

Complaint to Autorité des Marchés Financiers (AMF)

Dated July 21, 2011

We are Quebec members of the 360 Nortel disabled former employee group, who were covered by employer sponsored long term disability insurance funded within the Nortel Health and Welfare Trust (HWT) until Dec. 31, 2010, when our disability income was abruptly cut off by Nortel. Nortel's employees were told we had coverage for wage loss replacement should we become disabled and unable to work, until we reached age 65, died or became fit to resume work.

We are filing this complaint against Nortel Networks Limited, The Northern Trust Company, Canada and Sun Life (Canada) all entities under the regulatory jurisdiction of the Autorité des Marchés Financiers (AMF). The AMF has authority to investigate this complaint under the provisions within Quebec's Act Respecting Trust Companies And Savings Companies, Act Respecting Insurance and Securities Act. We believe there are also breaches of the Quebec Consumer Protection Act within the jurisdiction of the Ministry of Justice.

Here are links to the Quebec Registrations for these corporations and to the contracts relating to Nortel's disability insurance.

(1) Reporting Issuer Registered in Quebec

[NORTEL NETWORKS LIMITED](#)

[LTD Benefits Disclosure & Disclaimer Flex 2005 Handbook](#)

[Nortel Network Corporation Plan Number 90002 Appendix for LTD Benefit July 1, 1994](#)

(2) Trust Company Registered in Quebec

[THE NORTHERN TRUST COMPANY, CANADA](#)

[Nortel - Montreal Trust HWT Trustee Agreement Jan. 1, 1980](#)

[Nortel - Northern Trust HWT Trustee Agreement Transfer Dec. 1, 2005](#)

[Letter From Nortel To Northern Trust Dec. 1, 2005](#)

(3) Insurer Registered in Quebec

[SUN LIFE \(CANADA\)](#)

[SUN LIFE DU CANADA](#)

[ASO Agreement with Clarica Insurance Jan. 1, 1999](#)

Our complaint against Northern Trust is in its capacity as third party trustee hired by Nortel to supervise the Nortel HWT on behalf of the HWT beneficiaries. We believe that Northern Trust has breached the Quebec Act Respecting Trust Companies And Savings Companies.

The Nortel disabled are pushed into abject poverty because their income is funded from the Nortel HWT and not from the Nortel Pension Fund. Nortel was responsibly fully funding its HWT for disabled and survivors' income on a sound actuarial basis until 2005. The funding was required in the HWT Trustee Agreement and in the statutes of the Income Tax Act and Canada Revenue Agency (CRA) Rules for HWTs and Disability Wage Loss Replacement Plans.

Beginning in 2005, Northern Trust did not adhere to sound commercial practices, or its fiduciary duties as a trustee, when it permitted Nortel to misdirect HWT assets for uses that were not their intended purpose. Northern Trust did not inform the Nortel disabled beneficiaries that HWT assets were being misdirected and that Nortel could not maintain ongoing disability income, when there was dramatically insufficient assets in its HWT, while Nortel itself was experiencing financial distress. Northern Trust did not act fairly in its dealings with the Nortel disabled beneficiaries.

[\\$32 M HWT assets were withdrawn during May 2005 to April 2006](#) to pay for the medicines of the pensioners, active and disabled employees and the life insurance premiums of the active and disabled employees. **[\\$18 M of these withdrawn HWT assets are visibly taken from the Nortel disabled book-keeping account as shown in the Mercers' Valuation of the Obligations of the Health and Welfare Trust for the year ending September 30, 2005.](#)**

The HWT had two purposes. One purpose was for the HWT to be a conduit for the administration of receiving employer contributions to fund annual pay as you go medical and life insurance benefits. The second purpose of the HWT was for the accumulation of employer contributions, together with investment income, to fund disability insurance and survivors insurance sponsored by Nortel, and not through third party insurers. The HWT assets are needed to pay the incurred claims of the disabled and survivors of deceased Nortel employees. The incurred claims are for the current year and future years' income prescribed by the terms set out in benefits' brochures, plan legal documents and the HWT Trustee Agreement. So, when the HWT assets are used to pay for the medical costs of the pensioners, active and disabled employees and the life insurance premiums of the active and disabled employees, this is for a use other than its purpose to fund the incurred claims of disabled and survivors.

Northern Trust also did not adhere to sound and prudent management practices when it accepted amounts **["due from the sponsoring company"](#)** in lieu of cash employer contributions to be made into the HWT to fund the incurred claims for disability and survivors income. The **["due from sponsoring company"](#)** is listed as an asset in the

Statement of Net Assets for the HWT. This is effectively a loan to Nortel, which did not pay interest and did not require security to make this loan a sound investment. Northern Trust, in exercising its investment powers over the HWT assets, failed to act as a prudent and reasonable person, would act in similar circumstances, honestly and faithfully and in the best interests of the HWT beneficiaries.

The HWT loan has been outstanding at various face amounts during the HWTs history. Since Northern Trust became a trustee of the HWT in 2005, the loan increased dramatically from 22% of the HWT's net assets in 2005 to 30% in 2008. **The \$27 M HWT loan to Nortel was written off at December 31, 2009.**

At no time to our knowledge before or after Nortel filed for bankruptcy protection on January 14, 2009 did Northern Trust take any steps for Nortel to repay what it owed to the HWT. This was despite evidence of financial distress at Nortel, including it not making employer contributions into the HWT between May 2005 and April 2006.

The "due from sponsoring company" is an official acknowledgement that Nortel recognized it had a legal obligation to pay employer contributions annually to fund the incurred claims of the disabled and survivors. It was not prudent for Northern Trust to accept Nortel's IOU rather than demanding its employer contributions in cash.

Northern Trust failed to invest the funds it administered for the HWT beneficiaries in accordance with the Quebec Civil Code as is required in the Quebec Act Respecting Trust Companies And Savings Companies. Northern Trust did not preserve the property of others, collect the debts under its administration, run a diversified portfolio, or apply prudence and diligence in its investments, and act honestly and faithfully in the best interests of the beneficiaries.

Our complaint against Sun Life is that it did not adhere to sound commercial practices, and did not act fairly in its dealings with the Nortel disabled beneficiaries as required under Quebec's Act Respecting Insurance. Sun Life did not properly inform the Nortel employees that it is not the insurer of our disability benefits, that Nortel is responsible for the funding of our disability insurance and that Nortel and Sun Life knew that Nortel could not maintain ongoing disability income, when there was dramatically insufficient assets in its HWT, while Nortel itself was experiencing financial distress.

Sun Life was responsible for the administration of the plan under an Administrative Only Services (ASO) contract with Nortel.

Virtually all communications on our disability insurance have been with Sun Life. When Nortel entered CCAA protection in Jan. 2009, most disabled employees were of the belief that their long term disability income claims were insured by Sun Life. We were deceived,

since Sun Life was responsible for reviewing evidence of insurability forms when we were working and for deciding who qualified for both short term and long term disability benefits based on our claim applications and medical reports. Sun Life issued our disability income pay cheques, T4 slips, and required ongoing evidence of disability and operated a Nortel call center for employees on long term disability.

Some documents, say "This plan is administered by Clarica," or "group benefits currently administered by Clarica for Nortel Networks will be administered through the Sun Life Financial group benefit system." This disclosure was meaningless to employees.

Nortel stated in its 2005 benefit handbook "Did you know: Most of Nortel's Health & Group Benefits, including short-term disability, long-term disability, medical and dental/vision/hearing care, are self-insured. This means that Nortel plays a role similar to that of an insurance company for its employees. In other words, the Company assumes the risks and pays the claims directly from its net income or retained earnings. The insurance company only provides administrative services such as claims processing."

Nortel employees already disabled by 2005, did not receive the Nortel benefit handbooks containing this disclaimer. We did not become aware of Nortel self-insuring its disability benefits until August 2009, after receiving a letter from a CCAA court appointed lawyer.

The disability self-insurance disclaimer is deceiving and false. Nortel did not maintain adequate financial reserves to fund its disability insurance as it should have done in playing its role similar to that of an insurance company. Surprisingly, the year Nortel began to disclose its role as self-insurer was the same year that it started to drain the assets from its Health and Welfare Trust.

Sun Life's ASO services are also under the jurisdiction of the Quebec Consumer Protection Act, administered by the Quebec Ministry of Justice. This is because ASO contracts are not an "insurance contract" that is specifically exempt from the Quebec Consumer Protection Act. Under the Consumer Protection Act, Sun Life falsely represented the characteristics of performance and specified standards in our employee brochures that Sun Life assisted in drafting and in Sun Life's direct communications with us.

Sun Life failed to mention the important facts in its representations made to us as a consumer: it is not the insurer of our disability benefits, that Nortel is responsible for the funding of our disability insurance and that Nortel and Sun Life both knew that Nortel could not maintain ongoing disability income, when there was dramatically insufficient assets in its HWT, while Nortel itself was experiencing financial distress.

In addition to Nortel promising to make employer contributions under our employment contract, most of us used our own money to purchase optional disability insurance to raise our coverage from 50% to 70% of our pre-disability income. These employee premiums cover a large percentage of the money now owed to the Nortel disabled.

Sun Life, and predecessor insurers, Clarica Life and Mutual Life, had the opportunity to inform us each and every year they were not the insurer of our disability insurance by way of the handbooks, BEFORE, we became ill, when it would have made a difference.

Note that to keep employees working at Nortel through the CCAA process, Nortel has had to fully insure their benefits through a 3rd party insurance provider.

Nortel as a corporation supplier of our disability insurance and corporation sponsor of our Health and Welfare Trust appears to be exempt from registration or jurisdiction under Quebec's Act Respecting Trust Companies And Savings Companies, Act Respecting Insurance, Act Respecting the Distribution Of Financial Products And Services, and the Consumer Protection Act.

However, Nortel Networks Limited is a reporting issuer in Quebec. Nortel's bond owners are receiving unjust enrichment if the CCAA Final Liquidation Plan does not provide a priority settlement to remedy the damages to Nortel disabled former employees caused by Nortel's misrepresentations about its disability insurance to its employees or the breaches of fiduciary duties by the members of its Governance Committees supervising the HWT.

Nortel, Northern Trust and Sun Life have caused considerable financial losses, and in some of the more extreme cases, the financial and procedural abuse has resulted in loss of life. Many of us would not have worked for Nortel if we knew our disability benefits were at risk. Had employees known these benefits were bogus, we also might have purchased insurance through an independent insurance broker.

The Nortel disabled employees are requesting the Autorité des Marchés Financiers to investigate the matter and take steps within its authority to help recover damages for Nortel Quebec disabled employees. The Province of Quebec and the Autorité des Marchés Financiers are not signatories to the [March 30, 2010 Interim Settlement](#) with the Nortel disabled employees.

The Province of Quebec also has a financial stake in resolving these unfair practices, since the taxpayers now bear the millions of dollars of social costs supporting these disabled employees.

There is some urgency here, since the bankruptcy courts are planning to divide up the estimated \$10 billion Nortel Global Estate by the end of 2011.

To support our complaint and to aid your investigation, we have assembled extensive documentation including;

EMPLOYEE BENEFIT BROCHURES AND COMMUNICATIONS

ADMINISTRATIVE SERVICES AGREEMENTS

DETAILED FINANCIAL AND ACTUARIAL REPORTS

SWORN EXPERT OPINIONS FROM LAWYERS, ACTUARIES AND FINANCIAL EXPERTS

Sincerely,

Maurice Brosseau lumina95@hotmail.com

Micheline Brosseau michalou1@hotmail.com (514) 634-5272
(Sister and respondent for Maurice)

Nicole Lelièvre (819) 424-1987

Denise Gelineau riverdan@bell.net (819) 643-6701 Fax: (819) 643-1328

John Griffen (514) 366-4490

Josee Marin marin.josee@sympatico.ca (614) 678-2960
(Ontario Resident French Speaking Nortel Disabled Former Employee)