

Complaint to Office of the Independent Police Review Director
December 19, 2012

Contact information for the complainants:

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Which police service is your complaint about?

- Ontario Provincial Police

Who have you dealt with in this organization with respect to your complaint?:

Brian Mason, Detective Sergeant, Anti-Rackets Branch – Ottawa Unit, Ontario Provincial Police
Tel: 613-591-7033, Email: brian.mason@ontario.ca

Paul Beesley, Detective Inspector, Anti-Rackets Branch – Orillia Head Office, Ontario
Provincial Police Tel: 705-329-6401, Email: paul.beesley@ontario.ca

Chris Nicholas, Acting Superintendent, Interim Director, Criminal Investigation Services,
Ontario Provincial Police Tel: 705-399-6330, Email: nicholas.chris@ontario.ca

Please describe the circumstances that led to your complaint:

We are complaining about the three Ontario Provincial Police officers noted above not providing a proper service in response to our February 10, 2011 complaint about criminal fraud occurring within the Nortel Health and Welfare Trust, as exhibited by errors in their report and analysis of evidence shown in Appendix A. The OPP officers appear to accept at face value the statements of Nortel executives interviewed, and have simply disregarded, without providing any contrary documentary evidence or analysis, the July 30, 2012 Forensic Accounting Report prepared by Charlotte M. Urquhart, B Math, CPA, CA•IFA, CFI. Charlotte Urquhart is a reputable CA-designated specialist in investigative and forensic accounting, a certified forensic investigator and a private investigator with her own firm, Urquhart Forensics. Furthermore, an independent review of the facts and materials was conducted by Gary Logan, former Detective Sergeant - Manager of the Corporate Fraud Section for the Toronto Police Services, reaching the same conclusions as found within Charlotte Urquhart's Forensic Accounting Report.

The conclusions of Charlotte Urquhart's Forensic Accounting Report are:

“Upon conducting a review of additional information and materials received there is evidence to support that during the time Nortel's cash balances were declining between the period of May 2005 to and including April 2006, persons in authority having exclusive care and control of the Nortel Health and Welfare Trust Fund, did breach a fiduciary duty through knowingly misappropriating Trust funds for the unauthorized purpose and use by Nortel to offset declining corporate losses during the aforementioned period between May 2005 to April 2006.

This appears to be a methodical and calculated scheme running over a prolonged term resulting in the misappropriation of approximately \$32 million from the Nortel Health and Welfare Trust Fund for a use other than authorized by this Trust Fund.

The Nortel Health and Welfare Trust Fund was governed by both a Health and Welfare Trust Trustee Agreement, and common law for trusts, as the Nortel Health and Welfare Trust Fund was for the use and exclusive benefit of the beneficiaries.”

After no response from the OPP Anti-Rackets Branch for close to one year and upon observing an apparent dispute amongst various police forces on who had jurisdiction to investigate our complaint, we wrote a January 17, 2012 letter to the OPP Anti-Rackets Branch and a January 27, 2012 letter to the OPP, Peel Region Police Services and Toronto Police Services. Thereafter, Paul Beesley, Detective Inspector and Manager of the OPP Anti-Rackets Branch, said in his March 19, 2012 letter:

“The Ontario Provincial Police Anti-Rackets commenced a criminal investigation in January 2012 into allegations of a \$32 million fraud surrounding a Health and Welfare Trust (HWT) that was administered and operated by Nortel Networks Limited (Nortel) from May 2005 to April 2006.

An extensive review of the documentation surrounding the HWT was completed. In addition several interviews were conducted of individuals that were involved in the administration and operation of the Trust.

As a result, no criminal activity was identified, and no further action will be taken by the Ontario Provincial Police.”

We made a Request under Ontario FIPPA for O.P.P # RM11123204 and obtained the April 23, 2012 Memorandum from Detective Sergeant Brian Mason to Detective Inspector Paul Beesley, both in the OPP Anti-Rackets Branch. Since almost all the facts upon which Brian Mason reached his conclusions, as described in his April 23, 2012 Memorandum, were refuted by the documentary evidence we possessed as former employees of Nortel and from disclosures provided in the Nortel Companies' Creditors Arrangement (CCAA) proceedings, we approached Charlotte Urquhart and Gary Logan to review the evidence. Appendix A to this complaint reviews the facts, analysis of evidence, and conclusions of Brian Mason with detailed references to the documentary evidence and analysis within Charlotte Urquhart's Forensic Accounting Report and follow-up correspondence with Brian Mason.

Subsequent to the OPP Anti-Rackets Branch obtaining a copy of Charlotte Urquhart's Forensic Accounting Report and her email to Brian Mason dated Nov. 2, 2012, Chris Nicholas, Acting Superintendent, Interim Director, Criminal Investigation Services said in his November 6, 2012 letter:

"The OPP commenced a review of the allegations of possible criminal activity involving Nortel's Health and Welfare Trust funds. The OPP interviewed several senior executives of Nortel Networks Limited. You identified these individuals as those involved in the criminal activity, as they were also responsible for the administration of the Nortel Networks Limited Health and Welfare Trust.

The OPP conducted several interviews, and also reviewed financial records pertaining to Nortel Networks Limited Health and Welfare Trust. It was determined that there was no evidence to support that criminal offences had occurred during the administration of the Health and Welfare Trust."

The steps we took to resolve our complaint at the OPP:

We, Charlotte Urquhart, and Diane Urquhart wrote a letter to OPP Commissioner Chris Lewis dated October 9, 2012 requesting a meeting to have explained the justification for the Ontario Provincial Police in not conducting an investigation into allegations of criminal conduct supported by independent evidence on crimes impacting seniors and the disabled.

The November 6, 2012 letter from Chris Nicholas, Acting Superintendent, Interim Director, Criminal Investigation Services said:

"Commissioner Lewis is aware of your meeting request, however, advises he is unable to meet with you."

What was said and done:

Our full record of communications with the Ontario Provincial Police in our attempts to resolve our complaint with the Ontario Provincial Police can be found at the following password protected web address. Copy the web address into your web browser address section at the top of the web browser.

<ftp.ismymoneysafe.org>

Username: ronan@ismymoneysafe.org

Password: privacy007

Letter from OPP Criminal Investigation Services Nov. 6, 2012.pdf

C. Urquhart e-mail to Brian Mason November 2, 2012.pdf

Letter to OPP Commissioner October 9, 2012.pdf

Jennifer Holley v. Northern Trust and Royal Trust Statement of Claim September 26, 2012.pdf

Urquhart Acknowledgement of Expert's Duty Nortel Aug. 27, 2012.pdf

Nortel Misappropriation Trust Funds Complaint & List of Exhibits July 30, 2012.pdf

OPP Anti Rackets FIPPA Request Response May 2, 2012.pdf

OPP Anti-Rackets Memorandum from Brian Mason to Paul Beesley April 23, 2012.pdf

Request Under Ontario FIPPA for O.P.P # RM11123204.docx.pdf

Letter from OPP Anti-Rackets Branch OPP March 19, 2012.pdf

OPP-PRPS-TPS Letter 2012jan27.pdf

Notes for Brian Mason Telephone Call Jan. 26, 2012 + CV.pdf

OPP2ndletter - 2012jan17.pdf

OPPlatter - 2011feb10.pdf

Nortel Telecom Inc. HWT Trustee Agreement March 12, 1992.pdf

Communications with Brian Mason and Paul Beesley OPP Anti-Rackets Branch.pdf

Why the OPP’s decision for no further action was unfair and unreasonable:

No further action being considered by the OPP is not only unfair, but unreasonable, given the evidence. The response made by the Ontario Provincial Police “there was no evidence to support that criminal offences had occurred during the administration of the Health and Welfare Trust,” is not defensible. Two senior fraud experts, Charlotte Urquhart and Gary Logan, based on their review of the same evidence submitted to the Ontario Provincial Police have come to quite a different conclusion, contradictory to the Ontario Provincial Police.

The OPP’s conclusion of no “mens rea” or “guilty mind” by the Nortel executives, since there was transparency and nothing nefarious or dishonest done, is simply incorrect in the face of the evidence described in Charlotte Urquhart’s Forensic Accounting Report and listed in Appendix A.

We know that common law defines “mens rea” that the accused knowingly committed the prohibited act, or was reckless¹ or wilfully blind² to the fact that he/she was committing the prohibited act.

1 An accused is reckless when he/she is aware that there is a danger that his/her conduct could bring about the result prohibited by the criminal laws, but nevertheless persists in his/her conduct, despite the risk.

2 Wilful blindness exists when an accused is aware that certain facts may exist which would make his/her actions criminal, but deliberately refrains from making any inquiries so as to remain ignorant.

The common law tests for “mens rea” involving trust funds generally presume persons with knowledge of the trust understand the implications of its existence and therefore are deemed to be reckless or wilfully blind to the fact they are using trust funds for a purpose that were not the intent of the trust funds.

We recognize that our complaint about the findings of the three OPP officers would be difficult to investigate had the OPP concluded that while there was evidence of criminal conduct, they did not see a reasonable prospect for successful prosecution in the court. However, the OPP November 6, 2012 letter says “there was **no evidence** to support that criminal offences had occurred during the administration of the Health and Welfare Trust.**[significance added]**” This OPP statement is irrefutably in error.

The fact that the OPP report says there was “**no evidence** to support that a criminal offence had occurred” is very disturbing and implies a lack of a proper investigation into the allegations, or a lack of competency (pursuant to the Police Services Act R.S.O.) to investigate allegations of criminal conduct specifically, misappropriation of trust funds under the management of corporations or government bodies.

The damage or injury from the OPP not providing a proper service:

The Nortel disabled former employees' Health and Welfare Trust settlement of 2011 runs out within 1 to 2 years and these vulnerable people and their children cannot afford their essential living expenses up to age 65 on the meagre CPP disability income or the Ontario Disability Support Program. These people will no longer be able to live independently, without reliance on their family and friends for financial support.

As of March 24, 2012, there is \$10.3 billion in the Nortel Global Estate and once the Nortel CCAA Final Plan is executed at a future unknown date, this source of money to fund a restitution order for criminal offences is no longer available.

Many Nortel disabled former employees' have already died, in some situations this stress has been a contributing factor due to their Nortel disability income being discontinued and the injustice of the OPP officers appearing to have accepted at face value the statements of Nortel executives interviewed, and to have simply disregarded, without providing any contrary documentary evidence or analysis, the July 30, 2012 Forensic Accounting Report prepared by Charlotte M. Urquhart.

The OPP's failure to respond appropriately to our criminal complaint is in addition to the other injustices borne by the Nortel disabled employees, that being: the Ontario Ministries of Consumer Services and Attorney General Ministries refusing to enforce the Ontario Consumer Protection Act; the Financial Services Commission of Ontario supporting the March 30, 2010 Nortel settlement agreement; and the Ontario Court's acceptance of this patently unfair settlement agreement, which was without their informed consent in terms of material information not disclosed and no vote.

The action sought from the Office of the Independent Police Review Director:

We seek the Office of the Independent Police Review Director to request an independent review of the Nortel HWT evidence by another police service in Ontario. If based on this review, there is a finding of criminal conduct, this matter should then be assigned to another police service for appropriate investigation and enforcement.

Sent to:

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For additional technical information contact:

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