bill to be as perfect as possible, if perfection can be done by Parliament. I am wondering whether what you are proposing would not guarantee but certainly give some certainty around the administration of this in the future and also against any kind of legal action against the bill.

Mr. Pierlot: Thank you for the question. When I went through the bill, it was clear to me that the intent was to secure disability plan benefits, so the amendments that I suggested — and I am not saying they are perfect — are intended to assist the bill to achieve that end. I will give you several examples of what the amendments are focused on.

There are some small changes in there of a technical nature to accommodate multi-employer disability plans, because not all disability plans are single employer. There is another change to accommodate individuals who might be on a waiting period on a short-term disability plan, so that if they would become entitled to long-term disability benefits after the date of the bankruptcy, they would still get them. It is a technical transitional issue. There are a few points in there to address surplus assets and deficiencies and how those might be addressed.

I have also inserted into the bill the option, as suggested by Mr. Swedlove, that settling the whole insurance obligation via transfer to an insurance company could be quite an attractive option in some circumstances. That simply adds to the options of the bill.

With respect to the litigation issue that was discussed earlier, I have also inserted about 10 words at the end in clause 8 so that the bill would apply more clearly; I think the bill does apply, but I wanted to reduce any ambiguity that the bill might not apply to current proceedings under way.

That would probably adequately address the litigation issue. If you want me to speak more on the litigation issue, I am happy to do so.

The Deputy Chair: I do not want to take all the time, but I have a short question for Mr. Bell.

You mentioned that there were three different steps, and this could be the first step, but in fact as legislators we would have to start discussion with the provinces to ensure that in the future we do not have that kind of situation and that it can be corrected. Part of it would be to have the insured plan administered and funded on a regular basis through an insurance group, paying a premium, both employee and employer. The money would be there, whether the company goes down or not.

We have some homework to do after this bill. We would pass this bill, possibly with some of your amendments, and at the same time look to the future.

You come from B.C. and you deal with Alberta. Do you feel the provinces would be ready to go ahead in solving a problem that Canada seems to be afflicted with more than most of its partners?

Mr. Bell: I do not have my finger on the pulse of exactly what they would do. I would imagine that the provinces would be interested in talking about that. It fits with the discussion they have had on pensions over the last year and a bit. I do not think it would be a brand new discussion for them.

The Deputy Chair: I have made my point.

Senator Eggleton: Those are excellent points and answers. I want to explore this litigation issue a little more, because that is the issue that seems to keep coming up.

Mr. Pierlot, you are the lawyer here. The other two may by chance have law degrees, but you are the lawyer and the expert on this particular subject. I want to ask you about the possibilities of this getting tied up in litigation. We are hearing that maybe this will not serve people very well, particularly the Nortel people who are running out of time, that this could end up in the courts for a lengthy period of time and not serve them.

That is a key argument. I would like to hear more from you on that.

Mr. Pierlot: Thank you, senator. Part of my response will be to repeat some of the points you have heard before. This is not a legal statement but more a commonsensical statement: The optics of litigating in this particular circumstance are not particularly good. You have a very sympathetic group of people who would suffer as a consequence of the litigation. If I were a bondholder, I do not think I would want to go there.

The second point I want to make — Senator Eggleton alluded to this earlier — is that to litigate or to have any chance of success in a litigation, you need a cause of action. You need some basis in law to actually commence a cause of action, to sue someone. In this case, I struggle a little bit to figure out whom I would sue. If I were a person who did not like this bill, whom would I sue? Can I commence an action against the federal government for passing a piece of legislation that I do not like? I could if I can make some kind of an argument under the Charter or the Bill of Rights. You cannot really have a piece of legislation set aside unless there is some other principle of law that applies that you can appeal to with which that legislation conflicts.

In the case of the Charter, there has been a spotty record trying to litigate on economic rights. The courts have tended to shy away from granting economic rights under the Charter, so that would be a problematic area.

The other possibility would be to make some kind of an argument that clause 8 of the bill, which essentially makes the bill apply to current proceedings, is not applicable in the circumstances. I would put in some understanding that that was the intent. I added a bit of additional wording to deal with that situation.

I think that probably my main issue is not really seeing where the cause of action would lie.

The other point I would like to make is that, as was mentioned in earlier testimony, there is an issue outstanding that is currently being litigated that is being taken to the Court of Appeal on an agreement that was signed. If this bill were passed, it could potentially make that litigation moot and actually reduce the likelihood of future litigation.

Those are my comments on that. If there are further questions, I am happy to answer them.

Senator Eggleton: Could I also ask about the time factor? Litigation can go on for some period of time. Looking at a cost-benefit analysis, there is the amount of less than $100 million versus the $6 billion in global assets or the $1 billion in Canadian assets. It seems there has to be some cost-benefit analysis done by people before they decide to enter into a court case. Could you comment on that?

Mr. Pierlot: In this context, litigation is a commercial decision. People will do it if it makes business sense, and they will not do it if it does not make sense. It would take quite a bit of time for such an issue to be litigated. It has been a few years since I litigated, but the last time I did, it could take 12 to 18 months to get before the Superior Court on an issue. Maybe you could accelerate the schedule. Then if it goes to the Court of Appeal, it could take another year or two. It is not unusual for an action to take 7 to 10 years to get from the Superior Court to the Supreme Court.

I understand from previous testimony that the Canadian estate of Nortel is about $1 billion. Here, we are talking about maybe $60 million to $80 million at play. If I were a creditor, I would be concerned about the risk that that litigation could hold up my larger claim, because I would probably want to make sure that I received most of what I was entitled to. I would be concerned that I might be delayed in realizing my claim on the larger piece.

Senator Eggleton: Mr. Swedlove, you quite correctly point out that more needs to be done. In fact, you have all pointed out that more needs to be done here than just Bill S-216. However, Bill S-216 is intended as a first step, or a stopgap. It is actually the only way that we can deal with the current issue of Nortel and perhaps some other bankruptcy issues, or CCAA issues, over the next little while until something comes together, bearing in mind that something coming together could involve consultations with the federal government and the provinces. We all know that takes a long time. Can you see Bill S-216 in that light?

Mr. Swedlove: Yes, senator, I can see it in that light. Obviously, if there were an agreement amongst the provinces and the federal government that all LTDs were to be insured policies, I am not quite

sure of any need for Bill S-216. You are correct to say it would be somewhat of a stopgap measure. We are aggressively bringing this issue to provinces. We have written to all the provinces, and we are following up discussions with ministers because we think this is of extreme importance. We are hoping that as the provinces look at their insurance legislation, which they are doing in any event as we establish a new uniform act for insurance, they will take this into account in the short term.

In the meantime, you are correct, senator, that this could act as a stopgap measure.

Senator Eggleton: If I may, I will ask one more question, Mr. Swedlove. According to Nortel employees, for years, when they had claims, a cheque would come from an insurance company. They said they were not aware of the fact that the company is actually self-insured. The insurance company was only there to administer, but they did not find this out for several years.

Do you feel there needs to be an obligation on the part of the company to tell people what the nature of the fund is and the nature of paying for their claims? Does the insurance company not feel abused that it is out front and appears to be the villain, in some cases, but in fact it is simply administering the fund? Can you comment on that?

Mr. Swedlove: This is a real issue — the lack of understanding as to what the employee is actually receiving. In our policy paper that we brought out in September, we noted the fact that in most cases people are not aware that it is an administrative services only arrangement as opposed to an insured policy.

Increasingly, it is becoming clear on cheques that are sent in the case of administrative services only policies that it is done by an insurance company acting on behalf of the employer. There are changes in that area. I agree that there can be some elements of confusion.

Alberta and British Columbia have laws that require disclosure that it is an administrative services only policy. However, sometimes an employee has been an employee for many years before becoming disabled, and that person may not be aware or remember receiving that kind of disclosure.

In our view, disclosure could be helpful, but it is insufficient to really deal with the problem.

Senator Eggleton: With respect to Mr. Pierlot's suggestion on the transition clause, clause 8, I intend to move an amendment at the appropriate time that will be the same as the one he is suggesting. I agree with you about any other possibilities or something that could be subsequently looked at. Time is of the essence for putting this into place.

[*Translation*]

The Deputy Chair: If there are no further questions, I would like to thank our witnesses and suspend proceedings for a couple of minutes. We will then move on to the clause-by-clause consideration of Bill S-216.

[*English*]

Senator Greene: I would like to make a motion. My motion is that we adjourn the meeting. I want to do that because we have heard some excellent testimony today with lots of possibilities for amending the legislation. I am not in a position to vote for the legislation as it is, and I do not know and do not understand the impact yet of all of the amendments that have been proposed. I would like to be able to do that. I think that moving to clause-by-clause study right now is premature, so I move to adjourn the meeting.

Senator Eggleton: I do have a comment. There has not been any amendment put to this point in time. I intend to put one simple amendment forward that I actually read out yesterday. I do not know why that should cause a problem. That is the only amendment I intend to move.

I do want to point out, though, as has been said so many times, and as these people said here today, time is running out for these people if we do not get this before Parliament before the Christmas break. It is not as if this is a new concept that needs more time for consideration. It has been around since the spring. I introduced it in March; it got second reading in June. It has been around a long time. I intend to put only this one small amendment. I would like us to proceed to deal with this matter in the sense of urgency for helping these people by the end of the year.

[*Translation*]

The Deputy Chair: Thank you, I just wanted clarification. Until when do you wish to adjourn?

[*English*]

Do you want to adjourn until the next meeting?

Senator Greene: That is at the call of the chair and the deputy chair.

The Deputy Chair: I am asking you.

Senator Greene: I certainly agree with Senator Eggleton that time is of the essence. I am equally convinced that the bill in its current form will not satisfy the time requirement because it must go to the House of Commons, and it could be an endless situation there. Perhaps as soon as possible — I am open to that.

The Deputy Chair: We have a regular meeting every week. Do you suggest that we have a special meeting to deal with that? I think the steering committee could contemplate that. As far as I am concerned, I would be willing to add a meeting next week, as early as possible, to deal with the amendments that were proposed by one of the witnesses and deal with this properly. We will have them in our hands, and they will be translated, and we could deal with that next week.

Senator Greene: Well, again, that is up to the steering committee. I would like to see what they have to say about that. I am not opposed to it. Let us put it that way.

The Deputy Chair: Okay. Is everyone agreed on the adjournment?

Senator Ogilvie: To be certain, Madam Chair, my understanding is, then, that the motion is to adjourn the meeting, the date to be determined and recommended by the steering committee; is that the motion?

The Deputy Chair: Yes.

Senator Greene: Yes.

Senator Ogilvie: Thank you.

Senator Harb: May I make a friendly amendment to that? Is it at all possible that Senator Eggleton's amendment be tabled so that at least you have it tabled? We are all acting in good faith here, and I think our intention is to find a resolution that is a win-win resolution. As such, it would be good at least to table it. If we receive it, that will allow the secretariat to prepare it as part of the document for when we come back.

We have not heard anything earth shattering telling us that what Senator Eggleton is proposing will cause troubles. If anything, from everything we have heard, there is a plus to it; there is no negative to it, notwithstanding the one comment we heard yesterday.

If we want to really act in good faith — and I do believe we are all acting in good faith — I recommend we receive it and table it. We do not have to vote.

The Deputy Chair: Like the other amendments?

Senator Harb: Just to receive it and table it so at least —

Senator Greene: Like the other amendments that our witnesses are proposing. Would that be okay?

The Deputy Chair: Are you willing to table your amendment?

Senator Eggleton: Yes, I will table the amendment. If you want to look at clause 8 of the bill, on the very last page, the wording you see there would stand. There is no change in terms of leaving the wording as it is, but an additional few words would be added.

After the word "section," instead of a period put a comma and then the following words: "and notwithstanding any Judgment or Order by any Court during those proceedings."

I will read it one more time. I have it here both in English and in French, and the clerk has a copy: "Notwithstanding any Judgment or Order by any Court during those proceedings."

The purpose of this is to give even greater certainty. When the bill was originally drafted and presented to the Senate, there had not been a judgment exercised by the court in dealing with the CCAA issue of the health and welfare trust fund. Since then, under the existing rules, they have put forward an order. While the original wording was intended to cover it, in any event this additional

wording just adds a greater degree of certainty. It is the same wording that Mr. Pierlot also suggested here.

The only other thing I wish to say is that I am very concerned about adjournment of this because of the time factor. I cannot support adjournment. If that is the wish of the committee to do it, then so be it —

Senator Plett: It is not debatable.

Senator Eggleton: — but I would ask for a recorded vote.

Line Gravel, Clerk of the Committee: I will take a recorded vote, then.

Senator Harb: May I make a suggestion, colleague? This committee really works on a non-partisan basis. We try everything we can in order to provide accommodations. I presume even if your motion were to be dealt with now and we vote on it, it would take us until next week anyway in order to table it back in the Senate and all that.

What we are trying to do — and I presume my colleague is trying to do — is to take a bit of time in order to digest what the witnesses told us yesterday and today and, perhaps, to go back and see also what the administration may have in mind, given what they have heard, in the hope that we will be able to move forward with this. Of course we will have a chance to vote on it one way or another at the next meeting. Those few days will give us the opportunity to see if we can come up with some sort of positive resolution to it that will be taken to the Senate. It is my hope that, notwithstanding anything, on Tuesday we will be able to report back to the Senate, or at the meeting after the next meeting we will be able to report back to the Senate. It would be fantastic if we had something that is unanimous that we can all agree to, in the sense that we can have a situation where we can help those we want to help.

That is the only reason. It is quite obvious we will not win in the nays, notwithstanding that, but also at the same time, in the spirit of good cooperation and good faith, maybe that is what we should do.

Senator Eggleton: I appreciate your argument on this, but I have yet to hear any argument from those who are representing the government side with respect to how they feel on this issue in support of it.

The Deputy Chair: Senator Eggleton, I think we have heard your argument, and we know you are passionate about your bill.

Senator Eggleton: All right.

The Deputy Chair: I know it is not a debatable motion and we have to take into account at least the fact that we were flexible in terms of allowing Senator Harb also to express himself and Senator Greene giving some rationale. Further discussion would certainly not bring more support. What is important is to have the bill pass. If we can improve it, we will improve it. I will be sitting on the steering committee, and I will certainly press, according to Senator Greene, who is also with me, to

have it as soon as possible, which would be at the next meeting of our committee next week, on Wednesday.

I have not seen the amendments that have been proposed, so as far as I am concerned in good faith a few more days would certainly be a — but it is your choice. If you want a recorded vote, I cannot prohibit it. However, I think Senator Moore would agree with me.

Senator Eggleton: Okay. I will take the recommendation of my colleagues and not call for a recorded vote, but I am still opposed to the adjournment.

The Deputy Chair: The meeting is adjourned.

(The committee adjourned.)

COMITÉ SÉNATORIAL PERMANENT DES BANQUES

ET DU COMMERCE

TÉMOIGNAGES

OTTAWA, le mercredi 17 novembre 2010

Le Comité sénatorial permanent des banques et du commerce se réunit aujourd'hui à 16 h 15 pour étudier le projet de loi S-216, Loi modifiant la Loi sur la faillite et l'insolvabilité et la Loi sur les arrangements avec les créanciers des compagnies en vue de protéger les prestataires de régimes d'invalidité de longue durée.

L'honorable Céline Hervieux-Payette (*vice-présidente*) occupe le fauteuil.

La vice-présidente : La séance est ouverte. Je veux souhaiter la bienvenue à mes collègues et à notre invité d'aujourd'hui et à ceux qui comparaîtront plus tard.

J'aimerais, avant de commencer, vous présenter mes collègues. Le sénateur Ringuette, du Nouveau-Brunswick, le sénateur Harb, de l'Ontario, le sénateur Moore, de la Nouvelle-Écosse, le sénateur Merchant, de la Saskatchewan, le sénateur Kochlar, de l'Ontario, le sénateur Gerstein, de l'Ontario, le sénateur Greene de la Nouvelle-Écosse et le sénateur Massicotte, du Québec.

Nous commençons l'étude du projet de loi S-216, Loi modifiant la Loi sur la faillite et l'insolvabilité et la Loi sur les arrangements avec les créanciers des compagnies en vue de protéger les prestataires de régime d'invalidité de longue durée.

(Deputy Chair : As our first witness, we have today...)

(anglais suit)

(Following French -- The Deputy Chair continues after -- d'invalidité de longue durée.)

As our first witness, we have today Senator Eggleton, the sponsor of the bill, a senator from Ontario.

Welcome and please proceed.

The Honourable Senator Art Eggleton, sponsor of the bill: Thank you very much. This is a little unusual for me. I usually sit at the other end of the table in another committee that usually meets down the hall at this very same time, but I am delighted to be able to speak to you today.

I want to note the presence of Judy Sgro, the Member of Parliament for York West, who has been very active on this and other pension matters in the House of Commons.

Today I come to speak on the bill I have sponsored, Bill S-216, to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect the beneficiaries of long-term disability, or LTD as it is more commonly known, benefit plans.

Honourable senators, before I tell you what is in this bill and what it does, let me tell you what it does not do. I think this is important. First, it is not about pensions. That is a different issue. It is about long-term disability and that only. Second, the bill is not just about Nortel, although that situation precipitated this bill. It is about employees now and in the future who find themselves in similar circumstances with respect to LTD plans.

The purpose of this bill is straightforward: to protect employees on long-term disability. While its focus is narrow, it speaks to larger issues of fairness, justice and respect. Its aim is to correct a situation that leaves the most vulnerable of our workers in the most desperate of straits, and it reaffirms the simple principle that people who pay their dues and play by the rules have the right to expect that they will receive what was promised them.

At the moment, approximately one million employees in Canada have disability benefits that are self-insured by their employers. If a company with self-funded long-term disability benefits goes bankrupt, its employees who depend on these benefits are given the same standing as an unsecured creditor.

In 2001, Amy Stahlke wrote in *Benefits Canada* magazine about the impending problem. She said[11]:

In Canada, there has been little regulation of self-insured plans. There is no requirement that employers set aside adequate reserves to cover future liabilities arising from these plans. If reserves are set aside, there is no restriction on how those funds are invested. There is also no obligation to keep funds in trust to protect them from creditors. This means that a bankruptcy could spell the end of the benefits plan, including benefits for individuals already on disability.

Honourable senators, employees who are disabled, who cannot work, should not be shunted aside. Their needs are not over when their employer goes under. They still need medication, treatment and rehabilitation. They still need all the things that their long-term disability would have helped to provide.

The bill proposes to protect beneficiaries under long-term disability plans by granting them preferred status. By bringing LTD claimants to preferred status, employees are more likely to get their benefit coverage up to age 65, be able to pay their medical bills and continue to live outside of poverty.

Some may have concerns about the cost and the impact on credit markets and about our overall competitiveness. I have heard about this, but when we look at the evidence we see that not only can this be done but that many countries around the world are already doing it, or doing even more.

Thirty-four of 54 countries studied by the OECD and the World Bank, some of them our major trading partners, already have either super-priority or preferred status for employee claims in their bankruptcy laws, and that is for all pension claims, not just long-term disability. These countries have properly functioning credit markets, and they are still competitive. The two are not incompatible. We can protect our most vulnerable employees and retain dynamic credit markets and stay competitive.

Also, at least 12 countries, including Germany and the United Kingdom, require the payment of insurance premiums by their corporations to fund their public pension plan and disability income guarantee insurance programs. We do not do that, but at least 12 of our major trading partners do.

The United Kingdom's system goes even further. In 2004 they enacted the Pension Protection Fund that states that if an insolvent company has underfunded its long-term disability plan, the government will compensate the scheme to protect employees. They are, therefore, protected from an employer that goes bankrupt, because the

government requires the company to fund LTD funds. If there is a shortfall, the government will step in to cover it. In essence, the most vulnerable will be protected.

In the United States, LTD employees have disability protection for pensions through the Pension Benefit Guarantee Corporation. Also, employees have legal recourse to go after LTD benefits after bankruptcy provided by their Federal Employee Retirement Income Security Act legislation. There is no such avenue available to Canadians. In the United States they also have more generous Social Security Disability Insurance Program. It pays more than twice what the Canada Pension Plan Disability Benefits pays for the disabled in Canada. That is our major trading partner.

Honourable senators, nowhere is the inequity of the present situation more starkly illustrated than in the case of Nortel workers. As that company goes about the business of divvying up its assets, over 400 of its employees on long-term disability are being cast aside. The assets, by the way, are valued at over $6 billion.

Currently, the bankruptcy court has accepted an agreement for the dissolution of Nortel Health and Welfare Trust. This trust was set up to fund life insurance, LTD and other benefits for the 18,000 Nortel workers. This fund has been underfunded for years and holds only about 35 per cent of the assets necessary to fund its obligations to all employees. This is a dire situation for Nortel's LTD employees whose average age is 54 and who may need benefits for many more years to come.

Those employees will turn increasingly to social assistance and make greater use of social services if that company does not live up to its obligations. They will have to make the heart-wrenching decision of whether to buy medication or food for their families, to get treatment for their illness or to pay the mortgage or the rent.

Effectively, Nortel will have downloaded these costs onto taxpayers. Taxpayers will have to pick it up because these people will go to the social welfare system. Meanwhile, the company has $6 billion in assets and only a year ago paid some $8 million in bonuses to its seven top executives. This company will just walk away from its responsibilities.

I have put a document over on the table there. It has not been formally translated yet, so you will not have it in front of you. It is in both English and French, but it is in the original language of the people who have written it. There are some 28 impact statements here by these people. Have a read through this and you will see what kind of a desperate situation these people are in. There is one person in here who talks about trying to commit suicide. Please read that document and you will get an idea of

the situation they find themselves in. You will hear from a couple of them here at the committee as well.

Honourable senators, Nortel employees are not alone. LTD workers from the Pacific Newspaper Group, which is owned by CanWest, faced this uncertainty earlier this year. Thank goodness that CanWest survived through bankruptcy proceedings. However, if the situation led to liquidation, like in Nortel's case, those employees could have seen their benefits cut off as well. Nor is this problem new. We have seen this kind of thing play out before. In 1988, when Massey Combines Corporation went into receivership, 350 employees saw their disability payments vanish. Ten years later, the bankruptcy of Eaton's resulted in hundreds more being left without benefits.

Honourable senators, long-term disability is based on a simple bargain. If you pay your fees, you will be covered should anything happen that makes it impossible for you to work. In the case of Nortel and others that bargain has been broken. In the future, if no action is taken, similar bargains can be broken again, and the taxpayers, again, will pick up the costs.

The bill before you today represents an attempt to end that practice. It declares in no uncertain terms that promising long-term support and then making short-term decisions that leave those promises in tatters is just not a matter of liabilities that are unfunded, it is a matter of practices that are unfair, unjust and unacceptable.

This bill will not only bring a greater degree of fairness in the bankruptcy process but will help protect some of our more vulnerable citizens now and in future. Thank you very much.

Senator Massicotte: Thank you, Senator Eggleton, for your presentation.

I think I understand the proposed amendments to the act. I have read other presentations that I have received. I am trying to get a bit of information.

The contributions that the employees will make to their long-term disability, if it is not insured, goes into the coffers of the company and is not trust money? In law, the employee deductions for income tax, or whatever, are trust monies. Therefore, the board of directors would be legally liable if they were to use the trust monies for other than that for which they were intended. In this case, I understand that is not the case. There is no particular treatment of the employee contributions made for disability insurance within that company coffer. Is that correct?

Senator Eggleton: A health and welfare trust was set up in the case of Nortel and it is set up in the case of other companies, but there is no requirement for them to do

that. However, if they do that, there is no requirement as to how much they put into it or how the money is invested. In this particular case, they have underfunded it. They did not put in enough money to meet their liabilities.

Senator Massicotte: The contribution by the employee by way of the deduction made from his paycheque does not need to be trust money in a legal sense?

Senator Eggleton: That was put into a trust.

Senator Massicotte: If it was not set up in a separate account, it was not automatically deemed to be trust funds? It is not the company's money; it is the employee's money.

Senator Eggleton: I do not think there are requirements for it to be. The company puts in its own money as well.

Senator Massicotte: I suspect it is trust monies, but it does not mean that the employer is making his share. Sometimes the employer pays more. It is not 100 per cent the employees. If the employer does not make the contribution, then you have a problem of underfunding.

Senator Eggleton: I do not know that there is any question of the employee money, per se. As far as I know, that has gone into the health and welfare trust. The problem is that the company has underfunded its contribution.

Senator Massicotte: I do not know the stats, but, with the exception of some large companies that you mentioned, I expect that 90 per cent of the bankruptcies in this country occur once the secured creditor took his assets. There is never anything left for the unsecured creditors. If my numbers are accurate, while I support the proposed amendments, I am concerned that it will not resolve very much except for the Nortels of this world because most often, for SMEs, once the secured creditors are finished there is nothing for the unsecured creditors.

Senator Eggleton: Most companies take out an insurance plan. For about 90 per cent of employees that are covered by a company on a long-term disability plan, these companies do buy insurance. It is in the 10 per cent cases, which are about a million people, that they are self-funded. In most of the cases that we know about, it is major companies who feel that they have sufficient wherewithal to do this themselves. That is fine, except you get to the point where they are underfunding it and they go into bankruptcy. It is then the employees who are left holding the bag. It is those people we are trying to protect by this piece of legislation.

In the particular example here, and in some of the other examples of the past ones, there were substantial assets -- not necessarily in the current assets but in the fixed assets. If you are going to liquidate, then those assets come into play, and they should. That is what I am saying here.

Senator Massicotte: There is a submission by the life companies saying that if you work with us, you will not have any problem. However, I understand from their submission that if you use the word "insured," it is not really insured. It is basically money set aside with the insurance companies who are responsible to invest the sums. If there are insufficient funds in those accounts, there is also a shortfall to the employees. Is my understanding accurate? We use the word "insure" but it is not really insured. Segregation of funds is probably what is actually occurring when they use the word "insured."

Senator Eggleton: In the 90 per cent of cases where they deal with insurance companies, they would have agreements as to how they would pay to ensure that they are keeping their end of the bargain. That would be covered by the agreements with the insurance company. In the cases of “self-insured,” that insurance company could also appear on the scene and has in this particular case, but they are there just to administer. It is the money of the company. They are just there administering it, and it creates the false impression for the employee that there is an insurance company behind all of this doing more than just administering.

In fact, the Nortel employees did not know for many years that that was the case; that is, they really did not have the insurance company fully funded to deal with the plan, that the insurance company was only administering it.

Senator Massicotte: I see no problems. We have other presentations coming up. Some people mentioned there would be some funding problems. I have been involved in business for a long time. I appreciate there will be some small trickle of funding problems. I do not think it is a serious issue. I think what you are proposing has immense merit. If I have any reservation, I am scared that it will not attend to most of the problems that occur. In other words, maybe there should be an issue about forcing companies like they do with other deductions in a segregation account, but your bill does not deal with that. I think your proposed act has much merit. For future legislation, maybe more should be done because I am scared that it will not resolve anything for the SMEs 80 per cent of the time. For the big ones, yes; but it is a good first step.

Senator Eggleton: I agree 100 per cent that it is a first step. More needs to be done. I pointed out that other countries do. The United States, the United Kingdom,

Germany, many of these other countries that are major trading partners, have done more in many respects. Even on the bankruptcy level, 34 out of those 54 countries that were surveyed have a higher status than what we do. We have unsecured creditors. They have at least preferred. Many of them have super-priority.

Senator Massicotte: Ahead of the secured creditors?

Senator Eggleton: Yes; some of them do. I am not even suggesting that here.

Senator Massicotte: I appreciate that.

(French follows - The Chair: Vous pourriez penser...).

(après anglais)

La vice-présidente : Vous pourriez penser à un amendement si vous croyez qu'il ne sera pas protégé.

(Sen. Kochlar: Can this fund...)

(anglais suit)

(Following French).

Senator Kochhar: Can this fund be made a secure, insurable segregated fund and be imposed on the company to do that or is there no mechanism to impose on the company to segregate that fund so that when the time comes then these funds are available?

Senator Eggleton: It does in the case of my bill.

In the case of a bankruptcy proceeding or a proceeding under the[n2] Companies' Creditors Arrangement Act, it does provide for that kind of a fund to be put in place.

Senator Kochhar: That is before bankruptcy, as we are going along?

Senator Eggleton: The CCAA does provide for that. If you mean as a regular operating business, no, and I think we need to do that kind of thing.

Senator Kochhar: If you do that, your bill becomes redundant. You do not need it.

Senator Eggleton: It would not help any of the Nortel people. If you want to help the Nortel people, this is the way to go.

Senator Greene: In the settlement agreement, I believe there is a clause that insulates the agreement from changes to bankruptcy laws and so forth. If that is the case, how does your bill get around the settlement agreement?

Senator Eggleton: The bill has clause 8. Clause 8 is a transitional clause and it reads[n3]:

> For greater certainty, this Act applies to a debtor in respect of whom proceedings under the *Bankruptcy and Insolvency Act* or under the *Companies' Creditors Arrangement Act* have commenced before the coming into force of this section.

That is the condition that Nortel finds itself in.

Senator Greene: Yes, but that does not necessarily help anyone in Nortel, because there must be a ruling subsequent, I would think, that would enable your bill to affect the settlement agreement.

Senator Eggleton: When the bill was drafted, yes.

Senator Greene: It would be by a court or something.

Senator Eggleton: When the bill was drafted, this was considered to be sufficient to cover the situation. The bill was drafted back in the spring.

Since then, the decision in the court in terms of the settlement matter has been put in place. That leaves open some question about the effectiveness of this particular section. It can still be argued that it is quite effective. If you ask different lawyers, you will get different opinions.

I would suggest a few additional words would cover off what has happened between when this bill was drafted and introduced and where we are now. Those additional words would be: "notwithstanding any judgment or order by any court during those proceedings."

That would make it abundantly clear. I think what is in there now does cover it, but if we want to make it abundantly clear that it does cover the judgment that came down since, I would propose that those additional words be added.

Senator Greene: It is likely that even with those additional words you would end up in court at some level on this issue.

Senator Eggleton: That is a clear instruction from the Parliament of Canada. It does cover the condition that the Nortel people find themselves in, and it does cover the current proceedings. Even with those few additional words to make it absolutely clear, I think it would be helpful.

Senator Greene: Perhaps, but it still might not work.

Senator Gerstein: As a supplementary to Senator Greene's question, Senator Eggleton, as I understand it, I do not know whether if your bill were passed it would change the legal entitlements of former Nortel employees.

Let me start by saying we all sympathize with Nortel employees.

In fact, if your bill were passed, could it not result in litigation, as you yourself said? Different lawyers have different opinions that could tie up the court-ordered settlements of former Nortel employees for years. In fact, is there not the possibility that your bill might actually make matters worse for the very people that you are trying to help?

Senator Eggleton: No, I do not believe that at all. In this country, I suppose anyone can try to litigate anything, but we have talked with lawyers who are expert in

this area. The wording that is in the original bill is the wording that we were advised would work. Since there has been some advancement of this whole issue since the bill was introduced, those additional words I think would create greater certainty.

Senator Gerstein: However, you are not suggesting there might not be litigation.

Senator Eggleton: There is always that possibility.

Senator Gerstein: That would tie it up for years.

Senator Eggleton: I do not believe so, but I know one thing for sure. What you are talking about is maybe this and maybe that, and we know that in a legal context, people can easily use those kinds of arguments, but one thing we know for sure is that time is running out for these people. If they do not get this by the end of the year, then they are in very deep trouble.

Senator Gerstein: I understand that, but I want to pursue this for a moment. Are you not acknowledging that it may be that and it may be this, and in fact it could put the whole settlement into litigation, which could tie up payments to former Nortel employees for years and years?

Senator Eggleton: No, I do not believe so.

Senator Gerstein: That is including those not on long-term disability.

Senator Eggleton: No, I do not believe so. This only deals with long-term disability.

Senator Gerstein: Yes, but if you are opening up the fact that the government is legislating something new, people are not just going to say, "Okay, that is what it is, we will pay it." Someone will litigate it, and it will not be paid until the litigation runs out its term, I would assume. I am not a lawyer. I am asking the question, and I have to ask whether or not it could put the people that we are trying to help in a worse position than they are in today.

Senator Eggleton: No, I do not believe so. They cannot be in a worse position than they are in today. It is all running out by the end of the year.

If you are concerned about the condition of these people now and if you do not think this is the best solution, what is your solution?

Senator Gerstein: That is what we are trying to deal with.

Senator Massicotte: What is the effective date of the proposed amendment to the legislation?

Senator Eggleton: It would be effective upon passage or whenever the normal Royal Assent is given, but clause 8, the transitional provision, deals with anything that is a proceeding now before the courts, which includes the Nortel matter. It has a retroactivity provision in it, which is not unusual. We have passed a number of other bills in the last few years with retroactivity provisions. The world has not come apart as a result of those. I do not think it would here either.

Senator Massicotte: Just to make a comment, with the CCAA, basically the judge only has the discretion to deal with general creditors. He only has the jurisdiction to deal with the general creditors. You are saying that before there was a decision made by the judge, with the kind of arrangement that he accepted, and it always dealt with the general creditors. Passing this law with clause 8 automatically takes away his discretion to deal with the liabilities because then the act will apply to liabilities and it takes away the authority of the judge to say, "My previous treatment of those liabilities is not affected." I think it resolves the issue, but it is complicated.

Senator Eggleton: I think it does. I point out that the judge can only make a decision based on what he or she has before him or her.

Senator Massicotte: Of course.

Senator Eggleton: If that judgment comes into effect at the end of this year, first they will get cut off their medical benefits. On average, I am told it is about $12,000 a year. This is over and above medicare; this is $12,000 a year because of prescription drugs and a whole lot of other things. These people have cancers, heart problems, a wide range of disabilities. They require a fair bit of medication and rehabilitation. They will get cut off that; that ends at the end of the year.

Because there is so little money in the Health and Welfare Trust, their income will be cut substantially, some of them down to 20 per cent of what they are getting now.

Remember, what they are getting now is half of what they got as employees, because most of those disability plans were at the 50 per cent mark. Some of them did pay for more and got a 70 per cent provision. They are already getting half of what they got as an employee; now they will get less than half of the half. They will not be able to cope with that.

The stress they are under as a result of all of this is enormous. We are marching toward this deadline at the end of the year and these people are sick and they are getting sicker.

Senator Merchant: I want to congratulate you for bringing this bill forward. Dealing with the topic of making this very specific, some people say that it would be good enough anyway.

I was just reading something by Scott Taylor on June 5, 2010. He is a reporter for the *Ottawa Sun* and he was quoting an independent financial analyst Diane Urquhart. I believe she is appearing before us tomorrow. She said of Bill S-216:

> If[b4] adopted by the Conservative government, it would cover the Nortel disabled.

This is, of course, the outcome that we desire. I think the few extra words that you suggested that you might add to clause 8 would make it almost absolutely certain. Now, it could be 50/50, but it would put certainty to it and make it more specific. I support that; that would be a very good change to make but, generally, I support your bill.

Senator Eggleton: Thank you. For greater certainty and clarity, I think those few extra words would be helpful in clause 8 because we do want this to apply to the Nortel people. We want it to apply in other cases, but I hope before long we will have some action in some other areas as well, as happens in many other countries, so that this kind of thing does not come to the Bankruptcy Act or the CCAA, that it can be dealt with beforehand by some sort of regulation and paying into a fund.

They do that in a lot of other countries. The U.K. does it. The U.S. has different kinds of provisions that protect people. We do not have anything. They just get listed as unsecured creditors; they are down there with the junk bond holders. These people are employees.

We had an act that the government brought in a couple of years ago in 2007 called the Wage Earners Protection Act. It was dealing with current assets, which are liquid assets. It recognized that pension funds and wages should go up into super priority status.

Senator Massicotte: Whose report is that?

Senator Eggleton: This is a government bill, the Wage Earners Protection Act of 2007. It already has moved protection of pension plans and wages up into a super

priority category. I have to quickly emphasize here this is relevant to current assets as opposed to all assets.

However, already the government has recognized that what employees should get should be moved up in status. That is an even higher status than what I am suggesting here – it is super priority. That is up there with the government, the CRA and everyone else in government.

All I am suggesting here is that this is advanced a little further. There will be a final disposition of the $6 billion of assets of Nortel. In the spirit of what the government already produced in that act in 2007, I think this is the way to go at this point; but come in with some other things later that will protect people in future so it will not get to this point.

However, this is the only way at this point. With those additional words, Senator Merchant, I think we can protect Nortel people and any other company that might be in this immediate situation before anything else is brought in.

Senator Ringuette: I would like to make a comment in regard to the issue of litigation that was raised a few moments ago. Yesterday in the Finance Committee, we were studying the second budget bill, Bill C-47. The witnesses before us from the Department of Finance indicated to us that part of the legislation that they wanted to pass was to contravene a piece of litigation against the Income Tax Act. Bill C-47 is asking the Senate of Canada to remove that litigation from going further.

In regard to clarification, I agree that maybe an amendment to the current bill would make it definite – no grey area at all – in regard to where the funds should go.

In order for this committee to understand clearly, what is the deadline, in your perspective, for Parliament to pass this bill so the funds would be allotted in the bankruptcy proceedings?

Senator Eggleton: The end of this year. When we talk about Parliament, I am talking about both houses of Parliament. We are still in the house of first consideration here, and we have not yet gone back to the Senate with a bill for third reading.

Then there is the House of Commons. I know some members of the government have expressed some scepticism about the bill in some respects, but they have not, to my knowledge, taken a definitive position on this. I hope they will take a position. If they do decide to support it, it could be moved through the House of Commons rather quickly.

When I say the end of the year, the house does not meet past the middle of December, and here we are at November 17. There is not much time in a practical sense to get this done. I appeal to all members of the Senate and to the government to help move this through expeditiously.

Senator Ringuette: Absolutely. I totally agree with you that it has been held for too long already in regard to the daily anxieties that the people who we are looking to help are going through.

Senator Eggleton: I introduced this bill on March 25, and it got second reading on June 17. Here we are on November 17, having first consideration at a committee.

Senator Ringuette: The taxpayers of Canada, through the current government, have bought assets of Nortel, a building here in Ottawa, to the tune of $216 million, I think.

Senator Eggleton: I do not have the figure before me, but I think it was somewhere around that neighbourhood, yes.

Senator Ringuette: If we do not pass this bill, how much of that cash will go to the disabled?

Senator Eggleton: I do not know that any of it will. I think Judy Sgro, who is here, had asked the government to take some of that money it is paying to Nortel and have an agreement with the company with respect to some of that being put into the Health and Welfare Trust, or in some other way to help these people. However, to my knowledge, that has not been done.

Senator Ringuette: So there has been no movement in that direction from the government.

Senator Eggleton: As far as I know, it was just a straight purchase of property.

Senator Ringuette: For a company that is bankrupt to have paid seven of its top executives $8 million – in bonuses only, never mind salaries – are they living in la-la land?

Senator Harb: They were running the company into the ground.

Senator Ringuette: They were running the company into the ground, providing security for themselves that should have been brought to their employees and paying themselves bonuses in addition to that. If I was a court judge looking at this bankruptcy issue, and seeing that the top executives were paying themselves $8 million

in bonuses while there are people that need medication, that do not know one day from the other if they will be able to buy it, it is just – anyway, enough is enough.

Senator Eggleton: If I might just comment?

Senator Ringuette: I certainly have an opinion on the matter.

Senator Eggleton: I cannot resist a slight comment. I find that absolutely disgusting myself, and it is a characteristic of what we have seen in the last few years in terms of the financial meltdown, particularly south of the border.

To have people suffering when these kinds of bonuses are paid out, surely, we have to hold the company to account. Why would we now say, "Not only will you get away with that, but, at the same time, we will put taxpayers' money in to support these people through the social welfare system as opposed to holding you responsible"? We need to hold them responsible. This bill does not cost the taxpayer money.

Senator Ringuette: Thank you for caring, first of all, and having the patience to carry through with this bill.

Senator Moore: Thank you, chair, and thank you, senator, for being here and for your initiative to try to make the act better for all people caught in this, including the Nortel employees.

In answer to one of the questions, you mentioned earlier that Nortel has assets totalling $6 billion in value. We received a brief from the Library of Parliament. Do you have a copy of that? Could you go to page 3, please?

Senator Eggleton: Yes, I have it here.

Senator Moore: On the second paragraph, senator, it says, with respect to the health and welfare trust assets that, in[es5] 2009, the value of all cash and investments within that health and welfare trust was calculated to be $80 million. The present value of the benefits owed by Nortel Networks to its employees as of December 13, 2010 is calculated-- so it is a calculation -- to be $548.2 million, with $112.5 million owed to long-term disability beneficiaries.

Do you have any information in terms of your research and your work with the Nortel employees as to what those numbers are? Are those numbers accurate? I do not know what the basis for them is or where our researchers got them, but do you feel that is accurate?

Senator Eggleton: I think they are fairly accurate -- $80 million, $78 million, that is very close. I think the numbers are relatively close in terms of the trust.

As you point out, the $548.2 million includes pensions; that includes all obligation they have. What pertains to Bill S-216 is the $112.5 million. Some of that $80 million you see there is already allocated through the court judgment to go for LTD purposes, but that amounts to $26 million, so there is at least another $68 million, by my calculation. That would be a little bit more, according to the calculation by the researchers here, but not an awful lot more, so to be able to acquit itself of its obligations to carry LTD benefits for employees through to age 65.

The Deputy Chair: The $112.5 million, if it was set aside in a trust fund, would it cover just the health benefit?

Senator Eggleton: No, it would cover just long-term disability obligations. It would include their health benefits to the LTD.

The Deputy Chair: When the $6 billion has been collected and the assets have been sold, would the $112 million come from that pot of $6 billion?

Senator Eggleton: Yes.

The Deputy Chair: That is relatively a small percentage.

Senator Eggleton: It does not need that much, because there is already $26 million in the current trust that is allocated for LTD purposes. You could take the $112.5 million, subtract the $26 million, and $86 million is needed out of the $6 billion.

The Deputy Chair: It is important that we know the scope of what we are talking about.

Senator Eggleton: When you compare the two numbers, it seems like it is not a horrendous amount, but it is a world of difference to those people who are suffering.

The Deputy Chair: For the individuals, I agree with you. The problem is when we compare the assets that will have to be realized. At the same time, I agree with my colleagues that if we secure the bill, we ensure that this will be clear enough.

Have you consulted a legal adviser inside and outside of Parliament?

Senator Eggleton: Yes, we started with legal advice from outside, people that are knowledgeable and expert in the field. The final drafting of the bill was done with our in-house lawyers in the Library of Parliament.

Senator Moore: I will raise one other issue because it will probably be raised sometime over the next few days, either today or tomorrow, and that is the possibility of retroactivity. Do you have anything to say about that with regard to how it may or may not be impacted under Bill S-216?

Senator Eggleton: The only retroactivity would be on proceedings that are still in front of the court, namely, proceedings that have not been finalized. This bill would not go back and catch the Massey Combines of 1988 or anybody like that. The wording of it is such that it could deal only with matters that are still in front of the court, that have not been finalized.

There has been a judgment made with respect to the welfare trust fund in this case. That is the judgment we have referred to, but all matters relevant to the bankruptcy proceedings and the liquidation are not yet finished.

It is still in a state of processing, and that is what gets caught by this. That is the only nature of the retroactivity, and as far as I know, it is only Nortel that clause 8 would cover.

Senator Greene: Retroactivity continues to trouble me because, as you say, it might be the only retroactivity. However, the agreement itself says no to retroactivity.

Senator Eggleton: Which agreement is that?

Senator Greene: The[es6] agreement, the --

The Deputy Chair: [inaudible]

Senator Greene: That spells trouble for your bill because they have taken into account that there might be in future a bill like yours, and they have all agreed that it should not apply.

Senator Eggleton: No, I am sorry, that is not the case. Parliament is supreme, and if Parliament in fact passes this legislation, just as we have done in Bill C-37, which was a Citizenship Act amendment that was passed a couple of years ago, and in Bill C-33, the War Veterans Allowance Act. We allowed much longer retroactivity there. With Bill S-7there is retroactivity, and it was something just dealt with in the spring. There are retroactive provisions in other bills.

Senator Greene: There are, but in this case, I am sure where there are large amounts of money at stake and major financial institutions at play, we will wind up in the courts over your bill.

Senator Eggleton: It is possible to wind up in the courts on anything you do these days, but I do not think so. As I just illustrated a few minutes ago, it is not a large sum of money.

Senator Greene: It will tie up all the other money.

Senator Eggleton: No, it does not need to do that. It would not take long for the provisions of this bill to be implemented by the trustee to put it into effect. It would not do that. It would have very little impact. Both studies done here and studies done in Australia have indicated that the impacts on the markets, for example, are very minute. They are less than half of 1 per cent in any given case. They are very minute. It will not have a major impact on anything other than these people. It will give them more justice.

Though I have not found one, if there is a better idea that will help the Nortel people in the short run, and help other people in the long run, then I would love to know about it.

However, I have gone over this with lawyers and I believe it can work. If you ask other lawyers' opinions, though, you might get different opinions.

The Deputy Chair: You might provide us with some jurisprudence saying that a court order is superseding a piece of legislation for Parliament, but I have no knowledge of that in my province. It might be elsewhere. However, we are ready to receive documentation.

Senator Greene: [inaudible]

The Deputy Chair: Sorry.

[PR7]**Senator Harb:** Thank you very much, Senator Eggleton, for taking up this issue.

You indicated that the actual amount is really not that much because it is the difference between the $80 million and the $112 million. You stressed the importance at this committee that the Senate should pass it as quickly as possible so Parliament can deal with it before the deadlines. There was a court issue which has dealt with the

agreement but, nonetheless, the people who are on long-term disability came out on the short end of the stick.

Nortel used to fund these activities through their day-to-day operation. Somehow, for whatever reason, they have changed it. Then they started to fund it through the health and welfare trust.

I have a couple of questions for you. First, let us say that tomorrow the administration or the management of Nortel wanted to make a wise decision and they wanted to set aside that shortfall. In your view, do they have the necessary resources now to do it out of the $6 billion in assets that are there?

Senator Eggleton: The financial resources are there. I doubt the capability for them to do is there. They are under court action with respect to the Companies' Creditors Arrangement Act. They are before the court, so they are not free to just do anything they want. It has to be settled within the court's jurisdiction.

Senator Harb: However, the management itself has not pronounced itself one way or the other on the issue of funding, has it?

Senator Ringuette: Only on the issue of bonuses.

Senator Eggleton: I have not heard.

Senator Harb: Bonuses. Okay.

Do you have wording for the amendment you have suggested that you could table?

Senator Eggleton: Yes, I will table it. The wording you see there in the bill now would be left in. You would just add at the end the following few words "and notwithstanding any judgment or order by any court during those proceedings." That makes it abundantly clear.

Senator Harb: Thank you.

Senator Eggleton: I will circulate that, but I will do it slowly if you wish to write it down.

Simply put a comma after the last word in there now and then put in the words "and notwithstanding any judgment or order by any court during those proceedings."

Senator Ringuette: Could you please put those words into a formal amendment?

Senator Eggleton: Yes, I will do that. When I am finished here, I have the great honour to move over there, wherever there is a seat, because I will be a substitute member of the committee today and tomorrow.

Senator Ringuette: Thank you.

Senator Harb: Thank you very much. You mentioned something quite interesting. Either you pay through the fund that is available now and/or you have to pay through the social welfare system now.

Senator Ringuette: Absolutely.

Senator Harb: It is to the net benefit of the government, Parliament and the people of Canada to see this issue being settled through the existing fund that is already on the table.

Senator Eggleton: The existing fund does not have sufficient funds in it to cover this.

Senator Harb: I mean the $6 billion fund.

Senator Eggleton: Right. However, there are sufficient assets, and the assets are to be liquidated. Therefore, there are sufficient assets to be able to put the amount of money needed to be able to pay for the benefits for these people until age 65. That is what my bill provides for them. However, they need the legislative mechanism to get there, and that is what this bill does.

Senator Harb: Thank you.

The Deputy Chair: I should make a small remark about the system in Quebec to receive welfare. Normally they will take into account your personal assets, your car, your house and everything, and you have to become poor before you receive it. Therefore, you will effectively have to sell your house and you have to dispose of your car and everything before you get to the point to say that it might take some time but you will get there, especially if you are 55. You will not have enough income, anyway, to last until you receive your pension.

In Quebec we have invalidity pension that you can start receiving at 60, and even earlier if you are totally disabled. Therefore, there is the welfare side of it and the disability pension. I do not know the system in the rest of the country because it is a different system in every province.

Senator Ringuette: It works the same.

The Deputy Chair: However, everything is administered at the local level. We do not have any witnesses from the provinces but it is not only the federal government; it is mostly the provincial governments that would have to take the bill for these individuals.

It is important that we clarify that we would just discharge our responsibility and send it to the provinces. That is where I have some problems.

Senator Eggleton: We should also bear in mind, though, that we do pick up a big chunk of the social welfare system and the Canada pension disability plan through the transfer payments to the provinces. There is a lot of federal money that would still be required. However, the condition you say exists in the Province of Quebec is very similar in Ontario and very similar in most places across the country.

If you read these impact statements, many of these people own their own properties and they are talking about the fact that they will have to sell them. Who wants to go on welfare? Who wants to have to get rid of all their assets and use the social assistance system? Yet that is what they are faced with if we do not do something now and do it by the end of the year; time is running out.

The Deputy Chair: I have two minutes for you, Senator Massicotte. I know you are always short.

Senator Massicotte: Very short.

While you are debating what amendment you want to make to clause 8, you may want to consider the fact that, if you look at the existing wording, it says "for greater certainty it applies to any proceedings which have commenced." "Commenced" means last [inaudible[PR8]] years. I would be worried the judge will say it is too unclear. "Commenced" means millions and millions of CCAAs, and they will say, "It is unclear – to hell with it, we will not pass the amendment."

I think you have to propose an amendment that says "commenced" and say the words you said earlier: Still in delivery. Do not use process because this thing has been processed, but I think you will have to come up with wording to make it very clear, such as "commenced and still outstanding" of sorts. Otherwise, even if it is finalized, it is still "commenced."

Senator Eggleton: I am not a lawyer and I took these words from both the lawyer outside as well as our inside lawyers. I am open to any amendment that would make it absolutely clear that this applies to the proceedings now ongoing with respect to Nortel.

However, I am not a lawyer and I think the advice of legal counsel is what is important here. I am certainly told by legal counsel in the know that this is the wording that would apply.

Senator Massicotte: Bankruptcy laws?

Senator Eggleton: Yes, absolutely.

Senator Massicotte: Well, if you are confident.

Senator Eggleton: As best I can be. I am not a lawyer.

Senator Massicotte: I would hate to see this passed and that it never resolved anything.

Senator Eggleton: Some of the experts who are coming might be lawyers. You could ask them.

(French follows -- The Deputy Chair: Merci, sénateur Eggleton, vous avez...)

(après anglais)

La vice-présidente : Merci, sénateur Eggleton, vous avez fait un travail très important. Je pense que tous mes collègues démontrent qu'ils sont intéressés à aider ces personnes qui ont d'abord eu le malheur d'être malade, d'être invalide, et d'avoir en plus une entreprise qui disparaît. C'est beaucoup pour une même personne. Nous croyons que d'ici à la fin de nos travaux, nous pourrons trouver une solution. D'ici à demain, pour soumettre des amendements, il y aura possibilité de consulter nos experts afin d'avoir le texte qui va régler ce petit problème d'incertitude.

Merci beaucoup.

(anglais suite en 1720 – M. Randle : Good afternoon. My name is . . .)

(1720 -- Following French by the Deputy Chair: Merci beaucoup.)

Bill Randle, Assistant General Counsel & Foreign Bank Secretary, Canadian Bankers Association: Good afternoon. My name is Bill Randle, and I am the Assistant General Counsel at the Canadian Bankers Association. With me today is Bill Kennedy, Vice President of Special Loans with the National Bank of Canada. We appreciate the opportunity to appear before the committee today to discuss Bill S-216.

We recognize and sympathize with the problems created for individuals who may lose benefits, such as long-term disability payments, when their employer becomes bankrupt. This is a serious problem. We applaud the parliamentarians who are championing the efforts to find solutions, including Senator Eggleton. We are here today to offer our views on Bill S-216 from the perspective of participants in the financial marketplace and to provide, for your consideration, our thoughts on what impacts Bill S-216 could have on the economy in the future.

As you know, Bill S-216 aims to ensure that long-term disability benefits are available by granting preferred status in bankruptcy to such benefits by placing them before other unsecured creditors. We understand the motivation behind this bill and appreciate the efforts that have been made to find a solution to the problem. Our concern, however, is that the solution that has been proposed might very well prove to be ineffective in providing relief to beneficiaries, and it might have serious negative consequences to the broader economy. In effect, the bill uses bankruptcy legislation to address a benefits funding issue. It is our view that this approach will cause more problems than it will solve.

A delicate balance has been achieved over the years in the orders of priority in bankruptcy legislation. This delicate balance aims to ensure that the rights of various creditors can be met to the degree possible while also ensuring that Canadian businesses are able to have access to affordable credit in the future. Changes to the ordinary of priority in bankruptcy threaten to seriously undermine this delicate balance with ripple effects across the economy.

This bill would have the result of reducing the amount that some creditors would otherwise hope to recover in a bankruptcy. In the case of investors in a Canadian business who purchase unsecured financial

instruments, such as bonds, a change in the order of priority increases the risk that they will not recoup their investment in the event of a company's failure. This increased risk means that investors will be more reluctant to buy a company's bonds, in our view, depriving it of financing, or will do so only if there was a higher risk premium on the bonds, making financing more expensive for the company. In effect, higher risk means increased financial costs that in turn will inhibit some businesses from effectively financing their operations or expansions. Ultimately, this leads to reduced economic growth and job creation.

Beyond financial markets and the cost to businesses of raising funds, granting a preferred claim status would have other consequences, including the following: Companies that offer long-term disability insurance benefits would find themselves at a competitive disadvantage to companies without such benefits or possibly to international competitors in other jurisdictions.

If the costs are prohibitive, those employees may choose to stop offering those benefits to employees. Other unsecured creditors such as suppliers, many of them small businesses, would also be faced with a reduced likelihood of recovering any amounts they are due, which may put pressure on their own finances.

Finally, by disrupting the bond market, this measure could have a detrimental effect on the investments and retirement savings of millions of Canadians. Corporate bonds are widely held by individual investors, private pension plans and institutional investors.

I have mentioned balance a few times in these remarks, and of course the question is how to find the appropriate balance in addressing the problem of unfunded LTD benefits without damaging the ability of companies from raising funds in the future. In our view, amendments to bankruptcy and insolvency statutes are not appropriate solutions and will achieve unbalanced results that will negatively impact the economy in the future. We would urge this committee, parliamentarians and the government to seek alternative approaches to the problem of unfunded LTD benefits, and we would be interested in helping to find that solution.

John P. Farrell, Executive Director, Federally Regulated Employers - Transportation and Communication /FETCO: I appreciate the opportunity to meet with the committee today.

FETCO consists of most of the major employers in the transportation and communications sectors coming under federal jurisdiction. We employ approximately 600,000 workers.

First, I wish to acknowledge that the Nortel bankruptcy is an extremely sad affair, leaving disabled employees without long-term disability benefits and certain health care benefits. This is very unfortunate indeed.

I also wish to recognize the intentions of the Honourable Senator Eggleton for advancing a legislative proposal to mitigate the hardship for disabled employees who may suffer a loss of employer sponsored long-term disability health care or health care benefits in the unfortunate event of a bankruptcy of a corporation.

The concerns of employers, however, and the perspective that I want to convey to the senators today, is that this approach proposed by Senator Eggleton in Bill S-216 will do more harm in the aggregate than good. There is little doubt that the genesis of this proposed legislation emanates from the extremely effective lobby of the Nortel employees.

In a sense, a bill is being proposed that will purport to assist the Nortel employees, but is not necessarily the kind of legislation that will be beneficial to all employers in Canada.

Employers believe the proposed legislation is flawed. It attempts to prescribe remedy through amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act that will have some significant harmful side effects. Long-term disability benefits are discretionary programs provided by employers to employees or negotiated bilaterally with the unions representing employees.

There are a wide variety of plans that may be adopted by different employers and employee representatives and there are many differences in the structure of plans. There are differences in the terms of the definition of disability and differences in terms of the percentage of wages that are covered by a long-term disability plan. They may be a percentage or a fixed amount. The length of the benefit period could vary from 2 years to age 65, so there is a whole array of options there, and some LTD plans are integrated with other disability benefits. As well, the qualifying periods under which employees will qualify for benefits differ.

Accordingly, there are a wide variety of plan design possibilities and not just one standard formula at age 65. This seems to have been misunderstood by those who have drafted Bill S-216. LTD benefits are relatively costly because they provide a portion of employment income replacement in the event of disability and potentially for long periods of time, sometimes as long as to age 65.

While it must be noted that there are a variety of LTD formulas, LTD plans are risky and therefore costly to insure. The cost of the benefit in the event of a claim is high, and the costs of administering the plans over long periods of time are also very costly relative to other benefits.

The majority of plans are insured by insurance carries, however, some plans are self-insured by sponsoring employers. In such cases insurance companies are often hired to administer the plan because they have the expertise to do so. Self-insured long-term disability plans permit substantial cost savings to sponsors because they are not required to provide risk premium to insurance companies, nor are they required to put aside reserves that are also included as part of the insurance arrangement.

There is an underlying assumption, however, in the case of self-insured long-term disability plans that the corporation will continue to be a going concern. This was unfortunately not the case at Nortel. In bankruptcy, wages and other employee benefits, including self-insured long-term disability plans, stop once the company ceases to exist. They are treated like other benefits in the case of self-insured plans.

If Nortel has not clearly communicated to employees that their plan was self-insured, it is indeed most unfortunate. It should not have been a surprise to the employees that if the company went bankrupt the self-insured portion of the long-term disability provisions would not be provided.

In any given industry, not all companies provide LTD or related health care benefits. Consequently, the additional costs that would be imposed by Bill S-216 on employers to provide company paid, self-insured long-term disability and health benefits, as contrasted with those company that do not provide LTD benefits, would be unfair. Bill S-216 would create an additional government imposed cost on certain employers to provide LTD coverage for their employees, while other competitors in the same industry would not incur those same costs.

Trying to resolve the problems the disabled Nortel employees face is made exponentially more difficult with the solution that encompasses changes to the Bankruptcy and Insolvency Act and the CCAA. The approach of creating a fund derived from assets that would otherwise be available to creditors would have negative implications for existing creditors. This is obvious. More important, it would create an adverse impact on companies that are trying to raise capital needed for restructuring, needed to keep operating, needed to emerge from CCAA, needed to avoid bankruptcy, needed to live to see another day, and also needed to provide employment on an ongoing basis.

The approach offered by Bill S-216 would also slow down, complicate and frustrate the restructuring process under the CCAA, imposing additional time delays for companies to emerge from CCAA, longer delays creating more uncertainty, and more uncertainty leads to higher costs and potentially more bankruptcies.

I wish to refer the Senate committee to a paper that was prepared by the Canadian Association of Insolvency and Restructuring Professionals, published on June 25 in respect of Bill S-216 and other bills currently before Parliament. I will not get into the detail of this report. This report has been tabled by the Canadian Association of Insolvency and Restructuring Professionals with this Senate committee.

I would defer further comments with respect to the effects of this matter on credit markets and so on to the remarks made by Bill Randle, but I implore you to read the document prepared by CAIRP.

I now want to talk about the effects of Bill S-216. It is clear that in order to fix the hardships created by the loss in LTD benefits and certain health care benefits is a rare issue in cases like Nortel. However, these problems should not be resolved through amendments to the BIA or the CCAA. The solution is too complicated and too costly, and causes a lot of collateral damage for other stakeholders in bankruptcy proceedings. Loss of confidence in insolvency, restructuring and bankruptcy matters will lead to more liquidations and fewer jobs.

LTD is an expensive benefit, usually only provided to employers with employee populations in excess of 1,000 employees. Many employers do not have LTD plans and it is not universally applied by all competitors in the same industry.

The harsh reality is that if employers currently providing self-insured long-term disability benefits to their employees on a voluntary basis face the prospect of significant increases in cost or increased risks associated with a decrease in the availability of credit and the ability to restructure when economic times are difficult, those companies will have to take a hard look at whether they will continue to provide long-term disability benefits in their present form. I cannot predict what any individual company would do or how they would do it, but the potential outcomes will include reductions in the current benefit formula and conversion of 100 per cent employee paid plans and terminated LTD coverage for employees who are not currently disabled.

In other words, with this bill, you are changing the structure of the long-term disability plans, and once do you that, whether we like it or not, employers will have to look at the structure of the plans they are providing to their existing employees, and many of them will decide to make changes. Additionally, certain companies that have never provided long-term disability coverage but may be considering doing so will look at the increased risks and probably not go in that direction.

There is another issue that I think I should raise with this committee. I am not sure that enough research has been done with respect to the effect of this bill on other employers in Canada. I am here representing companies in the federal jurisdiction, but I believe that there are very few employers across the country that know anything about this hearing or this issue, and they should be consulted about the effect of this issue on their corporations before a decision is taken to advance this bill.

Do senators really know what the potential total liability and impact would be for employers with self-insured LTD plans? Do you know what employers might do if faced with increased costs associated with LTD benefits that are already relatively expensive? Do you know approximately how many employees will have their current LTD benefits terminated as a result of Bill S-216? If the risks associated with LTD coverage increase when Bill S-216 becomes law, how many employees will refuse to consider LTD as a voluntary employee-paid benefit in the future?

Certainly it is important for employers and employees covered by self-insured plans to know that such plans remain in place so long as the company continues to operate as a going concern. Sadly, that was not the case for Nortel. Dealing with this type of important issue is normally

considered under the employment standards legislation. This would be a much more practical approach.

Patrick Shea, Lawyer, as an individual: I would like to thank you for having me here, and I would like to say that I echo my friends on comments in terms of how tragic the Nortel situation is. I will keep my comments extremely short.

I think it is important that senators recognize that in an insolvency situation, by definition, there is not enough money to go around. Difficult discussions and policy decisions are made as to how that money will be allocated among the creditors. People make credit decisions and other decisions when they are doing business with a company based in part on the insolvency regime. For example, banks lend money to companies on the basis of where they will rank relative to other creditors. Unsecured creditors extend trade credit to companies based on where they will rank relative to other creditors.

What this piece of legislation effectively does is retroactively change the landscape for creditors that dealt with Nortel. I think a lot of people are frustrated with the management's decision in Nortel, and as I heard from one senator today, many people are frustrated with the bonuses paid to management. It is important to recognize that this bill will not hurt management and it will not claw back the money from them. What this bill will do is reallocate money to employees that would otherwise be paid to trade creditors who may themselves have employees and may themselves be in dire straits. It will be reallocated to employees that certainly need the money, but it effectively amounts to a retroactive change in the landscape.

I also have concerns that the provisions of the legislation will not actually be effective to produce the results that are intended. With the way the legislation is currently drafted, the retroactive provisions will certainly lead to some litigation, I would predict, but more importantly, other provisions of the legislation may not produce the intended result.

For example, Nortel is currently subject to proceedings under the Companies' Creditors Arrangement Act. The provisions of this bill that provide for benefits to be paid under the Companies' Creditors Arrangement Act contemplate that it be as part of a plan. It is highly unlikely that Nortel will be filing a plan. If Nortel does not file a plan, this bill will not help those employees. It is important to recognize that.

If someone were to ask me what the solution would be, I think the solution might be something along the lines of a piece of legislation that I remember learning about as a young articling student called the Abitibi Power and Paper Company Restructuring Act, a specific piece of legislation designed to deal with a specific problem and a specific company, as opposed to passing a piece of legislation of general application that is effectively aimed at a specific problem but may not solve that problem.

I am sorry to be so short and so blunt, but those are my submissions, subject to any questions.

Senator Moore: I would like to clear the decks here on one issue. Thank you all for being here. Do any of you have any relationship or have you had a relationship with Nortel Networks?

Mr. Farrell: I had a relationship with Nortel Networks several years ago.

Senator Moore: What was your relationship, Mr. Farrell?

Mr. Farrell: I coordinate collective bargaining for various companies in Eastern Canada, and I have an organization that is not operating anymore, but we used to meet with companies represented by the Communications, Energy and Paperworkers Union. The role of that group was to bring those companies together to exchange information about their relationship with the union and what bargaining issues they had.

Senator Moore: You organized for employees?

Mr. Farrell: I organized for employers. My role was to bring employers together to talk about matters of mutual interest on labour relations matters.

Senator Moore: When did you cease doing that with Nortel?

Mr. Farrell: It was before they filed for bankruptcy. I would say probably eight years ago or so.

Senator Moore: Mr. Shea, you wanted to say something?

Mr. Shea: Yes. I own Nortel shares, and I would be happy to sell them to any of you who want them right now in order to get rid of my conflict.

In seriousness, I act for a number of unsecured creditors of Nortel in the CCAA proceedings.

Senator Moore: As legal counsel?

Mr. Shea: As legal counsel.

Senator Moore: Who would be competing against these people if this bill went through?

Mr. Shea: In terms of the impact on my clients of this bill going through, given the money involved, it would not be significant. I do act for creditors who would compete with these people that right now, outside of this bill, are on an equal playing field with them. If the bill is passed, my clients would be subordinated to them.

Senator Moore: Mr. Randle and Mr. Kennedy, you have no interest with Nortel Networks?

Bill Kennedy, Vice President, Special Loans, Canadian Bankers Association: To my knowledge, none. There is no claim that has come across my desk for Nortel.

Senator Ringuette: I think you were here earlier when it was indicated that there are quite a few countries, 34 out of 54, that provide protection with regard to employee benefits in the case of bankruptcy, whether it is through LTD insurance or through pension funds.

Both of your comments respecting competitiveness are actually kind of irrelevant in this situation because at least 34 -- we have the U.S. which receives 80 per cent of our exports. The U.S. has a premium in order for their government to guarantee against bankruptcy with LTD plans and pension funds. They are a big competitor. They are our neighbours. I think many of the Canadian banks have financial institutions in the U.K., recently bought. The U.K. also has plans that guarantee, in case of bankruptcy. The argument that both of you have put forth to us in regard to the competitiveness is, from my perspective, not relevant to this bill.

One of the big questions I have is in regard to assessing risk. This question would probably be for Mr. Randle and Mr. Kennedy, because that was the other issue that you brought forward in your comments, assessing risk in regard to the bond market and so forth. We have seen in the last few

years quite a lot of junk bonds, and I do not know how the Canadian banks assess them.

Nevertheless, in your risk assessment, what is the ranking for corporate governance and corporate management?

Mr. Kennedy: Thank you for the question. Maybe I can just walk through this. I work in the risk management business. That is what I do in the risk management department of a bank. As you know, all banks are very concerned about risks and they pay great attention to this.

Senator Ringuette: They pay a lot of attention to interest also.

Mr. Kennedy: Right.

Senator Ringuette: Yes.

Mr. Kennedy: Let us take commercial paper, for instance, where a large corporation wants to issue commercial paper, which is to finance short-term working capital needs for 30-day periods. In order to go to the market to sell that debt, they will need a bank to provide a liquidity line, essentially, probably dollar for dollar. If they need to raise $1 billion or $100 million of short-term money, they will go to a broker and issue a prospectus, but they need the bank to provide a short-term analysis.

To get that commercial paper, they get the paper rated; however, to get the bank line, the backup liquidity line, the bank will conduct its own risk analysis. The $100 million that they want to issue will be unsecured on the balance sheet, and if it gets drawn on, that is where the bank would be; it would be $100 million unsecured. They will do the analysis of where that ranks in relation to all the other creditors. All the unsecured creditors, in essence, except for the priorities that exist under the Bankruptcy and Insolvency Act today, if there were no secured debt, we would all rank equally, or *pari passu*, as we say.

If we are now making a preferred creditor status of some of those unsecured creditors, where we rank equally -- we shared in the pot before, but now they will take priority by being a preferred creditor -- that changes the risk analysis. Depending on the risk analysis that you do, banks may not want to lend as much money, or bondholders may not want to issue as many bonds, or the price could go up.

Senator Ringuette: I appreciate, Mr. Kennedy, your explanation of how the system works in issuing commercial paper. However, my specific question was in regard to your risk analysis. Where does corporate governance and corporate management reside?

Mr. Kennedy: Right at the top. Any lender will tell you that when they are assessing risk, they also look at balance sheet, but they look at the capability and quality of management.

Senator Ringuette: Capability and quality of management is one of the top ten, top five?

Mr. Kennedy: Right up at the top.

Senator Ringuette: It is the number one issue in regard to the issuing of commercial papers.

Senator Oliver: Plus[n9] the balance sheet.

Senator Ringuette: That is not the number one, Senator Oliver. Number one is corporate governance and management.

Mr. Kennedy: We have an old saying. It is the three Cs: collateral, capacity, and the overall management quality.

Senator Ringuette: In your experience in assessing risk and in the issuing of commercial papers, how many bonds could a company sell if its corporate governance and its corporate management are in the low percentile in your risk analysis? I should also ask this: Where does the bankruptcy risk factor in the top ranking?

Nevertheless, my basic question is the following: In regard to bankruptcy risk -- which is, I hope, in the top five of your risk analysis items; and your number one, you have already said, is corporate management and corporate governance -- in your experience, a corporation that has these two extremely low values, in regard to your assessment, how could they ever get out and have bonds issued?

Mr. Kennedy: That is a good question, but each file is fact specific. Without the absolute facts, I cannot give you a definitive answer.

Senator Ringuette: Exactly what I thought, Mr. Kennedy. In regard to your comments, the Canadian Bankers Association comments, securing the

LTD benefits and the pension plans of corporations is not a higher risk factor in regard to the interest rate that they will be paying on loans, nor is it a major factor in regard to the issuance of bonds for their cash flow. Thank you very much.

Senator Harb: That was not a question.

Senator Massicotte: I will make this comment, but I am trying to figure out the importance of this issue. There is no question, when you deal with bankruptcy law, that you are basically taking a set quantum of monies and saying that most fairly we will allocate it. Someone will be short, because obviously that is why you are in bankruptcy. I appreciate your comments. It is a difficult business, because basically you are favouring someone and disfavouring someone else. It is harsh. I think we, as legislators, take that responsibility seriously, and we intend to do so. Unfortunately, someone has to do so. That is why we are here today.

I will also make this comment: I have been a senator for seven or eight years and I have dealt with the bankruptcy act. We have amended that act a good five or six times. I must say that every time, we hear a speech about the world will fall apart if we make the amendment. I will not be intimidated by your comments, although I know you are sincere about them. Every time it is a major disaster, and Canada is still one of the richest countries in the world, despite our having made significant amendments. We do not want to do something that hampers our country and the wellness of our citizens.

If we make this amendment, how will it impair the fairness issue and the economic growth? How big is this one? I can appreciate that you are taking an unsecured creditor and placing them higher. You are favouring someone. We all rationalize, but there has been a world trend, including in Canada, where, if you look at the last 20 years, employees and their claims have become favourites. We have moved up around the world to give them priority and to give them a bit more special attention. We have done so with legislation. There is that movement.

I would be worried, though, if this will impair the creation of jobs or impair economic growth. That is important. We are talking about some employees getting shafted, but I would care if this impeded significantly the creation of new jobs, because that is equally worrisome.

Maybe someone can help me there. On this issue, when you look at the liabilities -- and let us talk about Nortel – can you give me a sense of how much is the unsecured claim of the disability claim? What is that number versus the number of the total unsecured claims and the total debts of the company? In other words, if it is 50 per cent, I will agree with you. If you start changing that, though, you may start affecting the credit markets. Can anyone help me out here? Do you know the answer? What is the amount of the unsecured liability claims as a quantum versus the amount of the total claims of Nortel?

Mr. Shea: I do not know the specific answer to your question, but I do not think that changing the situation for Nortel, for example giving in to the specific Nortel situation, passing some legislation to provide priority or somehow facilitating a negotiated agreement where priority would be provided, is necessarily the issue. The issue is, first, the retroactive nature to do it; and, second, the go-forward effect of this on other companies. I am not a big proponent of making arguments that this will cause our credit markets to collapse. The practical reality is that the changes you make to the insolvency regime will cause people to make different decisions. It will not cause the whole system to collapse.

For example, if a bank is looking at a situation, and I will speculate here, where this legislation is passed, they will look at companies with self-funded long-term disability plans a bit differently than they will look at companies that have insured long-term disability plans. I will give you a real example that I have encountered where, when you have the priority that was created under the Wage Earner Protection Program type legislation, banks will now take out the $2,000 per employee from the borrowing base. Companies will not be able to borrow what they could borrow in the past. That may cause some companies to not be able to continue to carry on business, but maybe they should not be in business in the first place.

Senator Massicotte: I am trying to get a quantum of that. I have this legislation and, as a bank, I have to ask: How big is that number? If I were to guess – and if I remember correctly; I have employed many people in my life -- it is probably 1 to 2 per cent of total salaries. Depending on which business, it could be 40 per cent of revenues, or as high as 80 per cent if you are in the consulting business. Is it a big number? If it is 1 or 2 per cent or 40 per cent, the bank will say, "I have a risk here." First, most banks are secured. I suspect that in your case, 80 to 90 per cent of your claimants of

bankruptcies are in a secured position. They are probably not unsecured. Would that be accurate?

Mr. Kennedy: You are talking about two different markets, commercial versus the corporate market where you are doing commercial paper. That is unsecured. The commercial market, where you are doing small- and medium- sized businesses, generally is secured, as you know.

Senator Massicotte: Only in the large ones is the[v10] bondholder unsecured. In my experience, most trade creditors do business with someone. They do not say, "I want to check your balance sheet. I specifically want to know the status of your disability fund." That rarely happens. Maybe large public companies and then the bondholder may worry about it if you are getting it rated; I can appreciate that aspect. However, is it a big enough issue that it will affect the ability to raise bonds and the ability for companies to be created and cause jobs? I suspect not, but I do not have the quantum.

Mr. Shea: One correction, Senator Massicotte. While the bill creates a preferred claim in the case of bankruptcy, it effectively creates a secured claim in reorganizations that would have priority over secured creditors.

Senator Massicotte: Explain that, please?

Mr. Shea: The bill contemplates that if you want to restructure, no matter where this claim would normally rank, you have to pay it. It is not a preferred claim; it becomes a priority.

Senator Massicotte: Even ahead of the secureds?

Mr. Shea: You have to pay it. You cannot restructure unless you pay this quantum.

Senator Massicotte: Is that the case?

Mr. Randle: If you look at the bill, senator, you will see that for a proposal under the BIA, or a plan, or an arrangement under the CCAA, the way we have read it -- and fortunately Senator Eggleton is here --

Senator Oliver: What is the clause?

Mr. Shea: It is clause 6 of the bill.

Senator Oliver: On page 3?

Mr. Shea: Yes. That is just the Companies' Creditors Arrangement Act.

Mr. Randle: Look at clause 3, which deals with section 60 of the BIA. You have a proposal. The court can only accept a proposal if it is satisfied that the employer can and will make payments as required under the defined basis of a disability plan.

Senator Massicotte: The CCAA, yes, but you can do a proposal under the BIA also.

Mr. Randle: Under the BIA, yes.

Mr. Shea: It is under BIA proposals or the CCAA reorganizations that it becomes a super-priority claim effectively.

Senator Massicotte: I am not sure about that, but my understanding is that a proposal only deals with unsecured claims. The legislation does not allow the judge to start affecting the secureds, right? The court cannot say, "Your secureds have not been amended." It is a contractual right that they do not have the authority to do so. You can argue that they do not have the authority to deal with the disability so they have to deal with it anyway, like a secured claimant.

Mr. Randle: What Mr. Shea and I are saying is that it is not clear on the wording of the bill that, in a proposal situation, the court would be able to approve the proposal unless, as part of the proposal, all of the outstanding liabilities on the disability plan would be paid.

Senator Massicotte: To be specific, is that not the case for all claimants other than the unsecured? In other words, you get a list.

Mr. Randle: We are saying that the bill claims to be giving it a preferred creditor status. It has not been tested in actual action -- and Mr. Shea is much more knowledgeable in this area than me; this is his area of expertise -- but I would share his concern that it appears that the wording means a court can only approve a proposal if, as part of that proposal, there is[v11] full LTD.

Senator Massicotte: That is okay.

Mr. Randle: You are moving it up so that instead of getting part, they get the whole amount. Is that how you read it?

Mr. Shea: That is correct.

Senator Massicotte: That is the case for all claimants other than the unsecureds because the proposal under the BIA or the CCAA only deals with a realignment of the unsecured claims. If you take them away and put them among the 10 super-priorities or other priorities, of course you have to deal with them.

Mr. Shea: Except, in every other case where you deal with provisions like that, you are talking about amounts owing as at the date of the filing. Wage claims have to be paid in priority in a proposal, for example, and certain pension claims, although there is an out for the pension claims. That is, amounts owing as at the filing date. This talks about future obligations that must be paid presently in order to restructure.

Senator Massicotte: Based on an actual opinion or professional opinion on what those liabilities would be?

Mr. Shea: Notwithstanding that, the company will continue on business and pay those in the ordinary course. It would be forced so the bank considering a restructuring would have to appreciate that up front someone will have to provide this company with a lot of money in order for it to restructure to carry on business.

Senator Massicotte: Obviously, you all share the same thing. I have tended to conclude that it will not affect the creation of new businesses because it is not such a big number relative to most companies. It will not affect materially the creation of jobs. Mr. Shea, your argument is saying that this number could be big enough that it may affect successful restructurings, but how big is that number? Does anyone know the number? What are the numbers?

Mr. Randle: What Mr. Shea and I are saying is that it would appear on the wording of the bill that these claimants would be entitled to their total amount.

Senator Massicotte: I have no problem there. I agree with that.

Mr. Randle: However, in any proposal, all of the various creditors, including especially the unsecured creditors, make a deal so the company can continue. Clearly it is in difficulty because its liabilities are greater than its assets, so there must be reorganization.

If that goes ahead, if you are the group of long-term disability benefit claimants, there is no incentive in you, in fact, to negotiate at all because if a proposal goes ahead, that proposal that appears on the wording must provide you with the full amount.

Senator Massicotte: Yes and no. It is like the pension. Whoever is representing those employees is going to say, "I have a choice. I can get fully paid disability or I can have a job." Most of the people will be interested in having a job also, so they may concede for the sake of future employment.

Mr. Shea: The statute does not allow that.

Senator Massicotte: Does anyone know the answer?

Mr. Randle: I am sorry to interrupt, senator, but the issue we have here, and again, I do not want to get into all the technicalities, is that I do not see how the wording of the bill allows that to happen because the way I read this, you cannot make that concession. There is no provision in here to allow that concession to be made.

Mr. Shea: It is different from the pension provisions, which allow the concession to be made. This bill makes it absolute. There is no ability to contract out, whereas the pension provisions that were part of the last amendments to the BIA allowed the pension provisions to contract out.

Senator Massicotte: Is that not the same for the secured creditors, though?

Mr. Shea: The secured creditors have the ability to contract out. When you talk about the notion that secured creditors cannot be impacted by the CCAA, they can be impacted by the CCAA if they agree to do it. The act does not say you have to pay secureds. It does not even say you cannot compromise them. It basically says that they have to agree to a compromise.

In this case, the bill absolutely requires the future benefits to be paid currently.

Senator Massicotte: I am trying to understand what you are saying. The secureds cannot be prejudiced in the CCAA, but they can agree for the sake of lesser monies to keep lending money or whatever.

Mr. Shea: Yes.

Senator Massicotte: Are you saying, relative to the disability fund, the liability, there is no mechanism in place that they can agree to accept lesser for the sake of future jobs?

Mr. Shea: The secured creditor can agree to fund, but the pension plan obligations, the way this bill is currently drafted, you cannot pay less than the amount. There is no provision.

Senator Massicotte: That is like the secured, but they have a decision to make. There will be negotiations with CCAA all the time. Is there a mechanism in place where they would accept less than 100 per cent for the sake of the company succeeding and surviving?

Mr. Shea: No, not in this bill.

Senator Eggleton: First, with respect to the conversation that has just taken place, let me clarify that it is only in the Bankruptcy and Insolvency Act that this question of status comes up. It provides for preferred status, which is actually still an unsecured one. It is not the same as secured, but it is higher than the unsecured creditor rank that it is presently at.

In CCAA, the provision that was read out in the bill does force the court to ensure that the long-term disability plans are taken care of before the company can emerge from CCAA. As has been pointed out, the creditors ultimately have to get a vote on this, but the court must first of all impose that the company should meet its obligations. What is wrong with that? That is a natural thing to expect them to do to their employees, to acquit themselves of their obligations.

At the end of the day, yes, the creditors can decide not to vote for this plan, but they will look at all aspects of it. They are able to insure their losses, too. They have a bit of an advantage over the employees who are on long-term disability, all things said and done.

However, under CCAA there is no status suggestion, super-priority or anything else. I can understand Mr. Shea's argument. He is trying to help

his clients there, probably, but there is no such provision in terms of status. However, there is that provision in the bill that does force a CCAA settlement of that.

The banking association has made some key points here: first, that this could affect financial markets; second, it could affect the cost of business in raising funds, i.e., interest rates.

What evidence do you have that this has happened? What evidence is there to back this up? Is this just a theory, just a suspicion, just, well, anything can cost money ultimately and maybe this would too? What would back this up?

The studies that were done that I have seen indicate that this has very minimal effect, a minuscule effect on markets, both ones that have been done in Canada and one that I have seen recently that was done in Australia. If you added pensions, yes, you might be into a different ball game, but this is only long-term disability.

I would like to know what evidence there is of this concern.

Also, the other matter is that you say that this could create competitive disadvantage. Senator Ringuette pointed out, and I pointed out in my remarks, that most of the OECD countries have this now. Thirty-four out of 54, that is even more than the OECD, either have preferred status or super-priority status in their bankruptcy proceedings. We have heard that countries like the U.K., Germany or the United States all have different provisions, but they all have provisions that are more protective of these employees. We even hear that the current government brought in this bill, the Wage[n12] Earner Protection Program Act, in 2007 in dealing with current assets that has moved pension plans into a super-priority status. All we are talking about here is moving into the preferred status -- super-priority, even above secured -- into the same place we would have wages, for example. There is already some wages up in super-priority now and more wages in preferred. Much of this is wages for these people who are disabled. I cannot imagine what is possibly wrong with trying to move them up.

I do not understand why you would discourage other companies from getting into long-term disability plans. We are not asking them to get into the plan. We are not asking them to make commitments. What we are

saying is, if you make the commitment to it, you have to do it. You should follow through.

Mr. Farrell: Can I answer the question?

Senator Eggleton: Yes, as soon as I am finished with the question. It has a lot of preamble, sorry.

I find it hard to understand why asking a company to live up to the obligations, the promises that it made, will somehow affect the markets, affect other companies wanting to get to plans like this. Where were you when the government brought in this Wage Earner Protection Program Act in 2007? Has the world fallen apart because of that?

Mr. Farrell: Every company has responsibilities to live up to its obligations. There is no doubt about that in any employer's mind. You are having this debate at the macro level about the impact of this bill on the markets and so on, but you are losing focus on what collateral damage this bill will cause in the workplaces in Canada. That means that if you are an individual employer and you are providing an array of benefits to your employees and you provide a self-insured long-term disability plan, which costs a certain amount of money, and you see that these plans are increasing your risk as an employer, you are increasing costs because you may be required to insure plans that were previously self-insured, you will put at risk a situation where you may be teetering on the edge of bankruptcy at some time and when you get into bankruptcy, dealing with these issues of sorting out who gets what and so on will take a long time. It will encumber the CCAA process.

In the total scheme of things, when you look at these issues from the employers' perspective on the ground in individual operations, they are saying our long-term disability plans may become more risky. This will make them more risky. If they become more risky, we may decide that we have to change the structure of these plans or we may never get into these plans at all if they create this amount of risk.

The practical reality is that there are many Canadians who enjoy very handsome long-term disability benefits, and if you change the risk profile of these benefits, chances are the companies will make decisions about how they deliver those benefits in the future. The net result of this will be that, in

total, fewer Canadians will enjoy handsome long-term disability plans in the future than there are today.

Senator Eggleton: You are saying that companies, when they are sitting down designing these plans, say we might go into bankruptcy so we better prepare; this is not going to work very well. Wages are up there in preferred status. In fact, some wages are in super-priority claims. This is wages.

Mr. Farrell: The government enacted that legislation with respect to wages, but look at it from the standpoint of the individual corporation. If you are a corporation that provides long-term disability benefits and if your corporation is in trouble, you will take a look at all the ways in which you can manage your affairs in an effective way. You will take a look at your array of benefits and you will decide that if certain benefits are becoming too risky, you will change the profile of those benefits. The result of that is that certain companies will change the profile of their benefits based on the increase in costs of long-term disability.

The Deputy Chair: I will give a few minutes to Senator Gerstein who is leaving to chair another committee in a few minutes.

Senator Gerstein: Thank you, witnesses, for appearing before us. I would like to start by saying I am not a lawyer.

Although Bill S-216 will have general applications if passed, it is really at this moment directed specifically towards the Nortel situation. My questions will be focused directly on the Nortel situation.

As I understand it, Nortel and its former employees had mutually agreed to a binding settlement in court. The settlement agreement, as I understand it, contains language that specifically precludes any further claims, notwithstanding any legal basis that would give their claims higher priority than claims of unsecured creditors.

In your view – and I accept the fact it may be biased, there are 101 views on this – if this bill were passed with the amendment that Senator Eggleton proposed, would it change the legal entitlements that former Nortel employees have? Also, if this bill were passed, do you think that it could result in litigation that could tie up the court-ordered entitlements of former Nortel employees?

Mr. Shea: I agree with Senator Eggleton that you can sue over anything. I also think that it would be possible to draft language that would accomplish the objective of overturning the decision of the court. I do not think Senator Eggleton's language does it, but I think it would be possible for Parliament to overturn an order of a court by passing legislation.

I do not think that would avoid litigation, and I think that litigation would end up in the Supreme Court with respect to whether the language was effective. Moreover, while this particular piece of legislation could be drafted to accomplish the objective, I do not even think it works for Nortel in the sense that Nortel is in a CCAA. There will be no plan.

The only way this legislation will work for Nortel is if someone puts the company into bankruptcy or appoints a receiver. That will take an application to the judge, and then you will get all these arguments raised as to whether the company should be put into receivership or bankrupted to trigger these rights.

I do not think Parliament has the authority to bankrupt a company, and I do not think it has the authority to appoint a receiver over a company. It can pass legislation.

Senator Gerstein: If this were challenged, which I hear in your view, biased as it is –

Mr. Shea: As biased as it is.

Senator Gerstein: In your view, you used the term that it could end up in the Supreme Court. Would it tie up the current settlement that has been made with Nortel employees?

Mr. Shea: It could, but it does not have to. I want to be fair. It would be possible to hold back sufficient funds to allow this issue to be resolved and to proceed with an interim distribution.

Senator Gerstein: That also takes time.

Mr. Shea: That would also take litigation, to be honest, because this is –

Senator Gerstein: People have different views.

Mr. Shea: Not only that, but let us be fair. The lawyers in Nortel are probably making a lot of money out of this file.

No, it would not happen, senator.

Senator Moore: I was just thinking of the caution or alarm that Mr. Farrell mentioned with regard to long-term disability plans being expensive and usually only available to big companies.

On Monday of this week, Industry Canada provided a briefing document, and they say 63 per cent of the Canadian workforce, or 10.6 million workers, have some form of long-term disability coverage; that insured long-term disability plans covered 90 per cent of those with long-term disability coverage. It looks like we are well down the road.

This is the model that has been worked out, negotiated, agreed to and put in place by employers and employees – 63 per cent of the workforce. It is not like this is a brand new thing coming in that people do not know about and that could be expensive. This is there.

I do not really accept all of the caution that you were expressing.

Mr. Farrell: My point, senator, is that dealing with this matter under these acts is not the appropriate place to deal with them. It could be dealt with satisfactorily through the departments of labour in the various provinces under the employment standards provisions rather than mucking up the Bankruptcy and Insolvency Act. That is the place where these issues are normally discussed and resolved to the satisfaction of companies, unions and the employees that work for companies.

Senator Oliver: All witnesses began by saying that they feel very badly for the Nortel employees who are affected, and then the Canadian Bankers Association gave the reasons why they do not like this particular piece of legislation. In the conclusion, Mr. Randle said:

> This[b13] bill is not the proper solution to the problem, but we will help to find a solution.

I would like to know from Mr. Randle what solution would you recommend that would be appropriate in these circumstances, having given it some substantial thought?

Mr. Randle: I have given it some thought, but not as much as other people in our association and probably not as much as some of the senators. I think it is something that needs to be carefully looked at. As others have

mentioned, although Senator Eggleton says this is not a Nortel bill and therefore it is of general application, the impact is of general application and the concerns we have raised are general concerns.

Senator Oliver: So a solution?

Mr. Randle: I think the solution is you look at what the problem is; you look for prevention rather than an attempted cure to address the issues that have been highlighted by these cases and others.

As others have indicated, you look at the position in the Canada Labour Code to deal with these types of plans. You could have them better regulated or insured by third parties. There are several solutions.

I am not an expert in this area. I came here because I am doing insolvency, but I am sure we could bring others, if you had hearings on this matter, to help and assist you, which is what we are trying today, to come up with a solution that would be a real solution and would not have the negative impact on small businesses and others that we think this bill would have.

The Deputy Chair: First, I must say that we appreciate that you came and gave us your opinion and honest suggestions – but not enough alternative solutions, I would say. However, I would like to tell you that we will continue on in this committee, where I am for the last 15 years.

We could bring in other legislation later. We have to deal with 350 people whose lives are almost at risk. Let us call it an emergency piece of legislation, but we will have the time afterwards.

Together with the government, we are ready to go for a long-term solution because for these plans that are self-insured, I do not think most of the time the employees realize the risk that they have when they are under these plans. We were told by my colleague that they were the exception; the rule is usually that they are financed.

I feel that we owe these people. We know they went through a horrible period because this question of Nortel has lasted a long time. Going through that stress for that long, I can tell you, I have more than sympathy. For me and everyone I have talked to who is affected, I deal with them as if they were my brothers and sisters. I do not have any. I consider all these people my brothers and sisters.

With you, I think we would be willing in 2011 to address the question with a global solution. However, in this case, we have to find a solution for these people. I congratulate my colleague for trying to address this immediate problem and find a solution for the future.

Thank you for your presence, and we will look at your testimony.

(The committee adjourned.)

Senate, Thursday, June 17, 2010

Bankruptcy and Insolvency Act
Companies' Creditors Arrangement Act
Bill to Amend—Second Reading—Debate Continued

On the Order:

Resuming debate on the motion of the Honourable Senator Eggleton, P.C., seconded by the Honourable Senator Tardif, for the second reading of Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act in order to protect beneficiaries of long term disability benefits plans.

Hon. Percy Mockler: Honourable senators, I would like to take a trip back through time, and refer to the English version of the debates of this chamber from 1872. We heard Senator Olivier speak so eloquently about this in French.

We have always taken past debates into account, in an attempt to improve Canadian institutions and in an attempt to ensure that what we propose in this chamber truly reflects what I would refer to as the great debates.

In 1872, the Honourable Mr. Sanborn rose in this chamber to speak about insolvency laws. He said:

. . . the insolvency laws of England, of the United States, and of France, [are] all widely different from one another.

(1600)

The Honourable Senator Sanborn went on to say, on page 97:

. . . if we swept away the regulations now in force in the country we would throw open the door to fraud, and disorganize trade . . .

I would like to focus on the words "disorganize trade" in the context of Bill S-216.

[*English*]

It is an honour for me to rise in debate on Bill S-216. I have never and will never doubt that each and every one of us, no matter where we sit in this great chamber and regardless of the fact that we have been appointed by different prime ministers, have a common denominator, and that common denominator is to make Canada a better place to live, a better place to raise our children, a better place to work and a better place to reach out to the most vulnerable.

As my mother told me when I was growing up, people do not care who we are until they know what we care for.

[*Translation*]

Honourable senators, as I take part in this debate on Bill S-216 to amend the Bankruptcy and Insolvency Act in order to better protect long-term disability benefits, I would like to begin by thanking Senator Eggleton for drawing our attention to this important matter.

There is no doubt in my mind that we all share his concern for the financial well-being of beneficiaries of long-term disability plans. We have great sympathy for the challenges that long-term disability beneficiaries face when their employer commences insolvency proceedings — as in the debate from 1872 that I just quoted — under the Bankruptcy and Insolvency Act, also known as the Companies' Creditors Arrangement Act.

Prime Minister Stephen Harper's government recognized the importance of this issue in the Speech from the Throne and stated that it would explore ways to better protect workers when their employers go bankrupt.

Honourable senators, we will ensure that any steps we take will address the concerns of long-term disability beneficiaries and will not have unintended adverse consequences either for other creditors or for the productivity and competitiveness of all Canadian employers.

[*English*]

Honourable senators, I want to thank the Honourable Senator Eggleton for bringing this matter to our attention. No doubt we all share his concern for the financial well-being of beneficiaries of long-term disability plans. We have great sympathy for the challenges that long-term disability beneficiaries face when their employer commences insolvency proceedings under the Bankruptcy and Insolvency Act, BIA, or the Companies' Creditors Arrangement Act, the CCAA. Such proceedings can have a significant impact on both current and former employees who are facing the prospect of a reduction of their LTD benefits at a particularly vulnerable point in their lives, through no fault of their own. Our government recognized the importance of this issue in the Throne Speech when it stated that it would explore ways to better protect workers when their employers go bankrupt.

As the chamber of sober second thought, we must be mindful that any steps we take are effective in addressing the concerns of LTD beneficiaries and do not have unintended adverse consequences either for other creditors or for the productivity and competitiveness of Canadian employers.

Honourable senators, a fundamental principle of the insolvency system is that of balance and fairness. We must always strive for balance and fairness, regardless of where we come from. The insolvency system must balance competing interests among the creditors of an insolvent business. Each creditor wants to be paid as much as possible from the limited funds available from the assets of the insolvent firm.

While Bill S-216 purports to improve the protection of long- term disability beneficiaries in bankruptcy, it would attempt to achieve this goal by altering the existing balance between creditors and the insolvent company by requiring the payment of long-term disability claims before other creditors and restructuring under the CCAA and the BIA, creating a preferred claim for these amounts in bankruptcy under the BIA.

In the context of the CCAA and BIA restructuring, Bill S-216 would create the equivalent of a super priority, meaning that such claims would be paid ahead of the claims of secured creditors. In a bankruptcy under the BIA, Bill S-216 would provide for LTD claims to be paid after the claims of secured creditors but before the claims of unsecured creditors such as suppliers and contractors. I am concerned about that, honourable senators.

The implications of changing the priorities for payment in the insolvency system must be carefully considered and not undertaken hastily. I repeat: The implications of changing the priorities for payment in the insolvency system must be carefully considered and not undertaken hastily, without weighing and analyzing the potential consequences of such a change.

Honourable senators, as we consider this bill, we need to examine not only to what extent it will achieve the goal of better protecting the interests of claimants such as LTD beneficiaries but also what could potentially be the effect on all creditors. I believe that the BIA and the CCAA are fundamental components of Canada's marketplace framework legislation, as was indicated in the quote I read from the Hansard of 1872.

(1610)

As such, before changes are made to the priorities given to various claims, we need to have a greater awareness of these potential repercussions and potential changes. For example, before changing the priorities in insolvency, we must assess the impact of the costs and also the reduction in the availability of credit to Canadian employers. A significant adverse effect on credit could, in turn, affect competitiveness of the Canadian business world and Canadian businesses in an increasingly globalized marketplace. I am concerned. We must all be concerned.

Honourable senators, another issue we should look at is whether the difference in treatment of long term disability claims and restructurings in bankruptcy that Bill S-216 provides for can result in fewer successful restructurings, which is important, and more liquidation of otherwise viable companies. Lately, we have had such examples in New Brunswick.

For example, we should ask ourselves: Will secured creditors have an incentive to push an employer into bankruptcy over restructuring if there are large LTD claims? If the regime proposed by Bill S-216 were to be adopted, those are such questions. Yes, I am concerned. It goes without saying that it is in the public interest to promote the restructuring of otherwise viable companies in insolvency, as it results in better protection of jobs and greater return for creditors. We need to take care to ensure that Bill S-216 will not tip the balance toward liquidation of companies when a viable restructuring remains the greatest possibility.

Another point, honourable senators, is that while Bill S-216 aims at protecting LTD beneficiaries or bankrupt employers, before we make such a change to the BIA or CCA we need to look at whether that goal will be met. For example, do we know whether, in the context of a bankruptcy, a preferred claim will result in significant return for LTD beneficiaries? What if there are large secured claims that rank ahead of the LTD claim?

I also point out a transitional provision clause in Bill S-216. Although it is a transitional clause, it is an important clause. This clause moves away from the principle that amendments to legislation will apply to future situations so as not to interfere retroactively with existing rights. The transitional clause provides that the proposed amendments will apply to all.

[*Translation*]

Honourable senators, before any changes are made to the priority structure, I think we should consider the impact such a change would have on costs and the reduction in the availability of credit to Canadian employers, no matter where we live. A significant reduction in credit could, in turn, make Canadian companies less competitive in an increasingly globalized marketplace.

[*English*]

Honourable senators, the treatment of self-funded LTD benefit claims in bankruptcy deserves serious consideration so that we avoid creating economic harm unintentionally. As honourable senators can see from my remarks, changing the BIA and the CCAA is not without ramifications and we should consider these ramifications carefully.

Honourable senators, our government, the government of the day of Mr. Harper, is consistent with our Speech from the Throne commitment, which is exploring comprehensive and holistic solutions to the problem of uninsured LTD benefits when an employer goes into bankruptcy. Further response will be carefully balanced to protect

LTD benefits in insolvency, while continuing to protect the health of our economy as a whole.

[*Translation*]

Honourable senators, the treatment of self-funded long-term disability claims in the event of bankruptcy deserves serious — I repeat, serious — consideration so that we avoid doing unintentional economic damage. I am sure that is not what our colleague Senator Eggleton wants.

As you can see from my remarks, any change has ramifications, and we must consider them carefully and seriously.

[*English*]

In conclusion, honourable senators, we must be mindful that any steps we take are both effective in addressing the concern of long-term disability and, at the same time, do not have unintended adverse consequences either for other creditors or for the productivity and competitiveness of Canadian employers.

I believe a committee should undertake this type of careful analysis. The Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act are both fundamental components of Canada's marketplace framework legislation. Before changes are made to the priorities given to various claims, we need to have a greater awareness of these potential repercussions. We should be careful in committee when assessing the impact of these changes.

Honourable senators, our government recognizes the importance of this issue in our Speech from the Throne, when the government stated that it will explore ways to better protect workers when their employers declare bankruptcy.

Honourable senators, let us think together because we have the same common denominator: To make Canada a better place to live, work, raise our children and reach out to the most vulnerable.

Hon. Art Eggleton: I wish to put a question.

The Hon. the Speaker *pro tempore***:** Will the Honourable Senator Mockler accept a question?

Senator Mockler: Yes.

Senator Eggleton: I appreciate Senator Mockler's desire to have this bill properly examined and to make sure we know what the ramifications are, as he pointed out. That is something that can be well answered at committee. This bill deals only with LTD, which has a limited financial impact.

The one thing I was confused about is where the senator thought this bill was placed these creditors in the list. What I have recommended here is preferred creditor status. They would be placed in a position where, for example, outstanding wages are placed but still behind secured creditors, which are banks and government loans, and still behind super priority, which includes the Canada Revenue Agency and various other creditors. It is well down the list from the preferred status.

(1620)

Honourable senators, the only other thing I want to point out is the transitional provision. The purpose behind the transitional provision is not to go back in history but to deal with those things that are presently in the process. That particularly answers the question of the 400 Nortel people, because there are 400 very sick people out there who have cancers and various other illnesses diseases. If we do not do something like this to help them, we will be letting Nortel off the hook and putting the taxpayer on the hook because they will have to go on to the social service and social welfare system.

In light of that preferred status, can you see your way to support this, certainly to see it go to committee where we can further examine these various ramifications?

Senator Mockler: Honourable senators, our government recognized the importance of this issue and included it in the Speech from the Throne. Our government is exploring ways to provide better protection to workers when their employers enter bankruptcy.

With regard to the company that has been mentioned by the Honourable Senator Eggleton, there is no doubt in my mind that each senator in this great chamber wants to help the most vulnerable. However, I ask Senator Eggleton to stand together to bring it to committee so that we can assure Canadians in all walks of life that there are no ramifications.

[*Translation*]

Hon. Claude Carignan: I am very pleased that Senator Mockler recognizes the fundamental importance of this bill for those who are ill.

I believe that this bill seeks to deal with the following problem: when someone becomes disabled or suffers from a long-term disability while working for a major corporation that has decided to self-fund the disability benefit, and if this company goes bankrupt, the disabled person finds himself with no income. This is a serious problem because, unlike someone who can find another job, the disabled person cannot seek employment or turn to another insurance company.

I invite the committee to study this issue seriously and with a great deal of compassion and to also explore other types of solutions. Preferred claims can have unfortunate consequences and the capital of the bankrupt entity may be insufficient to cover future benefits.

For example, one of my high school friends, who suffers from multiple sclerosis and is an engineer with Nortel, is caught in this exact situation. Imagine the amount of the future benefits or the overall amount of such a preferred claim.

Perhaps we should examine the solution of obliging companies that self-fund the benefits to secure a guarantee in the event of bankruptcy, or simply require them to use an established insurance company to cover future liabilities.

Senator Mockler: I thank Senator Carignan for the question and for clarifying this aspect of Bill S-216. It is for this reason that I am requesting the collaboration of honourable senators on both sides of the chamber. In order to eliminate all claims against benefits and to help those most affected, any changes to the Act must be made with a view to protecting these individuals. However, we must keep in mind the repercussions on competitiveness and on the restructuring of Canadian corporations. This is very important because without Canadian corporations there will not be programs to help the most vulnerable.

Hon. Roméo Antonius Dallaire: Would Senator Mockler agree to take another question?

Senator Mockler: Yes.

Senator Dallaire: Honourable senators, when the senator talks about long-term disability benefits, does that mean people would receive benefits beyond age 65?

Senator Mockler: Honourable senators, that is a very good question that could be studied during review of the bill if it were referred to a committee.

Senator Dallaire: With regard to the argument not to jeopardize companies that face the significant economic implication of taking on such plans, I would simply like to point out to the senator that it is his government that is responsible for implementing the New Veterans Charter.

This new charter is funded by the Canadian government, which is a large entity and does not really have to worry about insolvency. Under the charter, veterans with disabilities — who lose an arm, both arms, a leg, or the like — will lose all their benefits when they turn 65.

Perhaps the Canadian government has a problem with the concept of the long term or with the spirit of the law for veterans. In other words, when veterans are injured in combat and they lose a limb, it is for life and we should be able to help them for life.

Senator Mockler: That is another debate and it does not concern Bill S-216. I ask honourable senators to consider Bill S- 216, in order to ensure that any amendments will reflect the needs of the people suffering with a long-term disability and so that we can protect the most vulnerable.

Senator Dallaire: I think that before telling the industry what to do, the government should lead by example and protect its own who are suffering from a disability for life.

(1630)

I meet those people regularly and Canadian veterans are quite pleased with the way the current government is looking after their well-being. On this side of the chamber, we will continue to work for the most vulnerable, regardless of who they are, honourable senators.

[*English*]

The Hon. the Speaker *pro tempore***:** Further debate?

Are honourable senators ready for the question?

Is it your pleasure, honourable senators, to adopt the motion?

(Motion agreed to and bill read second time.)

Referred to Committee

Senate, Thursday, March 25, 2010

Bankruptcy and Insolvency Act and Companies' Creditors Arrangement Act
Bill to Amend—First Reading

Hon. Art Eggleton presented Bill S-216, An Act to amend the Bankruptcy and Insolvency Act and the Companies' Creditors and Arrangement Act in order to protect beneficiaries of long-term disability benefits plans.

(Bill read first time.)

The Hon. the Speaker: Honourable senators, when shall this bill be read the second time?

(On motion of Senator Eggleton, bill placed on the Orders of the Day for second reading two days hence.) [*Translation*]