

FREQUENTLY ASKED QUESTIONS REGARDING NORTEL CANADIAN CONTINUING EMPLOYEES (NCCE)

Last updated: Sept 25, 2009

- Legal Representation (*Revised in light of the Sept 9 Endorsement by Justice Morawetz*)
- Continuing Employment at Nortel
- Sale of Assets to Ericsson
- Sale of Assets to other Purchasers (*Revised and updated*)
- Long-term Disability
- Nortel Pension and TRA Issues
- CCAA Claims Process and Proofs of Claim
- NCCE Claims and Potential Claims in CCAA Process

LEGAL REPRESENTATION

Note: This section was revised in light of the September 9 Endorsement by Justice Morawetz. For a copy of the Endorsement, please go to the home page of our web site.

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 employment-related general advice and representation to Continuing Employees, at Nortel's expense. We will disseminate the appropriate information and advice to the group and continue to explore the most efficient methods for doing so. We anticipate that the information and advice will be communicated through a variety of means including through our website, FAQ, email and possibly by holding information sessions to allow affected employees to receive the benefit of our advice and ask questions.

Q. Can representative counsel assist me in negotiating the terms of any offer of employment that I may receive from a purchaser of Nortel assets?

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 an offer of employment from a purchaser of Nortel assets in the context of the CCAA proceedings?

Yes. We can review the offer with a view to informing continuing employees of the nature and extent of claims and potential claims that they can make in the CCAA proceedings involving Nortel if they accept or if they 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. 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.

CONTINUING EMPLOYMENT AT NORTEL

Q. I am actively seeking employment outside Nortel. If I resign, do I forfeit my entitlement to severance pay?

Yes. Generally speaking, an employee who resigns is not entitled to receive ESA or common law notice or severance pay.

SALE OF ASSETS TO ERICSSON *(updated)*

Q. Can Ericsson change the terms and conditions of my employment?

Ericsson has agreed to provide employees with offers that are on "terms and conditions no less favorable, in the aggregate, than those that Employees currently have, subject to certain adjustments to conform to Purchaser's standard employment policies where legally possible".

Under the agreement Ericsson is not obliged to provide any equity, retiree, medical benefits, or defined pension benefit plans in employment offers it makes, unless required to do so by law. There are no legal requirements that would oblige Ericsson to offer those benefits.

Under the agreement, Ericsson must maintain the no-less-favourable terms and conditions for 12 months following the Closing Date. The agreement preserves Ericsson's right to make changes to employee entitlements during the 12-month period, as long as the changes are made generally applicable across its entire employee population (i.e., as long as the changes do not apply only to former Nortel employees).

Q. If I receive an offer of employment from Ericsson, do I have to accept the offer?

No, you cannot be forced to accept employment with a new employer.

Q. What are the consequences if I decline the offer of employment?

If the terms and conditions being offered by Ericsson are substantially the same as your Nortel terms and conditions of employment and you decline the offer, Nortel would normally be required to provide you with the notice and severance pay to which you were entitled under the Ontario *Employment Standards Act, 2000*.

However, Nortel is not honouring its statutory obligations with respect to termination and severance pay while it is under CCAA protection. You would have to claim your statutory entitlements through the CCAA claims process once it is established.

Your claim may be limited to 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.

Q. What if the terms and conditions offered by Ericsson are not comparable to my Nortel terms and conditions of employment?

To the extent the terms are different and that results in a loss to you, you would have a claim against Nortel for the difference.

Q. Will Ericsson recognize all of my service with Nortel?

Yes. Ericsson has agreed to recognize Nortel service dates for all purposes other than benefit accrual under any defined benefit plan. It is obliged at law to do so.

Q. What will happen to my accrued vacation?

The agreement provides that Nortel will either pay out accrued vacation or allow employees to take equivalent paid time off.

Q. Will my group benefits coverage remain in place?

Ericsson will likely offer benefits substantially similar to your Nortel coverage.

The agreement indicates Ericsson will waive any eligibility periods or evidence of insurance requirements and will honour any deductible payments made by employees. This is significant for employees who are ill or who have pre-existing medical conditions.

Q. Does Ericsson have a pension plan?

Ericsson has agreed to provide employees with a registered pension plan for at least five years after the Closing Date. It will be a Defined Contribution plan. Transferring employees' participation in the plan will start after the Closing Date.

Q. Can I stay at Nortel or go back to Nortel if I find another position within the company?

Under the terms of the agreement with Ericsson, there is a 12-month non-solicitation period during which Nortel is prevented from hiring back transferring employees. This prohibition would not apply to a transferring employee whose employment was subsequently terminated by Ericsson without cause. Ericsson has a corresponding obligation to not hire other Nortel employees.

Q. Are there any Nortel obligations that Ericsson does not have to honour?

Ericsson will not be responsible for:

- any liability Nortel has to make payments or provide benefits under any benefit plan that is not being transferred to Ericsson
- the KEIP, KERP and Calgary retention bonus
- any liabilities related to employment or termination of employment from Nortel, including any liabilities Nortel owes employees prior to or in connection with the Closing (i.e., severance, wages, bonuses, pension benefits, taxes, WSIB, etc.)

Q. What happens if Ericsson terminates my employment after the transfer?

Most Nortel employees are entitled to reasonable notice of termination at common law or pay in lieu thereof if their employment is terminated without cause.

A termination provision that attempted to restrict termination entitlements would not be a comparable term of employment.

In the absence of a termination provision limiting your entitlements, Ericsson would be obliged to provide you with reasonable notice of termination or pay in lieu thereof.

SALE OF ASSETS TO OTHER PURCHASERS

Q. Can a purchaser change the terms and conditions of my employment?

We anticipate that offers of employment will be on terms that are substantially similar as those that employees currently have. However, a purchaser is not required at law to offer employees any equity, retiree, medical benefits or defined pension benefit plans.

Q. If I receive an offer of employment from a purchaser do I have to accept it?

No, you cannot be forced to accept employment with a new employer.

Q. What are the consequences if I decline a purchaser's offer of employment?

If the terms and conditions being offered by the purchaser are substantially the same as your Nortel terms and conditions of employment and you decline the offer, Nortel would normally be required to provide you with the notice and severance pay to which you were entitled under the Ontario *Employment Standards Act, 2000*.

However, Nortel is not honouring its statutory obligations with respect to termination and severance pay while it is under *CCAA* protection. You would have to claim your statutory entitlements through the *CCAA* claims process once it is established.

Your claim may be limited to 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.

Q. What if the terms and conditions offered by a purchaser are not comparable to my Nortel terms and conditions of employment?

To the extent the terms are different and that results in a loss to you, you would have a claim against Nortel for the difference.

Q. Will a purchaser recognize my years of service with Nortel?

Yes. Any purchaser would have a legal obligation to recognize your Nortel service date for all purposes, other than benefit accrual under a defined benefit plan.

Q. What will happen to my accrued vacation?

You will not lose your vacation accrual. The most likely scenario is that Nortel would pay out your accrued vacation or allow you to take equivalent paid time off. If that were not the case, the purchaser would assume liability for your accrued vacation.

Q. Will a purchaser maintain my group benefits coverage?

A purchaser would likely offer benefits substantially similar to your current Nortel coverage. However a purchaser is not obligated to do so. To the extent the benefits are different and that results in a loss to you, you would have a claim against Nortel for the difference.

LONG-TERM DISABILITY

Q. I am in receipt of LTD benefits from Nortel. Will those benefits continue?

So far, Nortel has continued to pay LTD benefits. However, there is no guarantee that it will continue to do so. Koskie Minsky has been appointed to represent employees in receipt of LTD benefits and inquiries about your ongoing entitlements should be directed to that firm.

NORTEL PENSION AND TRA ISSUES

Q. If I accept employment with Ericsson, how will that impact my pension and TRA?

At this point, we do not have sufficient information regarding the pension-related aspects of the transfer to be able to advise on this.

Q. Nortel has told me that because Ericsson has a pension plan, I cannot both retire from Nortel and accept employment with Ericsson. I was also told that I cannot take my Nortel pension until my employment with Ericsson ends. Is this legally correct?

The answer will depend on the pension arrangements made between the companies, which we don't know yet. Generally speaking, an asset sale is a termination at common law. However, under s.80 of the *Pension Benefits Act*, affected employees, for pension purposes, are deemed not to be terminated by reason of the transaction. Consequently, employees who are not otherwise retirement eligible and who accept employment with Ericsson will not have the option of taking their pension or withdrawing their commuted value. Nortel employees who become employed by a successor employer like Ericsson and become a member of a pension plan of the successor employer:

- a) continue to be entitled to the benefits provided under the Nortel pension plan to the effective date of the sale;
- b) are entitled to credit in the pension plan of the successor employer for the period of membership in the Nortel's pension plan, for the purpose of determining eligibility for membership in or entitlement to benefits under the pension plan of the successor employer; and

- c) are entitled to credit in Nortel's pension plan for the period of employment with the successor employer for the purpose of determining entitlement to benefits under Nortel's pension plan.

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

Our intention is to represent continuing and transferring employees with respect to these issues. However, the scope of our mandate is still under discussion.

CCAA CLAIMS PROCESS AND PROOFS OF CLAIM

Q. I understand that the CCAA was amended as of September 18, 2009. How do the amendments affect Nortel's CCAA Proceedings?

The amendments to the CCAA that came in force on September 18th, 2009 only apply to CCAA proceedings that commence **after** that date. They don't apply to the Nortel's CCAA proceedings as it commenced in January of 2009. Nortel's proceedings will continue under the CCAA as it was in force prior to the September 18th amendments.

Q. When will employees be able to file claims?

There is currently no claims process for employee claims. Once a process for employee claims has been put in place, 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 approach 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. As things progress we will also provide updates via our website.

A claims process for other non-employee creditors was approved on July 30, 2009 and is ongoing.

NCCE CLAIMS AND POTENTIAL CLAIMS IN CCAA PROCESS

Q. What kinds of claims may employees have whose employment continues with Nortel or a purchaser?

We will assist you in identifying and valuing these. 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 a purchaser during a reasonable notice period
- entitlements under the *Employment Standards Act* to termination and severance pay should you turn down employment with a purchaser

Q. What is the reasonable notice period?

The courts have said that this is determined on a case-by-case basis taking into consideration factors such as age, length of service and level of position. The length may be affected if you were recruited from outside Nortel to your current position. We will assist when the time is appropriate to help employees quantify what their reasonable notice period likely is.

Q. When do you want more information from me?

If you have an employment-related problem or question you may contact us now at NCCE@nelligan.ca. We expect in the early fall to develop a questionnaire that we will provide to assist in gathering information in an organized fashion.