

## **Complaint to Ministry of Consumer and Business Services**

**May 30, 2011**

**We are members of the 360 former Nortel employee group who were covered by employer sponsored long term disability insurance 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 suppliers, Nortel Networks Ltd. and Sun Life Financial, for unfair practices, in the form of false, misleading or deceptive representations to us about our disability insurance. Nortel's long term disability income benefits meet the definition of a "contract of insurance". Our disability insurance did not have the performance characteristics, benefits or qualities that were communicated to us in our employee brochures and various interactions with the two suppliers.**

**Nortel has refused to pay damages for its disability insurance not having the benefits we were told it had. 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 disabled. Our treatment has been harsh, oppressive and exceedingly one sided.**

**Along with Nortel, we have named Sun Life in this complaint, because Sun Life was responsible for the administration of the plan under an Administrative Only Services (ASO) contract with Nortel.**

**Sun Life provided misleading information to Nortel's employees and assisted Nortel in propagating the deception that our disability benefits were insured. Virtually all communications on our disability insurance have been with Sun Life. Sun Life failed to state directly to us that our disability claims were being paid by Nortel, were not insured and that Sun Life assumed no liability for their payment.**

**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.**

**In 2005, changes to the Alberta Insurance Act required all companies operating in Alberta to disclose to their employees if their benefits were self insured. 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. Nortel Employees did not become aware of the misrepresentation until August 2009, after receiving a letter from a CCAA court appointed lawyer.**

**The 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, which summed to over \$100 million of HWT assets misdirected during 2005 to 2010. Nortel's Governance Committees breached their fiduciary obligations to protect the assets in Nortel's Health and Welfare Trust, which were the employer and employee contributions and investment income accumulated on the assets.**

**Nortel and Sun Life would both know that Nortel could not maintain ongoing disability income, when there was dramatically insufficient assets in its HWT, while Nortel itself was experiencing financial distress.**

**The Nortel and Sun Life misrepresentations have caused us irreparable damages. 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.**

**Sun Life, and Mutual/Clarica before them, had the opportunity to inform us each and every year by way of the handbooks, BEFORE, we became ill, when it would have made a difference**

**Nortel employees at all times were of the belief and understanding that we were fully insured. It is the position of those employees affected that this is an unfair business practice.**

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

The Nortel disabled employees are requesting the Minister to investigate the matter and to request the Ontario Court to order restitution of the disabled employees' damages estimated to be \$75 million for the unfair business practices of Nortel and Sun Life . This amount is based on the financial information released by the CCAA court and calculations by an independent financial analyst, Ms. Diane Urquhart.

Nortel 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.

The Province 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, the majority of whom reside in Ontario.

There is some urgency here, since the bankruptcy courts are planning to divide up the \$6 billion Nortel global estate by the fall of 2011.

If the Ontario government fails to enforce the Consumer Protection Act, R.S.O. this places more than 1.1 million Canadians, covered by employer sponsored disability insurance at similar risk.

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

**ADMINISTRATIVE SERVICES AGREEMENTS**

**EMPLOYEE BENEFIT BROCHURES AND COMMUNICATIONS**

**DETAILED FINANCIAL AND ACTUARIAL REPORTS**

**SWORN EXPERT OPINIONS FROM LAWYERS, ACTUARIES AND FINANCIAL EXPERTS**

Sincerely,

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