

COURT FILE NO.: 09-CL-7950

DATE: 20090722

**SUPERIOR COURT OF JUSTICE – ONTARIO  
(COMMERCIAL LIST)****RE: IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED****AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF NORTEL NETWORKS CORPORATION,  
NORTEL NETWORKS LIMITED, NORTEL NETWORKS GLOBAL  
CORPORATION, NORTEL NETWORKS INTERNATIONAL  
CORPORATION AND NORTEL NETWORKS TECHNOLOGY  
CORPORATION****APPLICANTS****APPLICATION UNDER THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED****BEFORE: MORAWETZ J.****COUNSEL: Thomas McRae and Arthur O. Jacques for Nortel Continuing Canadian  
Employees****Scott Bomhof, for Nokia Siemens Networks****Max Starnino, for the Superintendent of Financial Services of Ontario****Alan Merskey, for Nortel Networks Corp. et al****Lyndon Barnes, for the Board of Directors****Mark Zigler, Representative Counsel for the Former Employees****J. Pasquariello and C. Armstrong, for Ernst & Young Inc., Monitor****Gavin Finlayson, for the Notcholders****Alex MacFarlane, for the Unsecured Creditors' Committee****HEARD: JULY 9, 2009**

**ENDORSEMENT**

[1] Mr. Felske and Mr. Sylvain bring this motion for an order to be appointed representatives of all Canadian non-unionized employees of the Applicants (the "Nortel Continuing Canadian Employees" or "NCCE") and an order that Nelligan O'Brien Payne, LLP and Shibley Righton LLP ("NS") be appointed as representative counsel to the NCCE.

[2] They also seek an order that all reasonable legal, actuarial and financial expert and advisory fees and other incidental fees and disbursements be paid by the Applicants (also referred to as "Nortel").

[3] The NCCE sought the same relief by Notice of Motion dated March 30, 2009. That motion was dismissed. However, at paragraph 54 of the May 27, 2009 endorsement and at paragraph 22 of the June 17, 2009 supplementary endorsement, I indicated that, in the event that the situation changed, it was open to any party to bring a motion for appropriate relief.

[4] Counsel to the NCCE submits that the situation has changed by virtue of the following:

- (i) Nortel has entered into an agreement to sell certain assets and liabilities of the CDMA business in North America, as well as certain assets and liabilities of the LTE business in Canada;
- (ii) Nortel has announced that it is advancing in its discussions with external parties to sell its other businesses;
- (iii) Koskie Minsky has advised that it has a conflict in representing continuing employees as well as former employees, particularly given Nortel's current efforts to sell its businesses.

[5] The Applicants resist the motion on the basis that: (i) it is a collateral attack or abuse of process by re-litigation; and (ii) there are no new grounds that would give rise to a representation appointment for current employees.

[6] The Applicants are supported by the Monitor, the Noteholders and the Unsecured Creditors' Committee.

[7] In my view, there have been sufficient new developments such that I do not regard this motion as a collateral attack on the previous decision.

[8] The second objection, however, raised by the Applicants causes a greater difficulty.

[9] Counsel to the Applicants makes specific reference to paragraph 22 of the supplementary endorsement where I stated that Representative Counsel should be addressing actual issues and

actual claims as opposed to hypotheticals. Counsel to the Applicants submits that the basis upon which there is a non-hypothetical interest has not been identified.

[10] Specifically, counsel to the Applicants submits that employees to whom positions will be offered have not been identified; the terms of employment have not been proposed; and no issue of substance distinguishes the present situation from the first motion. Counsel also submits that, in any event, possible – or actual – transactions and offers do not mandate the need for representation.

[11] In my previous endorsements, I outlined the rationale for making representative orders in CCAA proceedings on behalf of employees.

[12] The manner in which the process is evolving is such that it is likely that some current employees will be offered employment by the purchasers of assets and some employees may not be offered employment. The group that is not offered ongoing employment can be represented by Koskie Minsky. However, Koskie Minsky has advised that they cannot represent the continuing employees. In my view, continuing employees do have an interest in these proceedings and it is advisable that these employees should have some form of representation.

[13] That is not to say, however, that this representative order should be open ended. The role of Representative Counsel for the Continuing Employees should not, to the extent possible, duplicate the role of Koskie Minsky. The role should be limited to situations (i) where Koskie Minsky is in real conflict; and (ii) where there is a potential for a real issue in the CCAA proceedings.

[14] In limiting the scope of this retainer, it is not my intention to unduly restrict the role of counsel. Counsel must be in a position to review employee issues generally and advise the NCCE of their rights. The limitation is, however, aimed at avoiding duplication in services or the provision of unnecessary services. In my view, this limitation is reasonable. I note that counsel to the Monitor has, on numerous occasions, reported that the Applicants are under severe financial pressure. Accordingly, it is reasonable that steps be taken to limit unnecessary expenses.

[15] An order is granted appointing Messrs. Felske and Sylvain as Representatives of the NCCE and that NS be appointed as Representative Counsel to the NCCE. However, in view of the restrictions placed on this retainer, I would request that the Applicants, the Monitor and NS meet to work out the parameters of appropriate limitations, taking into account the following guidelines:

1. NS must be in a position to provide a general advice on employee issues that affect the NCCE. Charges for these services should be based on an hourly rate and subject to a bi-weekly maximum to be agreed upon, in advance, by the Applicants, the Monitor and NS.
2. The retainer solely covers NS. At this time, I have not been persuaded that actuarial and financial experts are required. The retainer can only be

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expanded to include such experts if the prior agreement of the Applicants and the Monitor has been obtained.

[16] Any disputes arising in respect of the scope of the NS retainer which cannot be resolved by the Applicants, the Monitor and NS, can be discussed at a 9:30 a.m. appointment.



MORAWETZ J.

**DATE: July 22, 2009**