

FREQUENTLY ASKED QUESTIONS ARISING OUT OF ERICSSON'S EMPLOYMENT OFFERS TO NORTEL CANADIAN CONTINUING EMPLOYEES (NCCE)

Last updated: Jan 25, 2010

***Note:** The following is intended to provide general advice only and may not be applicable to your particular situation. This site will be updated as more information becomes available.*

- Legal Representation
- Acceptance/Rejection of Ericsson's Offer
- Terms and Conditions of the Offers
- Nortel Pension Issues
- NCCE Claims and Potential Claims in CCAA Process

LEGAL REPRESENTATION

Q. Is Nelligan O'Brien Payne providing legal advice to continuing Nortel employees at no cost to the employees?

As Representative Counsel for Continuing Employees, we have been appointed to provide advice and representation to Continuing Employees, concerning employment-related claims and potential claims, at Nortel's expense. We will continue to disseminate appropriate information and advice to the group through our website and FAQ and by e-mail.

Q. Can representative counsel assist me in negotiating the terms of the offer of employment I have received from Ericsson?

No. This is beyond the scope of our mandate as representative counsel. Individuals are free to retain us directly for this assistance if they wish. The Court has advised us that we are not able, at Nortel expense, to advise on matters between a purchaser of Nortel assets and the employees it proposes to hire. That is a matter for individuals to handle and pay for personally.

Q. Can representative counsel assist me in understanding the legal significance of Ericsson's offer of employment in the context of the CCAA proceedings?

Yes. We can review Ericsson's offers with a view to informing continuing employees of the nature and extent of claims and potential claims that they can make in the Nortel CCAA proceedings if they accept or reject the offer. This is within the scope of our mandate and the related fees will be paid by Nortel. To date, we have been doing this through inquiries to our web address NCCE@nelligan.ca and these FAQ.

Q. If I accept an offer of employment with Ericsson, will I still be considered to be a Continuing Nortel Employee and be represented by Nelligan O'Brien Payne in the CCAA claims process?

Yes. Employees who accept an offer from Ericsson will be considered Continuing Employees for purposes of legal representation in the CCAA proceedings.

Q. Will Nelligan O'Brien Payne be representing continuing and transferring Nortel employees with respect to their pension and TRA issues?

We will continue to represent continuing and transferring employees with respect to these issues.

Q. May I retain an employment lawyer at your firm for personal advice beyond the scope of the representation order?

Yes you may. To do so, please contact Leigh Norton at 613-231-8216.

ACCEPTANCE/REJECTION OF ERICSSON'S OFFER

Q. Can I request an extension of time to accept Ericsson's offer?

Yes, you can request an extension, but Ericsson is not obliged to extend its deadline.

Q. Can I request additional information before making my decision?

Yes, but given the seven-day turnaround time, which includes the long week-end, it may be difficult to get a meaningful response from the company.

Q. My manager has told me that if I do not accept Ericsson's offer I will be deemed to have resigned from Nortel. Is that correct?

Your manager's advice that you will be deemed to have resigned from Nortel if you decline Ericsson's offer is not reflective of the requirements of the *Employment Standards Act, 2000*.

Certain employees are exempt from the notice of termination/termination pay and severance pay requirements in the *Act*. The list of exempt employees includes employees whose employment is terminated "after refusing an offer of reasonable alternative employment WITH THE EMPLOYER" [emphasis added].

Even though Ericsson is purchasing a part of Nortel's business, it is a separate employer (not "THE employer", i.e., Nortel). A refusal of reasonable alternative work with Ericsson would therefore not disentitle a Nortel employee to statutory termination pay and severance pay.

However, as we have indicated in our earlier FAQ postings, Nortel is currently not paying out those statutory entitlements and you would have to claim them through the CCAA claims process.

Q. The offer is valid for only seven calendar days. If I do not accept the offer, will Nortel have the right to terminate my employment immediately?

Yes, Nortel has the right to terminate your employment at any time. However, your refusal to accept Ericsson's offer would not constitute cause for your termination and you would, therefore, be able to file a claim through the CCAA claims process for your statutory entitlements to termination pay and severance pay. You might not be entitled to claim pay in lieu of notice at common law, because by declining Ericsson's offer of comparable employment, you may have failed to take reasonable steps to mitigate any damages arising out of the termination of your employment with Nortel.

Q. If I accept the Ericsson offer now, can I decide to turn it down later, either before the Close Date (anticipated to be October 1, 2009) or the Final Transfer Date (around January 1, 2009)?

Yes. Ericsson could not force you to work for the company if you changed your mind before the Final Transfer Date. However, at that point you would arguably have forfeited your right to a claim for statutory termination and severance pay and pay in lieu of reasonable notice from Nortel.

Q. The offer states that my current salary level will be protected for a period of 12 months from the Close Date. What would happen if Ericsson decided to reduce my salary at the end of that period?

Depending on the size of the pay cut and the advance notice you were given, you could possibly have a claim for constructive dismissal against Ericsson. However, if the company provided sufficient advance notice of the change and red-circled your salary for a specified period, your choices might be limited to either staying on and accepting the reduced salary or seeing your employment terminated at the end of the notice period. You should get advice on your specific situation when it arises.

Q. My target incentive is also protected for only 12 months from the Close Date. The offer states that my compensation mix will be reviewed and may be adjusted I line with Ericsson's structure at the 2011 compensation review. Does this give Ericsson the right to decrease the target incentive component of my compensation?

See the answer to question 4, above. The terms of an employer's variable compensation plan frequently give the employer full discretion to change the terms of the plan. Ideally, Ericsson would provide you with sufficient notice of any substantial change to a fundamental term of your employment. You should get advice on your specific situation when it arises.

Q. I will retain my job title only until I am "mapped into the Ericsson job hierarchy", probably by the Final Transfer Date. What would happen if Ericsson demoted me as part of that mapping process?

Given the different "job hierarchy" at Ericsson, it may be difficult to determine to what extent a change in title is actually a demotion. As in any potential constructive dismissal scenario, a determination of whether you have been constructively dismissed will depend on the particular facts of your situation. In many cases, you may have a duty to remain in your changed position in order to mitigate any damages you may be claiming. You should get advice on your specific situation when it arises.

Q. Will Ericsson recognize my service with Nortel?

Ericsson is recognizing employees' full Nortel service for all purposes except benefit accrual under any defined benefit pension plan or where it would result in duplication of benefits.

Q. Will Nortel fully pay my accrued vacation on the transfer date?

According to the offer letter, vacation accrued to the Final Transfer Date will be paid out by Nortel. If Nortel failed to make this payment, you would have to claim it through the CCAA claims process.

Q. The offer states that Ericsson's "total compensation and benefits package" is generally comparable in aggregate with the current arrangements I have with Nortel. But paragraph 6 on page 2 of the offer states that Ericsson may "modify, suspend, or discontinue any or all such benefits" without notice or compensation. What benefits are being referred to in this paragraph?

This paragraph purports to give the company the right to modify or eliminate benefits that it is currently providing. It is not clear what benefits are being referred to. We are seeking clarification from the Monitor.

Q. The letter does not say anything about termination of employment. What would my entitlements be in the event Ericsson terminated my employment, without cause?

Ericsson would be required to provide you with reasonable notice of the termination or pay in lieu thereof. The reasonable notice period is intended to be an estimate of how long it will take a particular employee to find comparable employment and is determined with reference to factors such as the employee's age, length of service, position and compensation. Your Nortel service would count in any assessment of your reasonable notice period.

Q. What claims can I make in the CCAA proceedings if I accept the offer?

To the extent that the terms and conditions offered by Ericsson are not comparable to your Nortel terms and conditions of employment and that results in a loss to you, you would have a claim against Nortel for the difference.

Q. What claims can I make in the CCAA proceedings if I refuse the offer and Nortel does not continue my employment?

You would be able to claim statutory termination pay (8 weeks maximum) and severance pay (26 weeks maximum). You might not be entitled to claim pay in lieu of notice at common law, because by declining the purchaser's offer of comparable employment, you may have failed to take reasonable steps to mitigate any damages arising out of the termination of your employment with Nortel.

You may also have claims for:

- > loss of bonus income
- > loss of future TRA
- > pension loss
- > retiree benefits
- > future loss of patent awards
- > possible reduction in salary and benefits with a purchaser during a reasonable notice period

Q. Is Ericsson assuming any liability for the Nortel Defined Benefit Plan?

No. Ericsson is offering only a defined contribution pension plan.

Q. If I accept the Ericsson offer, do I retain my earned participation in Nortel's Defined Benefit Plan?

Yes.

Q. If I reject the Ericsson offer, may I take my earned Nortel pension entitlements?

If you reject the offer and are subsequently terminated by Nortel or are pension eligible, you will be able to exercise your Nortel pension entitlements.

Q. I am pension eligible. I have been told that if I accept the Ericsson offer, I cannot start taking my Nortel pension or withdraw the commuted value until my employment with Ericsson has terminated. Is that correct?

The law is inconsistent from province to province with respect to the treatment of a private pension plan following the sale or partial sale of an employer's business. The answer to this question will, therefore, depend on the province in which you work or, if you work from home, the province in which is located the Nortel office from which you are paid.

Pursuant to Section 80 of the Ontario *Pension Benefits Act*, and comparable provisions in the pension benefits legislation of Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador, the employment of employees affected by an asset sale is deemed not to be terminated, for pension purposes, by reason of the transaction. If the successor employer has a pension plan and you become a member of the plan, your employment with Nortel will be deemed to continue for pension purposes, and you will not be able to start receiving pension benefits from Nortel without terminating or retiring from employment with Ericsson.

There is no equivalent prohibition in the pension benefits legislation of British Columbia, Alberta and Quebec. If you work for Nortel in one of those provinces, your rights under the Nortel pension plan will be governed by the rights of plan members on termination of their pension plan, in accordance with the terms of the plan.

Q. I live in one province but work in another. How do I know which province's pension legislation applies to my circumstances?

Your place of employment under all provincial pension benefits legislation is determined, firstly, by the province in which you report for work. If you are not required to report for work for any reason (i.e. you work from home) then you are considered to be employed in the province in which is located the Nortel office from which you receive your remuneration.

Q. Under what circumstances can I withdraw the commuted value of my pension?

Your right to withdraw the commuted value of your pension will also depend on the province in which you are working or, if you work from home, the province in which is located the Nortel office from which you are paid.

The Nortel pension plan states that a Part I employee who is terminated and who is not eligible for retirement under the Pension Plan has the right to elect to withdraw the commuted value, rather than waiting to take a deferred pension.

A Part II employee who is terminated can withdraw the commuted value, whether or not the employee is pension eligible.

However, because Ericsson will have a pension plan, s. 80 of the *Pension Benefits Act* and comparable provisions in the pension benefits legislation of Saskatchewan, Manitoba, New Brunswick, Nova Scotia and Newfoundland and Labrador would deem your employment with Nortel to not have been terminated, so you would not be eligible to choose the commuted value option until your employment with Ericsson had ended.

The pension benefits legislation in British Columbia, Alberta and Quebec does not contain similar restrictions. If you accept employment with a successor of Nortel in one of those provinces, you will be able to transfer the commuted value of your Nortel pension, in accordance with the terms of the plan.

Q. Do I have to prove that I am not working for Ericsson or anyone else to be eligible to receive my Nortel pension?

Employment with Ericsson would render you ineligible to receive your Nortel pension. You would be able to commence your Nortel pension if you were pension eligible and were working for any other non arm's-length employer.

Q. I have heard that if I retire and draw a pension from Nortel, I will not be able to contribute to another employer's registered pension plan. Is that correct?

No. There is no prohibition on a person receiving benefits from one pension plan while simultaneously contributing to another employer's plan. The only restriction would be in a situation where the two employers are not at arm's length.

Q. Why is Ericsson offering to provide grandfathered participants in Nortel's Defined Benefit Pension Plan with a one-time cash compensation amount?

Ericsson is not offering a defined benefit pension plan. The one-time payment is an estimate of the loss of this benefit during the first year of employment with Ericsson and is being offered to ensure that the overall terms and conditions being offered are comparable to the terms and conditions of the grandfathered employees' employment with Nortel for the first year.

Q. I am concerned that the Defined Benefit plan might be wound up and the value of the plan and benefits to retirees be much less than it currently is. Would it be financially prudent to opt for early retirement now and take the 69% commuted value of my pension benefits while some funds are still available, rather than accept employment with Ericsson?

We recommend that you consult with a financial advisor to assess your own particular situation.

Q. Will retiree healthcare benefits and life insurance under the Traditional Part I plan be available to me if I defer my pension or are they available only if I retire directly from Nortel?

These benefits are available to you only if you retire directly.

CCAA CLAIMS PROCESS AND POTENTIAL CLAIMS

Q. When will employees be able to file claims?

The claims process for employee claims has still not been established. Once the process has been approved, employees will be able to submit a proof of claim seeking compensation for any employment-related losses they have suffered. Nelligan O'Brien Payne and Shibley Righton will be working with Nortel and the Monitor to negotiate a separate streamlined claims process for Continuing Employee claims. Once the claims process is established, we will send out an email to all continuing Nortel employees who are on our confidential email communications list advising them of the process and provide updates via our website.

Q. What kinds of claims can I make in the CCAA proceedings if I either accept or refuse an offer from Ciena?

We will assist you in identifying and valuing your claims. We expect that they may include:

- loss of bonus income
- loss of future TRA
- pension loss
- retiree benefits
- future loss of patent awards
- possible reduction in salary and benefits with Ciena during the reasonable notice period (to the extent the terms and conditions offered by Ciena are not comparable to your Nortel terms and conditions of employment and that results in a loss, you would have a claim against Nortel for the difference)
- entitlement under the *Employment Standards Act* to termination and severance pay should you turn down an offer of comparable employment with Ciena
- other claims to be identified

Q. When will you need more information from me?

If you have a question about your potential CCAA claim you may contact us now at NCCE@nelligan.ca. We are developing a questionnaire that we will ask you to complete to assist in gathering information in an organized fashion.