

FREQUENTLY ASKED QUESTIONS REGARDING OFFERS OF EMPLOYMENT FROM GENBAND

April 23, 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 Genband's Offer
- Terms and Conditions of Employment offered by Genband
- Nortel Pension Issues
- CCAA Claims Process and Potential Claims

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 Genband?

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 Genband's offer of employment in the context of the CCAA proceedings?

Yes. We can review Genband'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 and in discussions with the NCCE Steering Committee.

Q. If I accept an offer of employment with Genband, 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 Genband will be considered Continuing Employees for purposes of legal representation in the CCAA proceedings involving Nortel.

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 GENBAND'S OFFER

Q. How much time do I have to review Genband's offer of employment?

Two weeks ("14 calendar days") from the date you received the offer. In addition to indicating your acceptance of the offer, you must sign and return a copy of Genband's Confidentiality Agreement.

Q. If I accept the offer, when will my employment start?

Immediately after the transaction between Nortel and Genband has been completed (the "Closing").

Q. I have received an offer from Genband but I am currently on leave from Nortel. When will my employment start?

If you are on an approved leave from Nortel, such as pregnancy or parental leave, disability leave, medical leave or jury duty, you will not become an employee of Genband until 12:01 on the first business day following the date you are released by Nortel to return to work. The letter specifies a maximum leave period of six months after the Closing, but there is an exception if you are on a longer leave period pursuant to "applicable law". If you had just started a 12-month pregnancy and parental leave, for example, your employment with Genband would not commence until the day following the end of that 12-month period.

Q. My work permit is tied to my employment at Nortel. Will the permit be transferred automatically to Genband and, if not, when can my employment with that company start?

If you are on a visa or work permit that allows you to work only at Nortel, Genband will take steps to facilitate the transfer of your immigration application after you have accepted the offer of employment. Your employment cannot commence until your visa and/or work permit for Genband has been obtained. If the necessary paperwork has not been completed within 12 months following the closing, Genband will have no further obligation to hire you.

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

At a minimum, 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.

The Genband offers contain terms and conditions that have the potential to limit your entitlement in certain situations, such as the termination of your employment. Depending on your individual circumstances, it may be possible to argue that your Genband offer is not comparable to the terms and conditions you enjoy at Nortel, in which case you may have a claim against Nortel for common law reasonable notice should you refuse Genband's offer.

However, there is also an argument that, by declining the offer, you may have failed to take reasonable steps to mitigate any damages arising out of the termination of your employment with Nortel.

You may wish to obtain individual advice with respect to your own situation.

Q. What are the consequences if I accept Genband's offer of employment?

If you accept the offer as presented, you are agreeing to its terms and will be bound by them.

Q. Can I try to negotiate better terms?

In theory, all of the terms in an offer of employment are negotiable. In practice, Genband may not be prepared to negotiate with individual employees for improved terms.

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

Genband has agreed to recognize Nortel service dates for "all purposes", which would include vacation, calculation of severance and the pension plan. With respect to Genband's benefit plans, service will be recognized only to the extent it was recognized by Nortel under its corresponding benefit plans.

TERMS AND CONDITIONS OF EMPLOYMENT OFFERED BY GENBAND

Q. Genband is proposing to change some of the terms and conditions of my employment. Can the company do that?

Yes. Under its agreement with Nortel, Genband agreed to provide employees with offers that were on terms and conditions substantially comparable to those terms and conditions of employment of similarly situated employees of Genband. It did not commit to providing the same terms that employees had at Nortel.

Genband also agreed not to change the initial terms of your employment (as set out in your offer letter) during the first 12 months of your employment.

If you accept the offer of employment, you will be bound by its terms, which will stay the same for at least the first year of your employment.

It appears that Nortel employees are being offered work "of a similar capacity" and their Nortel salary. Your work location will be "reasonably near" your current workplace location.

The significant changes are that your entitlements on termination are being limited, the bonus component of your compensation is lower than at Nortel, and Genband's benefits package is different from your Nortel benefits package.

The Confidentiality Agreement contains provisions prohibiting you from soliciting Genband employees, consultants and customers for a period of one year following the termination of your employment for any reason.

By signing the Confidentiality Agreement, you are also agreeing that during and following your employment, you will not say anything disparaging about the company or its products or practices.

You were subject to a similar non-disparagement restriction at Nortel. The restriction on non-solicitation of employees and consultants was a term of Nortel's termination packages, not a term of employment. From a practical point of view, the Genband non-solicitation provisions are unlikely to give rise to any claim in the CCAA claims process.

Q. If I accept the offer and Genband changes a fundamental term of my employment after the first year of my employment, would I have a claim against Nortel for any monetary losses I could demonstrate?

If the change took place during what would be the reasonable notice period for the termination of your employment with Nortel and before the deadline (not yet established) for filing your proof of claim in the CCAA claims process, you would be able to claim against Nortel for the actual monetary losses you suffered during the reasonable notice period only. You could also advance a claim against Genband.

Grandfathered members of the Traditional Part I Pension Plan may have a claim to the extent Genband's Defined Contribution Pension Plan is less valuable than the growth that would have occurred in Nortel's Defined Benefit Plan during the reasonable notice period.

If Genband changed a fundamental term of your employment after the end of the reasonable notice period, you would have no claim against Nortel. You would have to look to Genband for recourse.

Q. Could the reduction in the variable bonus percentage result in a claim against Nortel?

This will depend upon your individual circumstances. If you have been receiving bonuses at Nortel over the past year, you may have a claim for the shortfall, if any, during the reasonable notice period following your termination from Nortel. For Nortel employees who were unlikely to have received a bonus had they stayed at Nortel, you would not have a claim.

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

The offer letters state that Genband can terminate your employment without cause by providing notice and/or severance in accordance with the company's severance policy. The letters direct employees to the Canada Severance Policy on the company's "employee on-boarding portal".

Under the policy, employees are guaranteed 8 weeks of notice (during which they may or may not be required to report to work). Additional severance entitlements are set out in a "Canada Notice and Severance Matrix" that forms part of the policy.

For most employees, the combined notice/severance period in the policy exceeds the minimum entitlements under provincial employment standards legislation, but is less than what would be found to be the "reasonable notice" period at common law.

By offering all employees 8 weeks of notice, the policy more than satisfies the notice requirements of the Ontario *Employment Standards Act, 2000 (ESA)* (assuming there is not a mass termination involving 200 or more employees).

The severance entitlements shown for employees with at least 5 but less than 8 years of service do not comply with the minimum severance pay requirements of the *ESA* (statutory severance pay entitlements start at 5 weeks and increase for every additional year or part-year worked, to a maximum of 26 weeks). However, the Company has protected itself against the possibility of non-compliance arising from the application of its policy by stating in its offer letter that "in no event shall you receive less than that to which you are entitled pursuant to applicable employment standards legislation".

If your employment were terminated without cause within the period of reasonable notice following your termination from Nortel, you would have a claim against Nortel for the difference between your common law entitlements and the combined notice and severance pay you received from Genband.

NORTEL PENSION ISSUES

Q. If I become an employee of Genband do I have to wait until my employment with Genband ends to take my Nortel pension?

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 the Nortel office from which you are paid is located.

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 Genband.

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 the Nortel office from which you receive your remuneration is located.

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 the Nortel office from which you are paid is located.

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 Genband 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 Genband 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. 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 commuted value of my pension benefits while some funds are still available, rather than accept employment with Genband?

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 from Nortel.

CCAA CLAIMS PROCESS AND POTENTIAL CLAIMS

Q. When will employees be able to file claims?

Nortel is continuing to sell of its operating divisions and its other assets worldwide. Until it has completed that process, the company remains unable to determine the size of the “pot” that will be available for distribution to its creditors, including Nortel employees and former employees.

Once an employee claims process has been approved, employees will be able to submit a proof of claim seeking compensation for any employment-related losses they have suffered. We are optimistic that Nortel and the Monitor will be prepared to work with us to negotiate a streamlined process for the claims of continuing employees. 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. We will also 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 Genband?

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 Genband during the reasonable notice period (to the extent the terms and conditions offered by Genband 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 Genband
- 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.