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SENT VIA EMAIL & POST

The Honourable Minister of Consumer Services John Gerretsen
900 Bay Street, 6th Floor, Mowat Block
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Dear Honourable Minister John Gerretsen,

On May 30, 2011, four of our dissenting Nortel disabled clients, whom we have been representing in the Nortel *Companies' Creditors Arrangement Act* ("CCAA") proceedings and the Nortel Health and Welfare Trust ("Nortel HWT") Wind-up proceedings, sent you a letter bringing to your attention a complaint they filed with your Ministry under the Ontario *Consumer Protection Act*. Carol Sampson, Josée Marin, Greg McAvoy and Jackie Bodie have filed this complaint against Ontario based suppliers, Nortel Networks Ltd. and Sun Life Financial, for unfair practices, in the form of false, misleading or deceptive representations regarding their disability insurance. Their complaint is that the disability insurance supplied to them did not have the performance characteristics, benefits or qualities that were communicated to them in their employee brochures and various interactions with the two suppliers.

In our opinion, the Nortel sponsored and Sun Life Financial administered disability insurance supplied to Nortel's employees is within the jurisdiction for investigation by your Ministry under the Ontario *Consumer Protection Act*. This disability insurance meets the test of applicable jurisdiction set out in Sections 2 (1) and 2 (2) of the Act.

The Nortel disabled former employee is a "consumer", defined in the Act to be an individual acting for personal, family or household purposes and does not include a person who is acting for business purposes.

The disability insurance was supplied under a "consumer agreement", which is defined in the Act to be an agreement between a supplier and a consumer in which the supplier agrees to supply goods or services for payment. Most Nortel disabled employees used their own money to purchase optional disability insurance to raise their coverage for wage loss replacement from 50% to 70% of pre-disability income. But even where the Nortel employees were covered by just the employer paid core disability insurance at 50% of the pre-disability income, Justice Robert Blair, in the case (*Attorney General*) v. *Confederation Life Insurance Co.*, (1995), 24 O.R. (3d) 717 (Gen. Div.) at paragraph 88, concludes it is well established that payment or consideration need not take the form of a cash payment: "see *Prudential Insurance Co. v.*

Commissioners of Inland Revenue, [1904] 2 KB. 658 at p. 663; *California Physicians' Service v. Garrison, Insurance Commissioner*, 172 P.2d 4 (1946) at pp. 17-18, adopted by Pennell J. in *Bendix Automotive of Canada Ltd. v. United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) Local 195*, [1971] 3 O.R. 263 at pp. 270-71, 20 D.L.R. (3d) 151 (H.C.J.).” In these common law cases, consideration includes the employee’s contribution of labour, skill and knowledge within the employee’s compensation package as a whole.

The disability insurance is a “consumer transaction”, defined in the Act to be any act or instance of conducting business or other dealings with a consumer, including a consumer agreement. The disability insurance is not in the category of “financial products or services regulated under the *Insurance Act*”, and so, it is not in the category of “Exceptions, this Act does not apply in respect of.”

We believe it is imperative for the Ministry of Consumer and Business Services to pursue this complaint. This is because the Nortel disabled have been barred from pursuing civil remedies for claims related to the massive funding shortfall and monies removed from the Nortel HWT against third parties, such as Northern Trust and Sun Life Financial, due to the legal release provisions of the March 30, 2010 Settlement Agreement between Nortel and its Former Employees, among other parties. The Ministry of Consumer Services is not a signatory to this Settlement Agreement and so its legal release cannot bar the enforcement responsibilities and actions taken under the Ontario *Consumer Protection Act*. Furthermore, the CCAA has specific provisions on how the CCAA court proceedings are to address the investigations, court actions and restitution orders obtained by regulatory agencies.

In addition, the CCAA court’s decision to approve an allocation methodology of the Nortel HWT assets that included payment of future death benefits to living pensioners has had the effect of diluting the existing claims of the disabled by \$30 million. Our experts have estimated that there are up to \$75 million in outstanding damages to the Nortel disabled, due to the Nortel disability insurance containing false and misleading representations.

We have accumulated a great deal of knowledge on the facts of the Nortel sponsored and Sun Life Financial administered disability insurance and the CCAA court’s Nortel decision-making to date. If the Ministry of Consumer and Business Services would like assistance in evaluating or formulating its legal case for Unfair Practices in the Nortel sponsored and Sun Life Financial administered disability insurance, our firm wishes to be considered a candidate to be retained by your Ministry.

Sincerely,



Joel P. Rochon