

FREQUENTLY ASKED QUESTIONS REGARDING SALE OF ASSETS TO AVAYA

September 22, 2009

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LEGAL REPRESENTATION

Note: This section reflects 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 advice and representation to Continuing Employees, concerning employment-related claims and potential claims, at Nortel's expense. We will disseminate appropriate information and advice to the group and continue to explore the most efficient methods for doing so. We anticipate that information and advice will be communicated through a variety of means, including our website, FAQ, e-mail 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 Avaya?

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 Avaya 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 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 Avaya, 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 Avaya 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.

SALE OF ASSETS TO AVAYA

Q. When will I receive an offer of employment from Avaya?

Nortel expects to notify employees by mid-October whether they are in scope or out of scope. Avaya could make offers any time after that date, assuming the sale receives regulatory approval.

Q. How much time will I have to review Avaya's offer of employment?

The agreement between Avaya and Nortel states that employees shall be given not less than two weeks to consider any offer.

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

Avaya has agreed to provide employees with offers that are on terms and conditions substantially comparable to those terms and conditions of employment of similarly situated employees of Avaya. The agreement then goes on to say that Transferring Employees will be offered positions comparable to their current positions, at their same base salary, in a location "reasonably contiguous to their current location".

During the 12 months following the Closing Date, Avaya will provide Transferred Employees with "the same severance payments and benefits as similarly situated employees" of Avaya.

Q. What if the terms and conditions offered by Avaya 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 receive an offer of employment from Avaya, 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 Avaya 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. Will Avaya recognize all of my service with Nortel?

Yes. It is obliged at law to do so. Avaya has agreed to recognize Nortel service dates for all purposes other than benefit accrual or the determination of the amount or duration of benefits under any Avaya Employee Plans, except with respect to Transferred Employee Plans. At this time, we have no information about any of these plans.

Q. What will happen to my accrued vacation?

The agreement provides that Avaya will assume liability for your accrued vacation time. Any vacation days accrued as of your Effective Hire Date have to be used within 12 months following the Closing Date, failing which they will be automatically forfeited.

If your employment terminates within the first 12 months of employment with Avaya, you will be paid the value of your accrued vacation.

Avaya has agreed that, for 12 months following the closing date, it will not decrease your vacation accrual rate or the maximum number of vacation days you can accrue.

Q. Will my group benefits coverage remain in place?

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

The company has agreed to "use reasonable best efforts" to waive any eligibility periods, evidence of insurability or pre-existing condition limitations and will honour any deductibles, co-payments, co-insurance or out-of-pocket expenses paid or incurred by Transferred Employees. This is significant for employees who are ill or who have pre-existing medical conditions.

Q. Does Avaya have a pension plan?

We do not know at this point. The agreement between Nortel and Avaya does not refer to an Avaya pension plan.

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 Avaya, there is a 24-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 Avaya without cause within the 24-month period. Avaya has a corresponding obligation to not hire other Nortel employees.

Q. What happens if Avaya 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, Avaya would be obliged to provide you with reasonable notice of termination or pay in lieu thereof.

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.

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. 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?

You will be considered to be an "Inactive Employee" under the terms of the agreement between Nortel and Avaya. You will remain employed by Nortel until you are ready to return to active employment and report to work with Avaya.

NORTEL PENSION ISSUES

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

If Avaya does have a pension plan, you would not be able to take your Nortel pension while you were still employed at Avaya. Under s. 80 of the Ontario *Pension Benefits Act*, employees affected by an asset sale are deemed not to be terminated, for pension purposes, by reason of the transaction, where the purchaser has a pension plan and the transferring employee becomes a member of the plan offered by the successor employer. Because your employment with Nortel is deemed to continue for pension purposes, you would not be able to start receiving pension benefits from Nortel without terminating or retiring from employment with Avaya.

If Avaya does not have a pension plan, the successor provisions of s. 80 of the *Pension Benefits Act* would not apply and you would be able to start receiving pension benefits from Nortel if you were otherwise eligible.

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

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, if Avaya does have a pension plan and you move to Avaya, under s. 80 of the *Pension Benefits Act*, your employment with Nortel would be deemed not have been

terminated, so you would not be eligible to choose the commuted value option until your employment with Avaya had ended.

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 Avaya?

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?

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.

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

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 Avaya during a reasonable notice period (to the extent the terms and conditions offered by Avaya 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)
- entitlements under the *Employment Standards Act* to termination and severance pay should you turn down an offer of comparable employment with Avaya

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 expect in the early fall to develop a questionnaire that we will provide to assist in gathering information in an organized fashion.