

FREQUENTLY ASKED QUESTIONS REGARDING OFFERS OF EMPLOYMENT FROM CIENA

January 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 Ciena's offer
- Nortel Pension Issues
- NCCE Claims and Potential Claims in CCAA Process

LEGAL REPRESENTATION

Q. What is the scope of Nelligan O'Brien Payne's role as representative counsel for continuing Nortel employees?

As Representative Counsel, we are authorized to provide advice and representation concerning employment-related CCAA claims and potential claims, at Nortel's expense, to continuing employees and employees who accept employment with any company that acquires Nortel assets.

Q. Can representative counsel assist me in negotiating the terms of my offer of employment I may receive from Ciena?

No. This is beyond the scope of our mandate as representative counsel. 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.

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

Yes. Individuals may retain us directly and pay personally for this assistance if they wish. For further information about receiving individual advice with respect to your situation, please contact Leigh Norton at 613-231-8216.

Q. Can representative counsel assist me in understanding the legal significance of an offer of employment from Ciena in the context of the CCAA proceedings?

Yes. We can review your offer with a view to advising on the nature and extent of claims and potential claims you could make in the Nortel CCAA proceedings if you 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 and questions to our web address NCCE@nelligan.ca and these FAQ.

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

ACCEPTANCE/REJECTION OF CIENA'S OFFER

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

One week from the date you received the offer.

Q. If I receive an offer of employment from Ciena, 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 the 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.

Your claim may be limited to statutory termination pay (8 weeks maximum in Ontario) and severance pay (26 weeks maximum in Ontario). You might not be entitled to claim pay in lieu of notice at common law, because by declining Ciena'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 are the consequences if I accept Ciena's offer of employment?

By accepting the offer as presented, you are agreeing to its terms and would 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, Ciena may not be prepared to negotiate with individual employees for improved terms.

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

Yes. It is obliged at law to do so. Ciena will recognize Nortel service dates for all purposes other than benefit accrual or determination of benefits under a defined benefit pension plan or where it will result in a duplication of benefits. Given that Ciena is offering a defined contribution pension plan only, the exclusion for a defined benefit plan is not relevant.

Q. Will Ciena change the terms and conditions of my employment?

The Sale Agreement states that Ciena's offers of employment will be on terms and conditions substantially comparable to the terms and conditions of employment of similarly situated employees of Ciena.

Employees will be offered positions with annual base salary and target incentive equal to their current base salary and target incentive or a substantially comparable overall compensation package.

The work offered will be at a location "reasonably close" to your current work location.

Ciena has undertaken to provide benefits that are substantially comparable in the aggregate to your current benefits at Nortel or Ciena's benefits for similarly situated employees.

During the 12-month period following the Closing Date, Ciena will provide Transferred Employees with the same severance payments and benefits as similarly situated employees of Ciena.

Q. What if the terms and conditions offered by Ciena 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. If I accept the offer and Ciena changes a fundamental term 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.

Grandfathered members of the Traditional Part I Pension Plan may have a claim to the extent Ciena'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 Ciena changed a fundamental term of your employment after the end of the reasonable notice period, you would have a remedy against it but no claim against Nortel.

Q. What will happen to my accrued vacation?

The Sale Agreement requires Nortel to pay your accrued vacation up to your Effective Hire Date with Ciena. Ciena has agreed to provide employees with reasonable time off until they accrue vacation time.

After your Effective Hire Date, the rate at which you accrue vacation and your maximum accrual will be determined in accordance with Ciena's vacation policy.

Q. Will my group benefits coverage remain in place?

The Sale Agreement requires Ciena to offer benefits that are substantially comparable in the aggregate to your Nortel coverage.

Under the sale agreement, Ciena is to waive any eligibility periods, evidence of insurability or pre-existing condition limitations. This is significant for employees who are ill or who have pre-existing medical conditions. Ciena will also honour any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by Transferred Employees under comparable Nortel benefit plans during the year in which the Effective Hire Date occurs. The company will require appropriate documentation to avoid duplication of benefits.

Q. Will Ciena have a pension plan?

The Sale Agreement and employment offers provide for a defined contribution registered pension plan. The plan will recognize your prior Nortel service for the purpose of eligibility to participate, vesting and entitlement to benefits. The employer contribution formula will be at least 1% of your salary and match 50% employee contributions up to total Company contribution amount of \$3,000.00.

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

Under the terms of the Sale Agreement, there is a 24-month non-solicitation period following the closing date of the sale during which Nortel is prevented from soliciting the employment of Transferred Employees. This prohibition would not apply to a Transferring Employee whose employment was subsequently terminated by Ciena without cause within the non-solicitation period.

Q. What happens if Ciena terminates my employment after the transfer? The letter does not say anything about termination of employment. What would my entitlements be in the event Ciena terminated my employment, without cause?

Ciena would be required to provide you with reasonable notice of the termination or pay in lieu of notice. 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. How can I determine the reasonable notice period?

Reasonable notice is determined on a case-by-case basis, taking into consideration factors such as age, length of service and the character and level of your position. We will assist when the time is appropriate to quantify what your reasonable notice period likely is.

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 Nortel employees in receipt of LTD benefits. Inquiries about your ongoing entitlements should be directed to that firm.

INACTIVE EMPLOYEES

Q. I will be on parental leave from Nortel until after the Closing Date. If I am in scope, which company will be responsible for my top-up?

As an "Inactive Employee", you will remain employed by Nortel until the first day you are ready to return to active employment with Ciena in accordance with Nortel's leave policies. Nortel will be responsible for the payment of any associated benefits under the applicable leave policy.

NORTEL PENSION ISSUES

Q. If I become an employee of Ciena do I have to wait until my employment with Ciena 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 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 Ciena.

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 Ciena 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 Ciena had ended.

The pension benefits legislation in British Columbia, Alberta and Quebec do 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 69% commuted value of my pension benefits while some funds are still available, rather than accept employment with Ciena?

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?

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.