



House of Commons
CANADA

Standing Committee on Finance

FINA • NUMBER 038 • 2nd SESSION • 40th PARLIAMENT

EVIDENCE

Thursday, June 18, 2009

Chair

Mr. James Rajotte

Also available on the Parliament of Canada Web Site at the following address:

<http://www.parl.gc.ca>

Standing Committee on Finance

Thursday, June 18, 2009

• (0900)

[English]

The Chair (Mr. James Rajotte (Edmonton—Leduc, CPC)): I call this meeting to order, the 38th meeting of the Standing Committee on Finance.

Pursuant to Standing Order 108(2), we are continuing our study on measures to enhance credit availability and the stability of the Canadian financial system. We are focusing on Nortel.

We have two panels here this morning, colleagues. First, we have a panel from Nortel Networks Corporation represented by the president and CEO, Mike Zafirovski, and Counsel Derek Tay from 9 a.m. to 10 a.m. From 10 a.m. to 11 a.m., we have persons representing pensioners for an hour as well.

I remind colleagues and all those interested in these hearings that the committee did adopt a motion on June 2 dealing with employment stock options, Mr. Mulcair's motion. There will be a report back to the committee by the Department of Finance in July, I believe. This is to deal with our study on credit availability and dealing with the pension issue, which is a subset of that study.

For the first hour this morning we have the president and CEO. Mr. Zafirovski, I understand you have a ten-minute opening statement and then we will go to questions from members.

Please begin.

Mr. Mike S. Zafirovski (President and Chief Executive Officer, Nortel Networks Corporation): Thank you, Mr. Chairman.

Good morning, honourable members.

I do appreciate the importance of the request to be here with you today. I do take your own inquiry very seriously, and I look forward to a very transparent and open discussion.

I believe I have ten minutes of opening comments. I'll try to be as transparent and direct as I know how, and I will try to address most of the issues. I do look forward to a quite robust discussion after that.

Before we get into the details, let me just say that not a day goes by when I do not think about the implications of our difficult decisions, which have hit both former and current employees. Nortel is a company with a very historic past, and I take this history very seriously.

When I came to Nortel three and a half years ago, many people said it was a mission impossible; but I, and many within Nortel, believed Nortel was a great global icon that could in fact be fixed. We did set a very ambitious agenda for the company, and together

the employees made tremendous progress on multiple fronts. We fixed our accounting and legal issues, we improved the quality of our products, and we improved our cost structure. But most important—and this is specifically for the Ottawa-based centre for R and D—we went from legacy technologies to new technologies. We made significant investments, multi-hundreds of millions of dollars of investments, in technologies such as fourth-generation wireless and 4800 gig optical unified communications.

Just a year ago at an investor meeting in Toronto, we were very proud and had lots of enthusiasm in discussing how we had planned to finish the transformation and about the real prospects for sustainable growth going forward. Then, frankly, we hit a wall. The global financial crisis and recession compounded our challenges and impacted our ability to complete a transformation.

On January 14 we filed for protection from our creditors in Canada, the U.S., and parts of Europe. We did not take this decision lightly, but it was authorized unanimously by our board, after thorough consultation with advisers and extensive consideration of the alternatives.

Nortel today is not completely or solely under the control of Nortel management and the board. Now we have the active involvement of the court-appointed monitor and several creditor committees.

It is not where we want to be. We'll be the first ones to say that. But rest assured, we are pursuing maximized value for Nortel and are trying to preserve as many jobs as possible with the same passion I had when I came to this company three and a half years ago.

We are trying to run the company based on three principles. First is not to lose the customer. It's very important to give confidence to our customers that we are here to stay in business. Second is to operate in the mode of reality and to see the world the way it is, not the way we wish it were—but also, in that same world, to work with a level of optimism. Third, time is of the essence.

Nortel employees have done a tremendous job under very challenging conditions stabilizing our business and delivering outstanding service to our customers. Again, I cannot tell you how much I appreciate the support of not only our employees but also of companies and our suppliers during this period.

Let me move to the matters we are here today to discuss. I do realize the sensitivity of these compensation decisions. One thing that Nortel confirmed right from day one was that we would continue to fulfill all obligations to existing employees. This was a combination of continuing to pay base wages—we did freeze salaries for 2009—and also allowing vacation to accrue, and we continue to pay medical and health care benefits.

At the time of filing, we also believed it was very important to continue our annual incentive plan, and also to have some sort of a retention program for the most important employees. I'll just make a couple of comments here on both of these.

First of all, there's the annual incentive plan. It's available to virtually all Nortel employees—95% plus. It's an ordinary course of business to give incentives, and this plan has been in place for many years. It's very much an industry standard. We do view the incentive plan as very much part of the wages we pay to our employees.

The decision regarding the 2009 annual incentive plan was developed by management, with input from the Mercer consulting group and very active discussions and negotiations with the creditor committees and the monitor. It's based on achieving three very important targets. The first target is to maintain the revenues of the business. The second is for us to be able to fulfill very high customer performance matrices. The third is to preserve the cash balance.

• (0905)

In addition, since we filed, all equity base compensation programs have been terminated. As you also may know, prior equity awards have been cancelled. Therefore we no longer have the ability to compensate our employees with equity awards, which traditionally make up a very significant part of the compensations for management and the employees.

Now to our retention programs. Let me just make a couple of comments about the employee incentive program and the overall employee retention program.

In this company's situation and in a highly competitive industry, retaining key employees and preventing unwanted levels of attrition are critical to preserve the value and to maximize the assets for a company's stakeholders. We have two programs. One is a key employee retention program, and this is for 900 non-executive employees. So this is a rather large number of employees, unprecedented, but we thought this was very consistent with the significant challenges facing the company. In addition, for 92 of the more senior employees, we have our key employee incentive program, and this program is based on achieving very specific incentive targets. Executives who are participating in this program are required to waive their rights under previous change of control programs.

I personally chose not to participate in the key employee incentive and the key employee retention programs. I have also waived the rights to my change of control provisions.

With respect to severance, this is a most difficult issue. It has weighed on me greatly. Most importantly, the decision not to pay severance was not taken lightly. We have a great level of appreciation for the employees. They're highly skilled. And frankly, although I have been with the company only three and a half years, I

have felt as a Nortel employee from the day I joined the company. However, in light of the economic reality of the company's constrained cash resources, particularly in Canada, and the fact that in the legal environment severance payments have equal weight with all other provisions for other creditors, we did not have a choice but to follow the legal jurisdiction. This was an extremely difficult decision. It was not taken lightly by management or the board of directors. It was made after extensive consultation with financial advisors and the monitor.

Let me move on to pension-related matters. I do think it's important to summarize that all moneys of Canadian registered pension plans belong to employees themselves. They're not available to the company or to the creditors. We'll continue to make both regular and special contributions to the pension plans, and we continue to make payments to our employees on a scheduled basis.

I know there has been lots of discussion in the press with respect to reducing the commuted value paid to employees who are getting out of the plans. Prior to filing, Nortel had said we've been paying commuted values at 100% based on exception to legislation, but starting in January 2009 we reduced the commuted value to approximately 86%, which is based on the estimated deficit shown in the last-filed valuations of December 31, 2006.

Unfortunately, since those last-filed valuations, the deficits have grown as a result of the well-reported declines of the equity markets, and we consulted with actuarial advisors and believe that the deficit is currently close to 69%. We asked for approval to go to 69%. This was approved, but I do think it's very important to highlight that the reduction was not designed to prejudice anyone but rather meant to ensure equal treatment of members and former members.

Let me just wrap up on two things. First of all, on my compensation, I do realize this is a very visible and explosive issue. For all the executives, myself included, we do try to follow a 50th percentile of the market for executives in the high-tech industry.

• (0910)

For executives, particularly at higher levels, most of the elements of the compensation program are at risk, meaning they are linked to individual corporate performance as well as to the stock price. For example, 88% of my compensation in 2008 was based at risk.

There is a significant difference between what's reported as compensation on the proxy statements versus the actual amounts received. For example, in 2009 the cash compensation was \$1.29 million, which was 12% of the total intended compensation for that year. No bonuses were paid in 2008. As I have indicated, we have cancelled all equity awards—both the historical, and we're not giving any equity awards in 2009.

There have also been comments on pension benefits. For me, it is based on five years of active employment. I've been with the company for three and a half years. Assuming I'm with the company for five years, that pension payment is not guaranteed. It will be the same as all other unfunded pension programs. It will become an unsecured claim.

What I can guarantee to you is that where we're driving, with the utmost passion and commitment, is to optimize the value of Nortel and at the same time preserve the greatest number of jobs in this environment. I cannot overemphasize the strong appreciation for the employees and the empathy for the current situation. One of the most significant motivations for management, the board, and me as we're working around the clock is to optimize the value of the Nortel assets. The better the job we do, it is going to result in a higher recovery value for employees, pensioners, and all the other creditors.

I thank you for the opportunity to be here. I look forward to your comments and your questions.

Thank you.

The Chair: Thank you very much, Mr. Zafirovski, for your opening statement.

We'll go to questions from members. The first round is seven minutes.

We'll start with Mr. Pacetti, please.

Mr. Massimo Pacetti (Saint-Léonard—Saint-Michel, Lib.): Thank you, Mr. Chairman.

Thank you, Mr. Zafirovski, for appearing.

I'm sort of caught in a dilemma, because there are a lot of issues that we'd like to cover and that I'd like to cover. I'm trying to look at this from a balanced perspective. I requested that you appear because I don't think it's fair to hear just one side of the story. There are three sides to every story, as we all know. I would have preferred to have you speak after we hear the second panel, because I think it is in your best interests to speak afterwards.

I'm not going to try to play the part of an employee or former employee. We are conducting a study on the stability of our financial market, so that's the other angle I'd like to also address. How do we prevent this from happening again?

My time is limited. I only have seven minutes.

● (0915)

[Translation]

I know that certain members had already formed their opinions. They have taken sides and ignored the facts. You now have the opportunity to give us the facts.

[English]

The first question is going to be asked in a more overall global manner: how do we avoid this happening again? How could this come to a point where.... You said yourself that of the three criteria of Nortel, one is to keep their customers, but how are you going to keep your customers if you can't keep your employees or former employees happy?

You also said you want to operate in the real world. We are now operating in the real world. Things have changed. I understand they are changing more rapidly than you would like them to, but you're not government; you're a company. You have to be able to change—and change quite rapidly. You can't expect government to change, yet we saw in Obama's statement yesterday that people have to react in a more transparent fashion. Corporations have to report. They have to act in a transparent fashion.

You have an obligation. There are people out there who are living in the real world, the real world meaning that if you've promised them, after 20 or 30 years of service, and they are relying on a paycheck at the end of the month.... Whether that paycheck is \$100 or \$1,000 is not the question. The question is, if they are relying on it, if they have been promised that, and if they are at the end of their working career, we have to do something about that. There needs to be protection there.

Your third point was that time is of the essence. Well, when you're making a couple of million bucks, yes, sure, you have commitments as well, but when you're only making a couple of hundred bucks and you're trying to find money to pay your mortgage payment and make your credit card payments, what do I say to those people? Because that's what we're going to hear in the next hour. We can go around and pretend this is not happening, but that's really the question we are going to have.

Now, I'm not sure how you're going to answer that. You've answered some of the questions in your opening statement. The problem is that we are going to get the second panel, and they're going to come up with their version, and we are going to have difficulty reconciling both.

I'm trying to take a neutral and very transparent view of this. You're going to get pressure from other MPs who have already taken sides. The Liberal Party position has always been one of the centre, so we will try to address both. I will give you a couple of minutes, but again, we have seven minutes. Could you address some of those points?

Mr. Mike S. Zafirovski: First of all, I thank you for the question.

I do think it's important to understand where the company was back in 2005 and 2006. I can assure you, there's been a level of a commitment and passion from the employees, customers, and suppliers to try to rectify lots of issues that were with the company at that point in time. We really believe we're making the right things. I mean, there's a significant investment. About 60% of our R and D used to be in legacy products, but we've completely transformed that; it's only 20%, and for the last three years we've made significant investments to really be at the leading edge of communications.

Mr. Massimo Pacetti: In answer to my first question, in order for this not to reoccur, the business plans of corporations have to be much better and not make commitments they can't deliver on, unless their plan is going to actually materialize.

Mr. Mike S. Zafirovski: That's an excellent point. We've tried to be very transparent from day one.

Mr. Massimo Pacetti: Or are we making promises we can never keep?

Mr. Mike S. Zafirovski: We've tried from day one to articulate the challenges for the company, which were rather significant. We also had very significant assets and tried to articulate what we were trying to do to restore a formerly great company. We really thought we were there in the middle of last year. A number of board members personally invested amounts to buy Nortel stock. I've been in business for 34 years and I've never bought a share from a company. There used to be equity programs. A year ago we put in \$500,000, including my three boys, who put some of their college savings in there.

First of all, we really believed what we were saying. You can look back and criticize some of those decisions, but there's not a lack of commitment and passion in making the investments for the future. When the world changed upside down, then we were very transparent internally, and made a painful decision at this point in time, particularly in the pension programs. They are not touchable, if you will, by the company or the creditors. We continue to make all payments, including special payments in the program. The reason we're trying to optimize the value—

● (0920)

Mr. Massimo Pacetti: We can almost say thank God that those pension payments are not touchable, but the problem is the deficit or the lack of money.

The Chair: You have one minute, Mr. Pacetti.

Mr. Massimo Pacetti: You stated in your opening comments that you stopped paying severance. How did you come to that conclusion? How did you just all of a sudden realize that you should stop paying severance?

That goes back to the way Nortel treats its former employees. You're going to have difficulty keeping your current employees if that's how you treat your former employees, I would think.

Mr. Mike S. Zafirovski: I fully agree with that statement. Mr. Tay can confirm the very heated discussions we had on what's possible. At times you want to do something that simply the circumstances do not allow. That fact of life is painful for me to understand and finally accept.

Mr. Massimo Pacetti: I'm going to wrap it up there, because you're going to get questions from the other members and I may get a chance again. But it's just because then you're going to have to rationalize why there are rumours of amounts of anywhere from \$7.3 million to \$23 million being paid to employees in bonuses. You did have an opportunity to make a choice.

The Chair: Thank you, Mr. Pacetti.

You have time for just a brief response, sir.

Mr. Mike S. Zafirovski: The annual incentive plan is a part of wages. We continue to make the payment. We do have a retention plan in place for 980 employees. It's a significant number, which we thought was absolutely imperative to stabilize the company and to actually give us the best chance to increase the value that would be available for all the stakeholders.

The Chair: Thank you.

We'll go to Monsieur Laforest *pour sept minutes*.

[Translation]

Mr. Jean-Yves Laforest (Saint-Maurice—Champlain, BQ): Thank you, Mr. Chair.

Good morning, Mr. Zafirovski. A few of your comments startled me. You claim that you have the support of your employees. I find it odd for you to make such an assertion. How can your employees support you when they are seeing former employees, current pensioners who are in the situation of possibly losing their pensions or only able to draw a tiny amount from their savings?

I find that very odd, but what is even more bizarre is that you received a \$9.7-million bonus last year. It is appalling to hear such things, that is the least that can be said. You also said that the room is hot. Perhaps it is hot, but you are feeling the heat because some of the people here do not necessarily support you.

How do you feel? You claim to have a lot of compassion for employees. Above and beyond the compassion, what specific and effective measures are you taking to restore confidence and support these people? In Quebec, 3,000 Nortel retirees are living in uncertainty.

[English]

Mr. Mike S. Zafirovski: Thank you for that question.

The decision on January 14 was the most painful and agonizing of my 34 years in business. It was very hard to come to the realization that to continue with the company as is would provide an even greater risk and potential for liquidation, which we certainly did not want to face.

My comment with respect to the employees is that of appreciation for their work, which has been above and beyond any expectations, and their professionalism in serving customers. The last nine months were actually a multi-year high in delivering for our customers and providing stability for the business, which is the best thing you can do in this environment.

The comment and the conversation is that for 2008, the \$9 million amount that you mentioned—and obviously for other executives—was based on stocks and options that today are worthless. As a result of filing for CCAA, that's no longer in place, but it has been a very difficult and agonizing decision. It's been very difficult and agonizing to see what has been happening with our employees.

The only thing I can tell you is that we are working around the clock. We have lots of support and professional pride from the existing employees to be able to optimize the value of the business, which is the only and the best thing you can do for current and for former employees.

● (0925)

[Translation]

Mr. Jean-Yves Laforest: Let us talk exclusively about the pension plan. I presume that for a company the size of Nortel, a pension plan is governed by rules of prudence when making investments. Do you have these types of rules, for example rules on investing a maximum percentage of 10% or 15% in high-risk stocks or riskier products?

Percentage-wise, how much was invested in commercial paper? Only one single agency in Canada, the DBRS, had given commercial paper a grade, and concluded that it was very risky. What is the proportion of commercial paper purchased as investments under the pension plan? I believe that it must have been a major factor in the collapse of the value of your pension plan.

[English]

Mr. Mike S. Zafirovski: I have a couple of comments on the pension plan.

For a large corporation, our pension assets have been managed rather conservatively. You can have a different view with 20-20 hindsight, but 50% of our pension assets were in equities, the stock market, and 50% in fixed income. Most companies of this size, particularly in North America, have a higher percentage in equities. So that's one. We're also good on making all payments to the pension plan, including special payments.

Back in 2006, when I arrived, the pension deficit was actually very significant through returns to the marketplace and special payments. The deficit was down to well below \$1 billion on a global basis. A company with our balance sheets, with an unprecedented decline in the capital markets in the second half of last year and the first part of this year, produced very significant deficits. In terms of looking back—from our trustees, the boards—we had managed that business in quite a balanced fashion. One thing you have to admit is that the environment over the last couple of quarters has frankly been unprecedented.

[Translation]

The Chair: Fine.

Mr. Laforest, you have 30 seconds.

Mr. Jean-Yves Laforest: There are other pension plans that performed very well, and that were able to avert the kind of collapse you experienced. You tell us that you received good assessments. Nonetheless, mistakes were made. I would like you to tell us exactly which mistakes were made.

[English]

The Chair: Very briefly, Mr. Zafirovski.

Mr. Mike S. Zafirovski: A very quick comment.

We have 50% of our pension plan in equities and 50% in fixed income. For the last three years on balance we've performed pretty well compared to benchmarks. I'll be happy to follow up with more specifics on that.

The Chair: Thank you.

We'll go to Mr. Kramp, please.

Mr. Daryl Kramp (Prince Edward—Hastings, CPC): Thank you, Mr. Chair.

Welcome, Mr. Zafirovski and Mr. Tay.

Obviously, Nortel has a significant impact on this region and many regions across the country. I'm from the Belleville, Quinte region. Nortel has had a long and storied history there, so I can assure you that I've heard from many of the retirees, pensioners, and of course former executives of Nortel.

There's isn't a person around this table who doesn't realize that the best pension guarantee that exists, of course, is a successful and profitable company. But we also understand that when difficulties do occur, pension guarantees do fall under the responsibility of the provinces. People ask if the federal government is off the hook, and I say, quite frankly, no, we have responsibilities as well. I think we, as federal legislators, have a responsibility to provide a regulatory environment that serves the best interests of both corporate and employee groups. Our purpose here today is to listen to the various perspectives, to see if we can come forward and deal with potential legislation and/or enforcement and/or guidance that we could provide that would be of benefit to both groups going forward.

As we travel through this difficult period, I personally—and a number of my colleagues and certainly my constituents from Belleville and many in the Ottawa capital region I've had direct contact with, and my colleagues as well—believe that more clarity is needed. The rumour mill reigns supreme on a little bit of everything, but when people are directly affected personally we really have to get to the very bottom of it to make an intelligent decision.

While Nortel was seriously reducing or in many cases eliminating pension benefits, I'd like to know.... I have three or four quick questions, and maybe you can give me a true or false to them, if you wish, and then we can move on rather quickly.

In the current job market—it's a tight job market out there—do you really believe it was necessary to offer large bonuses, given this market, simply to retain the people you have?

• (0930)

Mr. Mike S. Zafirovski: Yes.

Mr. Daryl Kramp: You do. Fine.

Were any other incentives not considered, other than bonuses? If so, what were they?

Mr. Mike S. Zafirovski: I actually want to make sure that when we discuss the bonuses, sir, we understand that this is part of a compensation program that is very typical in the high-tech industry. A secretary, for example, used to make \$40,000. Typically, if you are an industrial company, you pay the full \$40,000 as a base salary. In the high-tech industry, you may pay \$36,000 and then 10% as an "annual bonus." I do think it's very important, but this is true for all employees. The annual incentive plan is not a bonus per se; it's part of your compensation for a job personally well done.

Mr. Daryl Kramp: It's still dollars received, whether it's bonus or whether it's salary. My consideration is we are not in normal everyday times. We are not in business as usual times.

Is it fair to expect, when people are hurting very badly, to see other people stand up—and I don't wish to use the words "at the trough", because I think that would be unfair.... But when you share the gain, you should also share the pain. Has there been any consideration within the company or discussion that suggested potentially part of this benefit plan and/or bonus plan should be dropped?

Mr. Mike S. Zafirovski: Sir, the discussions have been what can we do to pay severance. We're absolutely convinced that paying the annual incentive plan and the retention is critical to preserve value within Nortel. That's based on any good practice that has happened in this country and many countries all over the world. Discussions were not either/or, but what we can do to in fact pay severance to employees. That's why, with all the arguments—and the board, myself, and Mr. Tay can attest to many late-night discussions on it—the view was that per the jurisdictions in Canada, and given the fact that severance payments to former employees carry the same weight as any other liability, the judge, for financial perspectives, would not be approve that request to pay severance.

Mr. Daryl Kramp: I noticed that on March 2 Nortel—not the individual court, but Nortel—filed the motion in court to pay retention bonuses of \$7.3 million simply to eight key senior executives alone among many other what I would call financial programs to administer wages. What portion of that is bonus? What portion of that is considered salary?

Mr. Mike S. Zafirovski: For the retention plans in specific, for all 980 employees, including the eight executives you mentioned, it's a very specific retention plan. This is new. That's for this year. It's a very volatile situation to be able to retain and motivate employees, to be able to stabilize the company, to optimize the value for it. Many things have been forgone, including equity plans. In the change in control plans we've eliminated many benefits, but this is a special plan for 2009 to be able to allow the company to survive. I chose not to be in those.

• (0935)

The Chair: One minute, Mr. Kramp.

Mr. Daryl Kramp: I think we can certainly understand the anger and the angst, though, when people are faced with what they felt was a very positive, predictable future and they see that dramatically cut and curtailed and yet they still see a bonus process in place. We understand that you have to offer incentives to try to attract quality people, but there just does appear to be a bit of a contradiction at this particular point when there doesn't appear to be a sense of balance and fairness, and that has been demonstrated by many people throughout the company. When I take a look at—

The Chair: Do you have a question?

Mr. Daryl Kramp: Okay, question. I have a statement from yourself as CEO basically standing up for the code and principles, and the code of business conduct, that Nortel Canada should.... Do you feel you and the company are honouring this code of conduct?

The Chair: Very briefly, sir.

Mr. Mike S. Zafirovski: The short answer is yes. When you file for credit protection, that means you have many real liabilities, whether it is to a supplier, to an employee, to a bond holder. The unfortunate realization at that point in time is that you cannot fulfill all your obligations. That's why you file for credit protection. From that perspective, the short answer is yes. I do want to re-stress the point in regard to making severance payments that we made a very painful decision and we really did not believe there were any other options but to take that course of action.

The Chair: Okay, thank you.

Monsieur Mulcair.

[Translation]

Mr. Thomas Mulcair (Outremont, NDP): Thank you, Mr. Chair.

Mr. Zafirovski, good morning.

[English]

In your presentation, you explain to us how painful it was for you, and these are your exact words: “difficult and agonizing”, and you explained your “empathy”. Those are all your words.

Given that, I would ask if you would be so kind as to stay for the next hour so that you can hear from all these people who are actually suffering the pain that you say you have.

Voices: Hear, hear!

The Chair: Order. I would ask the crowd to please respect Mr. Mulcair's time.

[Translation]

Mr. Thomas Mulcair: Mr. Zafirovski, my first substantive question is the following: you went before the courts to ask for an additional \$45 million to pay retention bonuses to your executives. In response to a question, according to the legal opinion you would have received, there was no point in asking for money to pay severances, because you already knew ahead of time that the courts would say no.

How does that work exactly? How did you know in advance that the courts would give you and the other executives \$45 million, and without even trying, and presume that they would deny money to pay severances?

[English]

Mr. Mike S. Zafirovski: The approach internally on continuing to fulfill obligations to existing employees in the retention plan, based on studies of companies all over the world, we thought was the absolute minimum requirement. Creditors, who have the same expectations as employees, and would like to optimize what the company owes them, also believed that they were very much in active discussions about the right things to do to be able to have the proceeds to fulfill the greatest percentage of previous obligations.

Mr. Thomas Mulcair: Mr. Zafirovski, are you going to stay for the second hour? I have places right here for you and Mr. Tay if you'd like to hear from the people. Mr. Pacetti was right. The order was decided by the chair. That's fine. But they are here, and it will take you one hour to hear from them. I think that would be useful, given the fact that you've described how painful this has been for you. This might be a way for you to expiate some of that pain. I'm inviting you to stay here for another hour, if that's possible.

• (0940)

Mr. Mike S. Zafirovski: I'm sure I will consider that. I've spoken to many employees and still continue to speak to many current and former employees.

Mr. Thomas Mulcair: Would you like to listen to them instead of speaking to them? Would you like to listen to them?

Mr. Mike S. Zafirovski: The speaking comment was a combination of listening and speaking. I will consider that. Thank you.

Mr. Thomas Mulcair: We'd be very thankful to you if you did.

We're trying to also find out what the actual state of play is here. Is it possible that you've been on the Hill in recent months since the January filing? Have you been up here on Parliament Hill having any meetings since January?

Mr. Mike S. Zafirovski: We've had a number of meetings: November, December, January, and March....

Mr. Thomas Mulcair: Have you met with any ministers or spoken with any ministers?

Mr. Mike S. Zafirovski: Yes, in private discussions, yes.

Mr. Thomas Mulcair: Well, actually, we get to ask you about them here. Who were those discussions with? Which ministers did you meet? You have to answer.

Mr. Mike S. Zafirovski: I mean, we've spoken with a number of them.

Mr. Thomas Mulcair: Well, name them.

Mr. Mike S. Zafirovski: We've spoken with Industry, Trade—

Mr. Thomas Mulcair: Mr. Clement is Industry. Who else? Have you spoken to the Prime Minister?

Mr. Mike S. Zafirovski: Mr. Flaherty.

Mr. Thomas Mulcair: Mr. Flaherty.

Mr. Mike S. Zafirovski: I met the Prime Minister as part of Industry, but I have not spoken specifically with respect to Nortel.

Mr. Thomas Mulcair: You have to answer this question: What was the nature of those conversations?

Mr. Mike S. Zafirovski: There was the status of the company, the status of the industry—

Mr. Thomas Mulcair: That's general. I'd like something more specific.

Mr. Mike S. Zafirovski: —and also any potential areas of collaboration.

Mr. Thomas Mulcair: Did you talk to them about the fact that if you don't pay severance, people will get employment insurance, and that's a liability for the state, as opposed to the company?

Mr. Mike S. Zafirovski: That certainly was one of the items. It was also discussing areas of more substantive systems. But those discussions did not end up in any concrete....

Mr. Thomas Mulcair: Specifically, what was the nature of your discussion with regard to severance and EI, and with whom was it?

Mr. Mike S. Zafirovski: There was not any specific discussion of pensions or severance—

Mr. Thomas Mulcair: I didn't discuss pensions.

Mr. Mike S. Zafirovski: —in the discussion. Obviously, we discussed the impact on employees and the expected reductions if we were to file, but we did not have a specific discussion on severance.

Mr. Thomas Mulcair: Did you discuss severance versus EI with Mr. Clement or Mr. Flaherty?

Mr. Mike S. Zafirovski: I said that there was not a specific discussion on severance. There were discussions on the overall impact on employees.

Mr. Thomas Mulcair: Did they offer anything to you with regard to the existing schemes under the Bankruptcy and Insolvency Act? In other words, was there any attempt by the Canadian government to get involved? I notice that they're not there at the hearings, but the U.S. government is.

Mr. Mike S. Zafirovski: No. We've had very active discussions with EDC, but we did not come to areas of direct assistance there.

Mr. Thomas Mulcair: On several occasions during your presentation you talked about increasing the value to be available for all stakeholders.

Mr. Mike S. Zafirovski: Correct.

Mr. Thomas Mulcair: Do you consider the people in this room—your former employees—to be among those stakeholders?

Mr. Mike S. Zafirovski: Absolutely—pensioners, current and former employees.

Mr. Thomas Mulcair: But right now they're in the same position as a distressed bondholder on Wall Street, aren't they? They're relegated to the back of the pack.

Has your analysis and the decisions you've taken been a function—depending on which countries you've put yourself in bankruptcy protection in—of what would be available from various states and governments in those different jurisdictions and whether you put yourself into bankruptcy or try to make it a going concern? Because if it's protected in bankruptcy, you can do things like pay yourselves \$45 million in bonuses; but if it's a going concern, it's going to be under a different light, isn't it?

Mr. Mike S. Zafirovski: That's not really true.

I'll comment on the first one. There is no one in the back of the line. Whether you're a supplier—

Mr. Thomas Mulcair: There is. There are secured creditors out there, and the employees are not secured creditors.

Mr. Mike S. Zafirovski: No, there are no secured creditors, sir. There is no one back.... There are the active, ongoing employees, there are consultants or parties that are serving the various stakeholders, but there are no secured creditors.

The Chair: You have 30 seconds, Mr. Mulcair.

Mr. Thomas Mulcair: You say there's no back of the line, but I put it to you again—and I'll end where I started—that the people who are in back of you are in the back of the line, because they don't get to ask for \$45 million in bonuses, they don't get their severance, they're not getting anything, and they're watching their pensions being whittled away.

So I invite you again to spend the next hour of your time listening to these people, because they're the ones who are feeling the pain.

Thank you.

[Applause]

The Chair: Thank you, Mr. Mulcair.

I'll just remind members of the audience that it is time for members' questions. I'd just ask you to please respect that.

We'll go to Mr. McCallum, please.

Hon. John McCallum (Markham—Unionville, Lib.): Thank you, Mr. Chair.

And thank you, Mr. Zafirovski, for being here today.

I'd just like to associate myself with my colleague from the NDP, and I hope you will be able to find the time to stay an extra hour to listen to all these people.

It's quite obvious this is an extremely sad case, I know you say for yourself, and more so, I would say, for the others in this room. But it is also for Canada. Before I came into politics I worked for the Royal Bank, and at one point Nortel was worth more in terms of market capitalization than the Royal Bank of Canada. And look where Nortel is today.

I've heard from some Nortel people about the possibility of government help. I'd just like to pursue a little bit of Mr. Mulcair's line of questioning.

In terms of your discussions, whether with Mr. Flaherty, Mr. Clement, Mr. Harper, or any other government officials, did you propose to them some sort of plan for the government to provide help, not so that Nortel would survive totally intact, but to maximize the number of R and D, high-skilled jobs in Canada?

We've had bailouts around the world and in this country. It seems to me that when you have thousands of high-tech, highly skilled R and D people, when innovation and ideas are the way of the future in this country, it's not only a loss to Nortel but it's also a loss to the country if all of those people go south of the border or elsewhere in the world and are lost to the country.

So did you put that case to the government, and if so, how did you put that case, and what did the government say?

● (0945)

Mr. Mike S. Zafirovski: We did have a number of very in-depth discussions in November, December, and January. There were a number of cases presented to the government during active discussions. But there are no specific actions that came out of those.

Hon. John McCallum: But with all due respect, "productive discussions" sounds a bit like the descriptions of the recent conversations between Mr. Ignatieff and Mr. Harper. "Productive meetings" and words like that are used when you don't want to tell people what happened.

I am asking you what actually did happen. In terms of Mr. Ignatieff and Mr. Harper, we heard after a couple of days what did happen, but the meetings you had were a long time ago. So my question is, what specific proposals did you make to the government

for some kind of assistance, whether to keep the jobs, to help the pensioners, or any other proposals you put on the table, and what was their answer?

And I don't want to just hear "we had productive discussions".

Mr. Mike S. Zafirovski: We did have lots of discussions. Preserving employment was at the top of the list.

We are currently pursuing a number of discussions internally and with outside companies as to the best way to preserve value for the company, including preserving employment. The government has been active in those, and they may be supporting some future activities. But we did have a specific ask, and that specific ask did not materialize.

Hon. John McCallum: So you did ask for something specific and the government said no.

Mr. Mike S. Zafirovski: Correct.

Hon. John McCallum: And what did you ask for?

Mr. Mike S. Zafirovski: Sir, this is obviously.... Those were private discussions, and they were very active discussions, as I'm sure—

Hon. John McCallum: Well, In a parliamentary committee you're supposed to answer the questions. Can you tell me at least the general nature of the proposals to which the government said no? What was it you were asking them to do?

Mr. Mike S. Zafirovski: There was a general request for financial assistance for a period of time.

Hon. John McCallum: How much?

Mr. Mike S. Zafirovski: Those were—

Hon. John McCallum: You requested financial assistance to do what? You wanted it for the pensioners, or for other purposes?

Mr. Mike S. Zafirovski: Those were discussions to help the company, to keep it from going into CCAA.

Hon. John McCallum: So these were proposals to help the company maintain operations in Canada?

Mr. Mike S. Zafirovski: Yes. It was done to help the company continue, without going to CCAA.

Hon. John McCallum: I don't think I'm going to get any more.

Thank you.

The Chair: Thank you, Mr. McCallum.

Monsieur Carrier, *s'il vous plaît*.

[Translation]

Mr. Robert Carrier (Alfred-Pellan, BQ): Thank you, Mr. Chair.

Mr. Zafirovski, it is a pleasure to see you today; but after listening to the answers you gave to my colleagues, I believe that this is a sad day for our democracy and our parliamentary system. You have certainly met with representatives and ministers from the government to talk about your financial standing. Your employees are here today, and are the primary asset of your company. They were not at all considered in discussions about a possible bail-out plan the government would have been involved in. I find this very regrettable.

Currently, the employment insurance program has many shortcomings. In light of recent discussions, everyone knows that those who are not receiving employment insurance benefits will have to wait until an agreement is reached. The government does not care about people, about the public, about its citizens. This is what I find regrettable.

You state that you did nonetheless consider your employees. In my opinion, the employees you must count on are your greatest wealth. How can you look forward to the future if you no longer have the confidence or the appreciation of these employees whom you are not even considering?

You agree to cutting back the pension that they have worked for all their lives. I put myself in their shoes. When working for a business for many decades, there are certainly many things that one does not like, and even uninteresting work must be done. However, one expects that one will be recognized for all of these efforts at the end of a productive period. Yet now employees are being deprived of everything because of current difficulties, and at the same time, the executives are still going to receive millions of dollars in bonuses. This is considered normal, because the executives need the bonuses to continue their work.

I deplore this situation, and I truly hope, as all my colleagues have expressed, that you will stay and listen to what these employees have to say later on. It would have been good to hear them before hearing you. That would have helped us understand their distress and their situation.

Can you summarize your position on all of this?

• (0950)

[English]

Mr. Mike S. Zafirovski: You are talking about a position on what part?

[Translation]

Mr. Robert Carrier: I would like to hear your comments on what I said about how you treat your employees during a difficult economic situation, especially given the fact that you have the collaboration of the current government and the permission of the courts to take such action. As a democrat, this is what is of most concern to me. I am believer in a democratic system that is devoted to the well-being of everyone, collectively. I greatly deplore this situation which you are instrumental in shaping.

[English]

Mr. Mike S. Zafirovski: It's a rather broad statement and question, but let me just make a couple of comments.

Nortel had 100,000 employees back in 2000. The market gap was more than \$250 million. It was in a tailspin at the end of 2005, down to 32,000 to 33,000 employees. I can just tell you the work ethic, the supports, the excitement from the population over the last three years have been second to none. Many of us were on a mission to have one of the great turnarounds in business. It was all based on people; most of the promotions were inside the company. We really thought we'd be able to take four or five years of going backwards to create a company for the future.

We made some big investments, many of which were in Ottawa, on fourth-generation wireless, unified communications.... You can just go through the Ottawa.... So this was not playing defence, because we knew that if that trend from 2005 had continued, this business would have been bankrupt a number of years ago. We thought we were there in the middle of 2008.

Things changed. I can tell you with the same commitment and passion that this will not be a long-term outcome. I'm certain of that. The reason I'm here is because I think I can make a difference, taking the company through this stage. A big part of the efforts we're driving are to preserve the greatest numbers of jobs, which I think we are doing a good job of at this time, and that will be proven over the next number of months.

The Chair: Okay, thank you.

We'll go to Mr. Dechert, please.

Mr. Bob Dechert (Mississauga—Erindale, CPC): Thank you, Mr. Chair, and good morning, gentlemen.

Mr. Zafirovski, Mr. McCallum mentioned earlier the former market capitalization of Nortel. I remember a few years ago I think it represented approximately one-third of the value of all the companies listed on the Toronto Stock Exchange, so I guess all Canadians or most Canadians have shared in Nortel's pain. I represent the city of Mississauga, where a lot of your recently severed and retired former employees live.

I wonder if you could tell us if, through the Companies' Creditors Arrangement Act proceedings, you have any plans to ask the court to set aside any of the funds that might come from proceeds of sale of assets for the benefit of recently severed employees for their severance obligations, or for the pension plan, to help bring its funding back up to the full-funding level. Do you have any plans for that?

• (0955)

Mr. Mike S. Zafirovski: We are viewing—and this is based on very strong legal advice—that the creditors, including all current and former employees, will be in the same level of protection. If you're a pensioner, employee, bond holder, supplier, then our job is to optimize.... And just as another clarification, the severance policy is applicable, obviously, to everything that's happened to this point in time, including levels of management. We are pretty confident that the decision is—

Mr. Bob Dechert: Would you be prepared to ask the court to set aside some of those funds if there's a sale of assets, for example? Would you be prepared to recommend that to the court?

Mr. Mike S. Zafirovski: We had been prepared. The strong advice was that they would not be approved.

Derek.

Mr. Derek Tay (Counsel, Nortel Networks Corporation): Since it's a legal question, maybe I can be of assistance here.

I think the point that Mr. Zafirovski made earlier was that this company is now under a court-supervised process in which you have the monitor and you have various creditors' committees, so we don't make decisions on our own. It's a consultative process.

Mr. Bob Dechert: But you could make recommendations, could you not? You could make a recommendation to the court.

Mr. Derek Tay: I can also say that the court has appointed counsel for all employees, and that in fact the counsel for employees has made that motion, and it's in fact in front of the courts right now.

Mr. Bob Dechert: I understand. I just wonder if the company would make that submission as well.

Let me ask you another question. Mr. Zafirovski, can you tell us the ballpark value of any unused scientific research and experimental development tax credits currently held by Nortel?

Mr. Mike S. Zafirovski: I do not have the exact number, but the number is very significant.

Mr. Bob Dechert: I've been told it's in the neighbourhood of \$1.5 billion.

Mr. Mike S. Zafirovski: Yes, it's well over \$1 billion. That's correct.

Mr. Bob Dechert: So given that it's a valuable asset of the company, are you aware that the retirees' position is that those tax credits were earned with their quite substantial skills and efforts over the years, and represent a significant value in the assets of the company? Given that, would you consider contributing part of the value of those tax credits, the value the company received from the sale of those tax credits—if you were to sell them to another third party that would then use those tax credits—to either the recently severed employees' fund or the pension fund?

Mr. Mike S. Zafirovski: I certainly will take a look at it. But my understanding, simply said, is that all the creditors—

Mr. Bob Dechert: I understand.

Mr. Mike S. Zafirovski: —are on the same place, and not the back of the bus. There's no one in front. The question is whether we can make severance payments and pensions as a priority over all the others. There's certainly lots of empathy for that. I do not believe that's going to be possible.

Mr. Bob Dechert: I would suggest that maybe you could make that submission to the courts to deal with.

The Chair: You have 30 seconds.

Mr. Bob Dechert: I just have another question. I know my time is short. Would you, in your future business plans, have any plan for paying any of those past severance obligations going forward? Say the company comes out of CCAA and it's profitable again. Would you make plans in your future business plans to compensate those severed employees?

The Chair: Very briefly.

Mr. Mike S. Zafirovski: That's part of the restructuring plan, which the courts would have to approve in that process. We'll be dealing with all the creditors. I do not believe there will be a priority for anyone.

Mr. Bob Dechert: You might be willing to consider that?

Mr. Mike S. Zafirovski: Absolutely.

The Chair: Thank you.

We have about two or three minutes.

Ms. Hall Findlay for a short round.

Ms. Martha Hall Findlay (Willowdale, Lib.): Thank you very much, Mr. Chair.

Thank you, Mr. Zafirovski and Mr. Tay, for being here.

My colleagues have asked—and I suspect everyone would agree—that if you are able to stay here for the following hour, if you have any comments after that based on what you will hear, we would really appreciate hearing from you. If those comments could actually be flowed through the clerk so we can all see them, that would be very much appreciated.

When General Motors and Chrysler approached the federal government for aid the first time, they were denied aid. Very publicly, the reason was that their plan was not viable enough. I understand your hesitation to disclose details of your conversations with the government. You have said you did ask the federal government for assistance and that this assistance was denied. Can you please tell us the reasons why that assistance was denied?

• (1000)

Mr. Mike S. Zafirovski: I do want to stay brief on this. A combination of the viability of the industry and the plan was one reason, and whether this was more company-specific as opposed to an industry-specific matter. The auto industry was being viewed as an industry-specific issue, and some of the challenges around Nortel were viewed more as company-specific.

Ms. Martha Hall Findlay: Given your understanding of Nortel and Nortel's viability, and your efforts to keep it out of CCAA, and given what you have read over the last several months in terms of government assistance for General Motors and Chrysler and their ability and their sector, do you think the government should have actually given Nortel assistance?

Mr. Mike S. Zafirovski: We were expecting to have a 5% or 10% growth in the industry, and overnight it went into a 20% decline. There was a very significant shift in telecom, in the communications industry. So any plan that was presented at that point in time, including internally, could have been viewed with lots of skepticism, if you will. So it's whether you can have a viable, guaranteed plan in the fourth quarter of 2008 when the industry came down 30% in revenues from where it was supposed to be. Arguments have been made by many that it was very difficult to have a 100% secured plan for Nortel for the future.

The Chair: You have 30 seconds left.

Ms. Martha Hall Findlay: I suspect it's hard for all of the stakeholders—employees, shareholders, everyone in Nortel—to have you do what you can do to make sure that this company remains viable and yet somehow acknowledge that the government may have not provided the assistance because it wasn't viable. I will just add that my colleague, Mr. McCallum, I think pointed out that the future of this country we believe is very strongly based on innovation and research and development and the technologies, and we see a disconnect.

The Chair: Thank you.

Mr. Mike S. Zafirovski: I fully agree with that. As a side note, I think the governments also believe that's the case. I am very confident to tell you that in our discussions internally, preserving R and D jobs in whatever final restructuring form there will be for Nortel is a major priority. We are hopeful that forthcoming announcements later this summer will in fact be consistent with the view that we've done everything possible successfully to optimize R and D jobs in Canada.

The Chair: Thank you, Mr. Zafirovski.

Thank you, colleagues.

We will suspend for about two minutes and we'll bring the other witnesses to the table.

Mr. Mike S. Zafirovski: Mr. Chairman, I appreciate the request to stay and would also appreciate—and I'm not sure if that's with your approval—making some comments after the hour.

I will stay; I've never shied away from the employees. It has always been the favourite part of my job to talk with employees, and if I can have three or four minutes at the end to make some comments, I would appreciate it.

The Chair: Okay, thank you.

- _____ (Pause) _____
-
- (1005)

The Chair: Colleagues, I ask you to take your seats, please.

You have a point of order, Mr. Wallace?

Mr. Mike Wallace (Burlington, CPC): Thank you, Mr. Chair.

Very quickly, I know we have a busy schedule, and I would like to deal with the motion on the parliamentary budget officer before we break, which I think we have unanimous consent to do. Could we just pass it now, if we have agreement?

The Chair: Do we have unanimous consent to pass that motion?

Mr. Mike Wallace: Mr. Mulcair, are you here with us?

The Chair: Do we have unanimous consent?

Monsieur Mulcair, Monsieur Laforest?

Monsieur Laforest.

[Translation]

Mr. Jean-Yves Laforest: I have a friendly amendment to make to Mr. Wallace's motion. I move that in his notice of motion, there be a definition of the regions designated for the tax credit.

[English]

The Chair: Okay?

Mr. Mike Wallace: No problem.

The Chair: Okay, we'll accept that amendment.

(Motion as amended agreed to) [See *Minutes of Proceedings*]

The Chair: Thank you, colleagues.

We have with us today, for the second hour, the Nortel Retirees' and Former Employees' Protection Committee, with Mr. Donald

Sproule, national committee chair, and Ken Lyons, representative. We also have the Canadian Nortel Employees on Long Term Disability, with Mr. Lawrence Clooney, leader. And we have three individuals: Diane Urquhart, independent analyst; Paul Hanrieder, professional engineer; and David Jeanes, Nortel pensioner.

We'll go in that order, and please limit your comments to five minutes so we can have time for members to ask questions.

Mr. Sproule, we'll start with you, please.

[Translation]

Mr. Donald Sproule (National Committee Chair, Nortel Retirees' and Former Employees' Protection Committee): I thank all members of the committee for this opportunity to speak on behalf of retirees and former employees of Nortel.

[English]

The committee I represent includes Nortel retirees and former employees and was formed after Nortel filed for bankruptcy protection on January 14. We represent some 17,500 pensioners across Canada, the bulk of them in Ontario, but 3,000 in Quebec and 2,000 in other provinces. Of that, there are another 11,000 people who are represented in the health plan. There are 750 pensioners who receive additional benefits, and over 1,000 severed employees who are affected by what's happening at Nortel. Today, in other discussions, I've discovered another 450 employees on long-term disability who are being affected by what's happening with Nortel.

Why are we here today? We wish we weren't here. We wish there were a viable solution for Nortel to emerge from CCAA, but there's no indication that such a plan is forthcoming. In fact, the press is full of indications that the pieces will be sold off and what will be left will be a rump of the corporation.

There is a campaign to save Nortel that's under way from former executives, and I wish them well, and I hope they get enough oxygen to breathe. But the reason I am here is I must plan for the worst outcome. That worst outcome will be the windup of Nortel.

Who is affected? It's the registered pension plan. It's underfunded. Yes, the pension assets are segregated from the corporation, but there's a significant piece of underfunding in the plan itself, to the tune of about \$1 billion. That represents two plans, both the negotiated plan and the non-negotiated plan. There are union retirees who are also affected. That plan, as Mr. Zafirovski has said, has dropped 31% since the last evaluation. Under CCAA and BIA, our pension deficit will sink to unsecured creditor status.

The retiree health plan and other benefit plans are underfunded. That whole area is extremely opaque. Pension plans are at least public, and there's information available. So unlike the registered plans, it's not funded, it's paid out of Nortel revenues, there is zero visibility in terms of the long-term viability of these plans, and there's no federal or provincial government oversight. These claims will actually sink to unsecured creditor status. And in the case of putting pensions and the health plan together and the loss of that for some of our members, it would be welfare for some of those people.

In preparing for this, I started looking at the long-term disability group. Again, there are no federal or provincial standards for long-term disability. The plan is administered through Nortel's health and welfare trust, and is funded, again, through Nortel general revenues on a quarterly basis. It is a self-insured plan. There is no backing of any insurance companies. If Nortel goes insolvent, the monthly payments to those long-term disability people will sink to unsecured creditor status. If they ever make it to the pension plan, they'll lose any accrual of those dollars in terms of making it into a pension plan. For them, they'll lose crucial health care. Again, it means welfare for some, for people who are ill-equipped to look after themselves.

Finally, there are the severance people. Employment standards acts, from what I understand, are a lot in the provincial domain, but those standards are being overridden by CCAA and BIA. Those severance claims will sink to unsecured creditor status. As we all know, the severed employees now have to move on to EI and get handouts from the taxpayer.

Who are the unsecured creditors? Let's look at number one: the bondholders, a sophisticated bunch of money managers—sophisticated not only on the bondholder side but in the corporation. They negotiate between equals. They do it for a living. The bondholders take an active view of risk management, of what happens if the corporation goes bankrupt. They look at the probability of default. They shorten the maturity dates on bonds, they ask for higher yield, and they're clever enough to make sure they get cross-guarantees between the two jurisdictions of Nortel, between the U.S. and Canada. In this environment, the original bondholders are actually selling or probably have sold off a lot of their assets, and they've been picked up by vulture bondholders. The information I have is that those bonds are probably going at 12¢ on the dollar.

I don't know what the outcome is going to be if Nortel goes insolvent, but as an unsecured creditor, I'm going to get something north of 12¢ on the dollar. Let's call it 20¢ on the dollar. But I and all of the people I've talked about are going to take a significant haircut.

I'm worried about other jurisdictions. This is a very complex case. Nortel is a large organization. From what I understand in Nortel Canada, there are very few assets. There is little cash, and a global R and D centre with huge costs associated with it. So there are many liabilities.

• (1010)

One of the most significant of the liabilities is what's represented by the group I represent—\$1 billion at least from a pension underfunding, plus another maybe \$300 million if you add up all the other issues. Outside Canada there's cash, but it's cash that probably can't be reached, because it's tied up in China, which has policies that don't allow you to bring cash back to Canada.

My concern as a creditor is to make sure that the rightful assets belonging to the parent corporation come back to Canada. I am also concerned about other jurisdictions trying to reach out and grab assets in Canada, where there are limited Canadian assets.

Let me move on to the retirees. We are not a sophisticated bunch of money managers. There is an inequality between what the company understands of the pension plan and what the retirees

understand. We've put in a lifetime of work and invested in our pensions and our benefits. For us, risk management was all about whether we were going to live too long or too short, whether our spouses would be looked after, whether we'd have a good health plan if our health declined. We never contemplated company bankruptcy.

For the disabled employees, their wage replacement and health care claims are going to sink to unsecured status. Any pension accrual will sink to unsecured status. These people are not eligible for EI or WEPP—all they're going to get is their CPP disability. For the severed employees, there will be no severance pay. Most employees did not even contemplate that they weren't going to get severance. It's highly unusual for people not to be paid severance as they leave the corporation. These people have been forced onto EI, forced to go on at the taxpayers' expense.

What we have here is an egregious imbalance. This problem has been known for a while, and it's not been fixed. People such as pensioners and the disabled and former employees sink to the bottom of the ladder. In today's economic climate, things are going to be brought forward. It's not just about the assets, or even the tax implications. The bondholder is going to get tax write-offs, tax gains. I don't know what we're going to get. We're going to lose money, but I doubt if we're going to be given any treatment from a taxation point of view.

I'm here today to ask you, the members of Parliament, to remedy this situation. The CCAA and BIA sinks us down to unsecured creditor status. I urge you, with the utmost urgency, to grant higher-priority ranking to pensioners, disabled employees, and severed employees. I ask you to handle their claims.

This is a federal jurisdiction. Pensions are provincial issues, but this is a federal jurisdiction. Two days ago there was a unanimous vote in the House, and one of the items in that unanimous vote was to give pensions higher priority in bankruptcies. That unanimous agreement has now been shifted to a study by some other committee. I think what's interesting about the proposal here today is that it requires no new government spending. So there's an opportunity here.

Government, you're investing in infrastructure today to protect the economy. Could you please invest in the legal framework to correct this egregious imbalance? This legislation is shovel-ready, and I implore you to act quickly.

Thank you.

• (1015)

The Chair: Thank you.

Mr. Clooney.

Mr. Lawrence Clooney (Leader, Canadian Nortel Employees on Long Term Disability): I'd like to pass my right to speak to Sue Kennedy, who is actually the chair of the group.

The Chair: That's fine.

Ms. Kennedy.

Ms. Sue Kennedy (Spokesperson, Canadian Nortel Employees on Long Term Disability): Thank you very much.

We appreciate the chance to speak to everyone here. In a way we've been hiding in the back because our benefits were still being paid up until now, and we appreciate that. You don't know how much we appreciate it.

As people on LTD, we have no options. We basically ended our working careers when we qualified for LTD. Now that things are getting to this stage, probably only a small percentage of the people on LTD recognize that their benefits might be at risk. We know very well how much they are at risk from doing a lot of research on the subject.

We wonder why Nortel could get tax benefits by storing the money to provide our benefits in a health and welfare trust but did not insure this LTD benefit, as specifically recommended by the Canada Revenue Agency's bulletin on the subject. We also wonder why our government has no way of enforcing that requirement and tells us that we need to come to the finance committee to ask them why it was not protected and what the finance committee can do about it.

Right now, we're still being paid. We appreciate that. We also appreciate that it could end at any time, and we have a lot of years before we can get to our pensions, if there are enough pensions left, thanks to all the efforts of the pensioner group. During the time we're waiting, which could be up to 24 years for some of the people that we know in our group, we will no longer get our wage replacement. It was 70% of our original salary for most people. That salary could be from a long way back; in my case, it is in 1994 dollars, so that was a pretty small salary to start with. From that, if we get 20¢ on the dollar, I'll be making about 20% of the salary that I was getting from the LTD pay.

We will lose our health benefits. Many of us, in addition to making great use of the health benefits provided by Nortel, also have significant out-of-pocket health costs, so this is another factor that really worries us. We can't qualify for EI because we weren't paying into it, nor can we qualify for the wage earner protection program.

We will be left with the CPP disability. That will be about 20% of what we were making on our LTD. CPP disability was designed to provide 25% of the basic minimum that people need to live on.

As Nortel employees we deserve better than that. Instead, some people on LTD will end up possibly on welfare. We will end up dependent on the government—not in a proactive way, in that they protected our benefits, but retroactively, by applying for welfare. Some people in our group will end up in the Royal Ottawa Hospital, and one already has—that's really hard for us to see—because of all the stress this is causing us.

Thank you.

• (1020)

The Chair: Thank you very much for your presentation.

We'll now go to Ms. Urquhart. Ms. Urquhart, please go ahead with your presentation.

Ms. Diane Urquhart (Independent Analyst, As an Individual): I'm an independent financial analyst.

Nortel was operating at a cost structure above what its revenues could support, and it's burning cash at the rate of \$1 billion annually. All the figures I'm giving today are in U.S. dollars.

The financial crisis is causing a large drop in telecommunications equipment sales throughout the world, and Nortel, due to the uncertainty of whether it's liquidating or not, is having its revenues decline at a much greater rate than its peers in the industry.

I'd like to emphasize that Nortel chose to enter bankruptcy protection in January 2009 by missing a \$107 million interest payment, despite the company having \$2.5 billion of cash on its balance sheet. Nortel's next major principal repayment is not until 2011, when \$1 billion of debt will need to be repaid. That, of course, is two years from now. We're dealing with much more stressful situations in other bankruptcies that already have debt repayments that cannot be refinanced.

Nortel management has indicated it has volunteered to enter bankruptcy protection to avoid paying severance. We don't have detailed estimates from the company, but on the assumption of the 5,000 jobs cut around the world, the estimated bill for severance would be approximately \$500 million, of which we would anticipate Canada to be approximately \$100 million, in U.S. dollars.

Under the current CCAA and BIA laws, it is correct that severance does not have preferred priority over unsecured creditors. I would like to note, however, that it is prevalently the case that numerous companies that have filed for CCA protection enter in the beginning days of the process to seek approval from the judge for the payment of severance. In this case, they have chosen not to do that and they have said the purpose of the filing was not to pay severance in order, as we heard many times today, to optimize the value of Nortel—"we need to pay bonuses to the current employees to preserve the value of Nortel". Obviously, severance and making special contributions in order to top up the pension fund deficit is, in his mind—Mr. Zafirovski, for respect—depleting value for the estate. From my perspective, those statements of optimizing value have a lot to do with maximizing the value for the bondholders by not paying the severance and the pension fund deficits around the world.

Indeed, Nortel is definitely technically bankrupt. The value of the assets on the pending sales, as in the early stages of ongoing concern, are considerably less than the estimated \$11 billion of claims. I've estimated, based on what we can find from the updated actuarial reports, that the employment-related claims in the world are approximately \$5 billion. So half the creditor claims that are currently being sought for compromise are in the employment-related field: severance, disability, pension fund deficits, not only in Canada but in the rest of the world.

After listening to the presentation of management earlier today, it's very clear to me that they are no longer vigorously pursuing Nortel as an ongoing concern. All the phrases are "I tried to rectify the company", "I really believed in the turnaround". These are all in the past tense.

This group, both the terminated employees and the retirees, would like to have an ongoing concern to better enable the payment of the pension fund deficits. And more importantly, they would like to have an ongoing concern to provide research and development jobs in our country for the children of the retirees, the engineering graduates, the mathematics graduates, the physics graduates, and so on, so they could have gainful employment in their pursuit of innovation within Canada and not have to go to the research and development centres of the foreign buyers of the Nortel businesses.

• (1025)

I'd like to note that it is erroneous for the government to say it is reluctant to intervene in the provincial jurisdictions for severance and pension benefits standards. The federal government administers the Companies' Creditors Arrangement Act and the Bankruptcy and Insolvency Act. I don't have time today to go into all the details of this, but I urge everyone to examine the Court of Appeal of Ontario case by Justice Farley. When the Superintendent of Financial Services of Ontario asked his court to approve the special contributions in order to replace the deficit of the Ivaco pension plan, he turned down the request—even though that would have been in the normal course of provincial legislation—on the premise that Ivaco would be liquidating, and under the BIA the pension deficits and the special contributions were *pari passu* with the unsecured claims. He was unwilling to execute the protections that were in the Ontario Pension Benefits Act.

For this reason, and as a result of what we have heard today about the premise for not paying the employment-related claims in the Nortel case, we ask for an emergency amendment of the Bankruptcy and Insolvency Act to give super-priority to the severance and pension deficits over the bondholders and the unsecured suppliers in this situation.

A statement was made that there were no secured creditors in this company. I'd like to note that \$200 million of debtor-in-possession financing—non-arm's-length financing—has come up from the United States. It has been granted super-priority status with respect to the cash disbursements that will come from the sale of assets by Nortel. It is a Canadian-based company, although there are multiple subsidiaries in multiple areas of the world that have their own legal corporations and their own specific indentures and considerations.

A point was made Don Sproule, the head of the retirees protection committee, that Canada is in a particularly precarious situation. Even though Nortel has a 115-year history and is the Canadian base of operations for half of the research and development of Nortel in the world, it is primarily a cost centre. This is typical of a number of successful international companies.

Due to the inter-corporate transactions between Canada and the U.S. on internal transfer pricing agreements, inter-corporate loans, and so on, it is our firm belief that unless there is government intervention there will be limited cash from the disbursements of the sales of Nortel available for provision of top-ups to the pension

plan and severance—so much so that we could have nothing in Canada, or perhaps ten cents on the dollar.

I think it is very optimistic at this point, based on the inter-corporate transactions without intervention by the CEO of the company, to disband with internal contracts to ensure that the appropriate amount of money is dedicated for the payment of the pension deficit.

The Chair: Ms. Urquhart, I would just ask you to conclude.

Ms. Diane Urquhart: Basically we're asking for the BIA amendment. We're asking that Mr. Clement be required to set conditions on the pending sale of businesses by the Canadian-based international company so that a substantial portion of the proceeds does not go to the debt-holders of Nortel, but goes to the pension fund and to pay the severed workers.

The Chair: Thank you.

We'll go to Mr. Hanrieder, please, for your opening statement.

Mr. Paul Hanrieder (Professional Engineer, As an Individual): Good morning. My name is Paul Hanrieder. I'm a terminated employee of Nortel with almost 15 years with the company. I would like to thank the members of this committee, especially Mr. Mulcair, for the opportunity to come here today to speak to you on issues related to Nortel's bankruptcy protection and filing, the impacts on terminated employees, and ancillary effects to Canadian taxpayers that have resulted.

Since the bankruptcy announcement on January 14 of this year, there have been significant impacts to employees who have worked extremely hard and given their hearts and souls to this company for a great many years. I speak to you today in representation of well over 440 terminated employees who have been laid off, and another 600 more potentially expected to be terminated this year.

You can only imagine the sheer terror that many of us awoke to on that fateful day. Dreams of moving on and building new lives, finding new jobs, building new businesses, and all manner of other hopes and dreams all vanished in seconds. The vast majority of employees had decades of history with Nortel and were promised industry-standard severances that would have permitted them to transition smoothly into new roles and opportunities.

• (1030)

The Chair: Mr. Hanrieder, I've been told that you're speaking too fast for translation, so please slow down.

Mr. Paul Hanrieder: Sorry. I'll slow down.

All of these contracts were conveniently rendered null and void when Nortel filed for creditor protection under the federal CCAA legislation. To our even further surprise, we were now to be ranked equal to unsecured creditors and could only hope to expect pennies on the dollar in the settlement that could easily be more than a year away. We also discovered that severance and pension issues are only protected under provincial jurisdiction. But under federal CCAA protection, all provincial requirements are no longer honoured.

At the time the company filed for creditor protection, it was sitting with over \$2.5 billion of cash on its books. It boggled all our minds to understand how creditor protection filing was needed with that much cash available. We were, only weeks before, assured by the CEO that we had liquidity well into Q4 of 2009.

This is what we need to fix. CCAA and BIA legislation needs to be revised to give super-priority to current and former employees' claims in these circumstances. Employees and pensioners have no recourse with a bankrupt company and therefore cannot be treated as a commercial creditor. Employees and pensioners need to be acknowledged as a unique group. Please ensure CCAA cannot be used, as it has in this case, to circumvent provincial employment standard laws and to hide from employee financial obligations for severance and pension top-up requirements. Please reference the Mike Zafirovski e-mail I've provided in my brief from 1/30/09. It clearly states it was key to Nortel's liquidity going forward that severance obligations be waived through the creditor protection process.

Unfortunately, despite the clear focus on liquidity and finding a way through its debt minefield, the company is now paying \$45 million in executive bonuses and paying employee incentive bonuses of an estimated \$68 million internally. This does not sound to us like a company that is trying to find a way out of financial straits.

This path is an all-too-easy way for employers to unload employee obligations onto the Canadian government and its taxpayers. This path pushed an expected 1,100 employees onto unemployment insurance at an estimated cost to us as taxpayers of \$20 million—a loss of \$34 million in income taxes we would have paid on the severance.

All told, by skilful execution of this legal plan, Nortel avoids paying an estimated \$125 million in severance obligations in Canada, \$1.25 billion in pension obligations, \$200 million in post-retirement health and other benefits. They also got to take out of the pockets of all Canadians about \$54 million without a single shot being fired. Wow, this is a pretty sweet deal for them.

This was all accomplished using the loopholes that exist in this aging CCAA and BIA legislation and with the help of \$5.5 million per month of lawyers. This needs to be fixed, and fixed now, as it has been and will be used by many more companies that will go into bankruptcy in the future.

We, as the severed employees of Nortel, want to ensure this indignity is not propagated onto any other hardworking Canadian employee in the future. We want to ensure the laws are amended and ensure that employers such as Nortel are forced to honour their employee obligations and do the moral and ethical thing for the employees. Nortel and its executives need to be made accountable to this case, and before any bonuses are paid out, they need to be made to honour their severance and pension commitments.

Please refer to the additional briefs we have provided on this matter, as I could not cover all the issues in this short presentation. We are more than happy to work with any levels of government to rectify this situation for future generations.

In closing, I would like to thank everyone for their time and attention here. Once again, I ask our government to begin immediate

work on fixing the federal CCAA and BIA laws to protect the innocent Canadian workers going forward.

I will close now and make myself available to answer any questions you may have.

Thank you.

The Chair: Thank you for your presentation.

We'll go finally to Mr. Jeanes, please.

Mr. David Jeanes (Nortel Pensioner, As an Individual): Yes, thank you very much, Chair. I'll speak very briefly as an individual and as a pensioner.

I joined Bell Northern Research, which subsequently became part of Nortel, back in 1973, and I went on pension 29 years later. I want to say that one of the problems you're facing is that among the 20,000 or so people who are already affected or who are going to be affected by the underfunding of the pension plan, many older people are completely unaware of the risk they are at.

I've been spoken to by many people who are on survivor pensions and who have continued to assume that their pensions were protected by government. These issues of the underfunding of the pension plan, the impact of the failure of the stock market, and the impending cancellation of many of these supplementary benefits, such as the health plan, life insurance.... The health plan, of course, includes dental benefits, includes the drug plan and so on, which is absolutely crucial for these older retirees. Many of them are going to be in a case of extreme hardship.

In this room today I recognize many former colleagues and contacts from Nortel. I think you've heard repeatedly and through many other contacts that Nortel was very much a teamwork kind of company that made a huge contribution to Canada's technology economy. It functioned like a university. It was perhaps more important than the National Research Council in terms of creating knowledge and intellectual property that allowed the formation of many companies and many world-leading technologies. It was a jewel that is at risk of loss. Therefore, I, like many other former Nortel employees, hope that initiatives may be possible like the Robert Ferchat proposal that part of the company might be resurrected to create a much smaller but still a technology jewel as part of Canada's technology economy.

I will say that you have many people who could not come into this room today. There were people who were turned away and are standing on the front steps outside Parliament this morning. Back in January, when Nortel first filed for CCAA protection, we had over 700 people show up trying to get into the first information meeting organized entirely by volunteers, because many of us, as pensioners, as retirees, have just not had the kind of information from the company or from the monitor to really make it clear what's happening in this process. So we're here before you today, and you've heard some eloquent proposals from the Nortel retiree protection committee. I have volunteered also to help that committee. I just wanted to speak today as a pensioner, like many of the people sitting behind me for whom this is a crucial issue.

Federal government intervention is essential, because although this is a multi-jurisdictional problem, as you've heard, many of the problems have been created because the federal process overrides provincial protections we were relying on.

Thank you.

• (1035)

The Chair: Thank you very much for your presentation.

We'll go to questions from members immediately. We'll go to Mr. Pacetti to begin.

Mr. Massimo Pacetti: Thank you, Mr. Chairman.

Thank you to the witnesses for appearing. It's been very interesting. I knew we'd get another version of the facts.

It's difficult. Everybody in this room is here for the right reason, and I think we all sympathize with the former employees. It's funny how we got here. We're here actually for another reason. We're conducting a study on the stability of our financial system and credit availability, and then we noticed there were problems with pensions, so we've been conducting a study. As it turns out, there's no better case study than the present case study, because it's actually a live one.

Now we're caught in a dilemma, because as parliamentarians we have committees and we have our own responsibilities within those committees—forget about our jurisdictional responsibilities, whether it be federal politicians, provincial, or municipal politicians. You're lucky I can toss the ball over, because we have the parliamentary secretary for industry, but I'm not sure how we're going to be able to solve this.

There are two points here. There's the same question I asked Mr. Zafirovski initially; that is, how do we prevent this from happening again, and what do we do now? What is happening now I'd hate to say is a commercial dispute, but there is definitely disagreement on the facts. How do we get to an agreement if we can't even agree on what happened in the past? So this is a big problem.

Everybody pretty well has suggested that we need to change the CCAA. I don't know how that's going to happen in the next little while and help the people we're trying to help. So I need some direction. I have to understand a little bit of what's happened in the past.

For example, Mr. Sproule, you talk about the bondholders being sophisticated, but I beg to differ. The bondholders are not sophisticated or else they wouldn't have invested. I think they're the least sophisticated of all, and that's what we've been able to see during all our studies. I'm going to turn around and maybe put the blame on you, because you were actually there. You're the employees; you see what's going on. Why didn't you help us and say maybe this is not a company we should be investing in? It might be a hard question, and you might laugh at it, but you are the front people. What happened there?

• (1040)

Mr. Donald Sproule: Could I respond to the sophistication aspect? If the bondholders are not sophisticated, then I'd hate to say what I am. I don't have the assets or the resources to investigate; they, when they investigate, look to see if the company is going to go bankrupt. I don't, as an individual or a pensioner.

Mr. Massimo Pacetti: The bondholders who now have the bonds are probably sophisticated because they're speculating now. I'm talking about the original bondholders, who actually did lose money. Those bondholders are actually in this room, because those are their pensions, right? That's who invested in those bonds.

Mr. Donald Sproule: Indirectly.

The question is, where did the company go wrong? It's been six years since I left, and I don't know. Certainly the legal issues from an accounting point of view did not help the company. Then we had a period when I think senior management was probably creating an air of competence, stability, and integrity, but not leading the company forward. I think that maybe by the time Mr. Zafirovski came around, he was working on the right things, but he had some real challenges in front of him.

What I think really precipitated some of this is the collapse of the marketplace. The water went down, and those ships that were having troubles were exposed. That tsunami of what's happened in the marketplace has certainly hurt the company. If I understand correctly, from a pension point of view there were some obligations in the U.K. that actually helped drive the company into chapter 11. That was the triggering event to go into CCAA.

Mr. Massimo Pacetti: That's part of the struggle that we have.

I know you're speaking as a former employee, but do the employees presently structure themselves right now? I don't want to use the word "unionized", but are they structured? Do they get together to decide on the benefits they do have access to? Are you not organized in that fashion?

Mr. Donald Sproule: Not at all.

Mr. Massimo Pacetti: I have a quick question for Ms. Kennedy, because my time is limited.

Ms. Kennedy, I want to ask about what happened in your case. To an extent, you faulted the employer by saying they didn't take insurance. Again, I'm not taking sides, but I'm trying to understand: wouldn't that have been one of the questions you would have asked? You then turn around and say it's the government's responsibility for them to have insurance.

Ms. Sue Kennedy: We looked for many people who might have insured our benefits. It was a long search. At first we originally thought that it was Sun Life; then we discovered that was for administrative services only. Then we looked at the fact that the money was placed in a health and welfare trust. According to the Canada Revenue Agency bulletins—and by the way, I'm nowhere near to being an accountant; I'm a psychologist—only the LTD part of the benefits that are put in there—

Mr. Massimo Pacetti: An accountant wouldn't have been responsible for your health plan. That's in the fine print. I think you can blame that on the lawyers. I think we can agree on that.

The question again is, how can we prevent that in the future? You were contributing to an insurance plan, and you were expecting the insurance plan to have an insurance. Is that feasible?

Ms. Sue Kennedy: Attempts were made in Alberta to protect against problems like this, but it was done at the provincial government level. They changed the Insurance Act so that a self-insured company providing LTD insurance—

Mr. Massimo Pacetti: I have to interrupt you, because I want to ask a quick question to Diane.

Diane, you put a lot in your brief, as usual, and if I can be critical, it's all over the place. One of the things that I think is also important for Mr. Zafirovski to respond to is the fact that you mentioned that there is a secured creditor, whereas he specifically stated that there were no secured creditors. I think that's an important point. Could you perhaps clarify that?

The Chair: Ms. Urquhart, please give a very brief answer.

Ms. Diane Urquhart: A \$200 million debtor-in-possession line of credit has been offered by Nortel Networks Inc. The beneficiary of that is Nortel Networks Limited, which is the Canadian operation. This is typical financing. In the first days of the bankruptcy protection filing, the court granted that they would have preferred status above all unsecured creditors. Since it is super-priority, I would say it's effectively secured financing, and it's certainly to the detriment of the net asset estate for Canada that is available to pay the pro rata share to the severance and the pension deficits of Canada.

• (1045)

The Chair: Okay, thank you.

Thank you, Mr. Pacetti.

Mr. Mike S. Zafirovski: Can I clarify that, Mr. Chair, if you're interested—

The Chair: Mr. Zafirovski, what we will do is at the end we might have about three minutes and I'll give you a very short time then.

Monsieur Laforest, *s'il vous plaît*.

[Translation]

Mr. Jean-Yves Laforest: Thank you, Mr. Chair.

Welcome and good morning to all of the witnesses. I would like to address Mr. Ken Lyons, specifically.

Mr. Lyons, I know that you are one of the representatives of the Nortel Retirees' and Former Employees' Protection Committee. You represent approximately 3,000 Nortel retirees in Quebec.

Earlier, I was listening to my colleague, Mr. Carrier, talk about how human capital, human resources are and will continue to be the greatest asset for companies such as Nortel. We have heard from people who feel that they gave everything—their lives, their passion—to Nortel.

Earlier, I asked Mr. Zafirovski how he felt about the situation, as he did not even try to help people. I did not ask this question, but it was understood afterwards. When he approached the federal government, and met with ministers, he did not even try from the outset to protect his former employees and retirees. This was not done.

I heard my colleague Mr. Pacetti tell us that he does not want to blame anyone. I have difficulty accepting the fact that what could have been done to support this human resource, retirees, was not done from the outset. They want to count on their human resources for the future, but at the very least, they must show respect towards those who made Nortel achieve the level of excellence it achieved.

Mr. Lyons, I would like to hear your comments on that issue in particular.

Mr. Ken Lyons (Representative, Nortel Retirees' and Former Employees' Protection Committee): Good morning, ladies and gentlemen.

Firstly, I would ask those who are asking me questions in French if they would be so kind as to allow me to respond in English, for the benefit of those who do not have access to interpretation, if that does not offend you. Would that be all right?

Mr. Jean-Yves Laforest: Yes, that is fine.

[English]

Mr. Ken Lyons: I'll answer the question in English.

How do I feel in this situation? I feel that I was just dumped aside. I gave my life. I loved working for Nortel. It's a passion for me. It is so much a passion that I still manage a museum, voluntarily, that boasts about Nortel's history going back to the very beginning. I'm still doing it on a free basis.

Nevertheless, we have pensioners who have pensions of \$12,000 a year, \$1,000 a month. If they take the hit of 31% they will go down to \$690 a month. Think of the survivors. They're taking another hit. It really hurts.

The Nortel I knew was a fabulous company to work for. We stuck together and we knew where we were going and all that. Unfortunately, what I've seen happen after I retired in January 1999 is the company before that point was well managed, but then they went on a buying spree and we ended up with new CEOs who seemed to be intent on creating wealth for themselves, and that caused a downward spiral.

[Translation]

I hope that answers your question.

Mr. Jean-Yves Laforest: I would like you to further elaborate.

You must certainly have your own overall interpretation of the causes of this collapse. Could it have been prevented? What solutions would you suggest, at the very least to resolve the current problem, and if possible, prevent it from recurring?

• (1050)

[English]

Mr. Ken Lyons: The main reason we end up with pension fund underfunding is the Income Tax Act. It's not a provincial responsibility, it's a federal responsibility. It prohibits overfunding pension funds by more than 110%. That's the big problem.

It was stated by Mr. Zafirovski a while ago that Nortel has maintained its payments, but it took a hit. When they were able and they had the funds to put money in the pension fund, they were not allowed to do so because of the Income Tax Act. We've made proposals that it should be raised to 125% instead of 110%.

There's also another proposal, which is far more interesting to companies and the stakeholders, the retirees, and that is to have a superfund that would sit on top. The companies would have the tax breaks, and if the pension fund is fully funded at 100%, then they could start taking money out of the superfund without having to go through all kinds of hurdles.

These are intelligent solutions.

There are also solutions some of our members have looked at that can help our own situation. It may well be, and we certainly don't hope so, that Nortel will not be able to restructure successfully and keep on with the pension fund obligations, so we're going to be faced with a hit. The big problem we have right now is a wind-up. We don't want our plan to be wound up if this happens. Keep it alive.

I do not have the information with me, but we have proposals where that could be done, without hurting the pensioners as much as it is now.

[Translation]

The Chair: I will allow you one final question, Mr. Laforest.

Mr. Jean-Yves Laforest: Thank you, Mr. Chair.

Earlier, Ms. Urquhart made a few suggestions, one of which is to give former retirees priority as secured creditors in the sale of assets.

Are you in favour of this suggestion? Are you pressing the government to take a step in that direction?

Mr. Ken Lyons: I agree completely.

[English]

I'm fully in support of the proposition that the pension deficits should be treated preferentially, as wages are. Looking at it, what's our pension? When we were working, we were given a salary, taking into consideration that we had a pension. We didn't have quite as much money as others, all right, so what we have now are deferred wages.

It's the same thing with our benefits. One thing I didn't mention a while ago is that if we lose our benefits, it's going to cost us about \$250 a month on top of the loss that we have. You know, we don't have bonuses. What we see on one side, unfortunately, are bonuses: they're going up, and we're going down.

The Chair: Okay, thank you.

We'll go to Mr. Kramp now, please.

Mr. Daryl Kramp: Thank you, Chair.

Thank you so much to our guests for coming in.

Mr. Lyons, of course you came up with a number of points there, a superfund, etc. These are obviously ideas this committee has been dealing with; we've had a pretty exhaustive study on pension capacities and liabilities. You also mentioned as well that you have other plans you would suggest, which might even be in the offing. We would like you to submit those in writing to this committee. You certainly don't have the opportunity now, with the brevity of time we have. I believe we would certainly entertain those and throw them into the mix for our deliberations. We would therefore appreciate it if you would do that.

Mr. Ken Lyons: You can count on it.

Mr. Daryl Kramp: Thank you very kindly.

Mr. Hanrieder, I've noticed that you've had your hand up on a number of occasions when you haven't had the opportunity to comment, certainly during Mr. Pacetti's turn. Maybe I'll give you that opportunity now on a couple of those points.

Mr. Paul Hanrieder: I appreciate it.

Yes, I'd like to comment about the feeling of the employees inside. They say that we saw this coming. Well, Nortel employees are probably the most dedicated, hard-working employees. It was a passion, as mentioned by some of the members down here. We went in there and we built the company. We built products that were simply amazing in the market, etc. We were fully invested in recovering the company. Many times Mr. Zafirovski rallied us as employees to do that.

As I said, rumours of bankruptcy were happening in the November timeframe of last year. They told us very clearly, "Don't worry, we're into Q4, give us some more hard work and we'll be more than happy to make this company successful". As I said, this was a surprise to us. We were fully invested in making the company successful.

Mr. Daryl Kramp: Okay, thank you.

Mr. Sproule, on the actual liabilities that are there in the various sectors, whether it's severance and disability or the pension, the various components of the liability that sits before all of the people right now, could we have a breakdown as to the percentage and total cost of each of those?

• (1055)

Mr. Donald Sproule: You certainly can. Our actuaries are working on it. Certainly on the pension plan that's well understood, but we're trying to get an estimate now on the remaining items.

We will certainly table those numbers for you. Some may be estimates, and some will be exact figures.

Mr. Daryl Kramp: Okay.

I would like to ask for your comment. Obviously, in priority ranking for the creditor status, there's always that dilemma between servicing that individual and/or that pension versus the capacity and availability of being able to raise capital on the markets. As a lender, you're not going to go to a company and say, "Well, we're going to provide x amount of dollars, but it's too bad, so sad, we'll sit at the end of the line."

It's really a difficult challenge to work through. A number of interesting proposals have been brought forward. I'm wondering if your group has given any thought to trying to find the mix that accommodates both. We can't have just "I win, I win", and the other corporate entities can't just say, "Only me, only me". Where do we find that balance in there? I would ask for your thoughts on that.

The Chair: Mr. Sproule, and then Mr. Clooney wanted to comment.

Mr. Donald Sproule: I'll hand it over to Diane in just a second.

In terms of balance, from an OECD point of view, there are studies out there that basically show certain countries doing quite well, where in bankruptcies the pensioners do get priority protection. In other jurisdictions, where there's no such clause, they have tremendous pension benefit guaranty funds that look after the employees.

In the United States, the land of free enterprise, \$54,000 a year is what the United States government, in the pension benefit guaranty fund, guarantees to pensioners. In the U.K. it's £28,000 a year. In Canada, Ontario is the only province that will do it, and they're talking about doing \$12,000 a year. So 30% of our constituency will get nothing because the other provinces do nothing.

Again, yes, it's a balance. It's a balance in terms of what the capital markets expect. Certainly, from an OECD point of view, it's an accepted policy.

I'll hand it over to Diane.

The Chair: Mr. Clooney wanted to comment as well. Then we can go to Ms. Urquhart.

Mr. Lawrence Clooney: Thank you very much.

I have two comments. The first is with regard to the statement that was made on why we didn't question our LTD benefit.

When I came out of university and joined Nortel, I got all these benefits. I thought they were great. When I looked at the brochures and the glossies, it seemed to me that I was getting an insurance policy, that if I went on disability, I would be insured beyond the life of the employer should they go bankrupt. Everything seemed to look that way. The glossy brochures looked that way. On my T4A statement the payer's name was Sun Life Assurance Company of Canada. Everything looked like that.

We have phoned Nortel HR on several occasions in the last several months to find out if we are insured. We have been given no indication of that. We have not been handed our policies or our contracts—nothing. So we are assuming the worst-case scenario: that we are not insured.

The second thing I'd like to read to you is something that came out of *The Economist* on May 7, 2009:

On April 30, after the failure of negotiations, Chrysler entered Chapter 11. Under the proposed scheme, secured creditors owed some \$7 billion will recover 28 cents per dollar. Yet an employee health care trust, operated at arm's length by the United Auto Workers union, which ranks lower down the capital structure, will receive 43 cents on its \$11 billion-odd of claims....

A precedent has been set in the U.S. with regard to giving pensioners and disability people a higher ranking on the creditor list.

The Chair: Thank you.

Ms. Urquhart, you have about 30 seconds.

Ms. Diane Urquhart: Thank you.

I just want to make the point that Australia made an amendment of its bankruptcy acts on a live case in order to give priority status to pension fund deficits. So we do have a precedent in the world. Sweden, Korea, and Japan are among a number of countries who give preferred status to severance and pension fund deficits.

I would argue that Canada and the United States and the U.K., the three places where Nortel has filed for bankruptcy, happen to be the countries that don't have the preferred status protections.

The Chair: Thank you.

Colleagues, I know you're looking at the clock. The fisheries committee is scheduled for 11 o'clock, but they've agreed to give us a few more minutes to finish this round.

Mr. Mulcair, you have seven minutes.

● (1100)

[Translation]

Mr. Thomas Mulcair: Thank you very much, Mr. Chair.

I wish to thank all the people who are here today for putting a human face to this drama.

[English]

It's so unbearable to watch what's happening to the individuals but also to realize, as the CEO of Nortel pointed out, that they approached the Canadian government to try to find a solution that would avoid the breakup and destruction of Nortel, which has generated so much wealth and growth and richness and resources, well beyond its own walls, in the Canadian economy and in the intellectual community. The breakup of Nortel is the Avro Arrow of the 21st century. It's one of those colossal mistakes that get made, and I was really distressed to find out that the door had been slammed on an attempt to come to a solution that would have allowed Nortel to continue as a going concern, as opposed to breaking it up.

Mr. Lyons, thank you for pointing out something that a lot of people don't think about, and that is that the money that goes into pensions is simply forgone income. It's your money, but you're putting it there. It doesn't belong to the employer; it doesn't belong to the employee. It's yours for later use, and you have to be able to call on it.

There's another issue the chairman referred to, and it's worth mentioning now. Because of the size and the scope of the changes Nortel has gone through, the variations, every possible perverse effect has been amplified, magnified—for example, the issue of the phantom income. For people who haven't followed the issue, it's going to be dealt with in September. A lot of Nortel employees bought stock, and there was a deemed disposition at a higher price. It was money they never saw—they're being taxed on it. And as they say at the train stations, be careful, because one train can hide another. Once you think one's gone, in bankruptcy there's a further deemed disposition and people are going to get hit again.

On the severance issue, if you had your severance, you wouldn't be going on EI. You'd be able to live off your severance for that amount of time and have EI at the end if need be. Here people will be immediately going on EI—that was the choice of the government when it turned down Mr. Zafirovski's proposition. There'll be a clawback of that when and if you get even 22¢ on the dollar. It's every possible perverse effect of the system amplified.

Mrs. Urquhart, I want to ask you something. Is it your view that if we gave preferred status to severance and pension benefits over bondholders and unsecured suppliers, it would have been an incentive to seek to maintain it as an ongoing concern, as opposed to going into liquidation? Is that your view?

Ms. Diane Urquhart: I would say that if you did an emergency amendment in this case, I guess I would be shocked to see that the debt holders wouldn't want to go to the ongoing concern plan, because if all of the \$3 billion to \$4 billion—that's my estimate, whatever it is—of deficits.... The proceeds of the sales will not leave anything for the debt holders. So they would rather have an ongoing concern, which would cause the pension deficits to not be a crystallized deficit, and live for another day. So even if the special contributions that cannot be borne today are sacrificed for an extended period of time, until a better day, they would have better recoveries in the future than to take sale proceeds now, where they are pro rata on a basis of approximately 50-50 in the world—worse in Canada—with the employment-related claims.

Mr. Thomas Mulcair: Thank you for that explanation. We tend to agree with you, and that's a reason to come back to it.

Mr. Sproule correctly pointed out that there was an NDP motion that was adopted unanimously just a couple of days ago in the House, which calls, for example, for the people at the CPP Investment Board to give back the millions of dollars of bonuses they paid themselves. I think there's a bit of a theme developing there.

The other thing it would do, of course, is fix this type of problem. There's nothing to stop us from doing it. But it would seem, from the meetings that were described, that the government is anxious to see Nortel go into liquidation, as opposed to doing everything it could to keep it vital and keep it as a going concern. That, for us, is extremely distressing information.

Also, the reference to the Income Tax Act is correct. We've looked at this issue in this committee, and it's part of what has to be fixed. Obviously when times are good you have to be able to top up more, and that limitation shouldn't be where it is right now. Your explanation was completely right.

There's another strange thing. The head of the Canada Revenue Agency was in here just a few short weeks ago, and we asked how it was that the employees of JDS Uniphase had had a very special remission with regard to their phantom income, and asked why that deal was not available to Nortel employees. We asked him if he had ever seen that before, that a remission order in a very specific case was not generalized to others. He said that in the 90-year history of the Canada Revenue Agency, no one had ever seen that, and he had never seen that. That's from the head of the agency.

The only difference between the two is that every single employee of JDS Uniphase—and I'm very glad for them that they got the remission—happens to be in Minister Lunn's riding. That's the only thing they seem to have going for them. So let's hope that the fact that a lot of the retirees live in some of the ridings, especially those who are from the Ottawa area, might make them a little more amenable than the ministers who were mentioned: Minister Flaherty; the Minister of Industry, Mr. Clement; and the Prime Minister.

Again, thank you for putting such a human face on this issue for us and explaining your individual situations, especially with the employees on disability.

I would love it if you could provide us, Mr. Clooney.... You gave us a very specific bit of information with regard to documents that refer to Sun Life and a deduction. Perhaps you could supply that to the clerk of the committee so that we could actually see it. It's incredible. I'm not saying I don't believe you. I'm just talking about the situation itself, that people would be led to believe they have insurance, that they find out it doesn't even exist, and that they're general creditors.

• (1105)

The Chair: You have one minute, Mr. Mulcair.

Mr. Thomas Mulcair: Thank you for protecting our time. It's very appreciated, sincerely.

I want to say to all the people who were not able to make it in today—a lot of people are following us online, and a lot of people are outside Parliament—we are going to do everything we can to help you.

Thank you.

Mr. Lawrence Clooney: Thank you.

The Chair: Thank you, Mr. Mulcair.

Mr. Clooney, did you want to comment briefly? If you want to provide that to the clerk, I'll ensure all members of the committee get it.

Mr. Lawrence Clooney: Would I provide it to Jean-François?

The Chair: Yes, please.

Mr. Lawrence Clooney: We'll provide it within the next 48 hours.

The Chair: Thank you.

I want to thank you all for your presentations and your responses to our questions. I want to thank you so much, because it's an issue of very serious concern to you, and you did so very respectfully. I sincerely appreciate that.

In terms of logistics, we try to do four meetings in one. It was a very challenging thing to do. Obviously, there will be an ongoing dialogue about this issue.

There was a request made for Mr. Zafirovski to do a final comment. Mr. Zafirovski, we're pushing another committee back. We have about three minutes, if you want to comment.

Mr. Mike S. Zafirovski: I'll try to keep it even shorter.

Thank you for the opportunity again. This is very much the human face that has made the decision so difficult and agonizing. When we filed in January, the decision was not made until January 13. I do have a family, with three sons. What I keep telling them is that if you want to accomplish something significant, you have to give it everything you have, and we certainly did that. And I always say just because you do, it does not guarantee success.

Phase one can give assurances to all the employees, former employees, pensioners—who are doing exactly the same level, they're giving everything they have. We're asking customers, suppliers, employees to work with us through this process to optimize, within the current constraints, the values for the liabilities that Nortel has. It's a major imperative. It's the only reason I'm going through this process. You have my personal commitment to that. I've expressed it to the employees on an ongoing basis. I cannot express in any more ways the level of empathy and respect that I have for the 100-plus years that Nortel has been here.

We gave everything we had. It's a different game plan. Still, many of the assets of the company are superb. We're trying to optimize them for the benefit of all, very specifically, employees and stakeholders. Mr. Tay can attest to lots of discussions that we've had internally.

There were a couple of very specific questions on the LTD. We have 409 people. We're continuing those payments. We're looking for options to continue those without any guarantees to deliver a specific update on that.

I have a very quick comment on pensions. We did stop the pension plan in Nortel in 2006. For many large companies that go through different stages, to have 25,000 people paying for 100,000-plus pensioners is a very significant risk. We have changed to defined contributions, which are defined benefits. I believe that it's a smart way to be looking at managing pension assets for employees.

Lastly, there was a comment that we did not make an accurate statement on priorities. I would like to ask Mr. Tay to comment on the \$200 million.

The Chair: Very briefly.

• (1110)

Mr. Derek Tay: When we filed, all the creditors were unsecured. As part of the cash constraints that Canada was facing, there had to be money borrowed from the U.S. In order to protect the U.S. estate, the judge ordered certain charges to protect that money, and \$75 million has been borrowed under that facility.

The Chair: I thank you for that.

I hope this dialogue does continue.

Members, we have a final item of business. I understand there is unanimous consent to adopt Mr. McCallum's motion. Am I correct on that?

Mr. Carrier.

[Translation]

Mr. Robert Carrier: Mr. Chair, I simply want to mention that we already tabled a similar motion. Our motion sought to schedule a one-hour discussion for self-employed computer science workers. At the suggestion of the parliamentary secretary, we had decided to meet the minister.

We are therefore in favour of Mr. McCallum's motion, but we do want to make sure that it includes self-employed computer science workers, whose problem is similar to what is being described here.

[English]

The Chair: I don't want to get into debate, because we've already pushed the fisheries committee back. I thought there was unanimous consent.

Is there unanimous consent for this motion? If there isn't, we won't pass it.

[Translation]

Mr. Jean-Yves Laforest: Mr. Chair, I wish to add to what Mr. Carrier said. When we tabled our motion, we were told that it concerned individual cases, and that we should meet the minister. In fact, we were given an appointment. We do agree, but I want to make sure that it is not forgotten.

[English]

The Chair: Do I have unanimous consent for this motion?

Yes. Okay, thank you.

(Motion agreed to) [See *Minutes of Proceedings*]

The Chair: Thank you, colleagues. Thank you all for coming in.

The meeting is adjourned.

Published under the authority of the Speaker of the House of Commons

Publié en conformité de l'autorité du Président de la Chambre des communes

**Also available on the Parliament of Canada Web Site at the following address:
Aussi disponible sur le site Web du Parlement du Canada à l'adresse suivante :
<http://www.parl.gc.ca>**

The Speaker of the House hereby grants permission to reproduce this document, in whole or in part, for use in schools and for other purposes such as private study, research, criticism, review or newspaper summary. Any commercial or other use or reproduction of this publication requires the express prior written authorization of the Speaker of the House of Commons.

Le Président de la Chambre des communes accorde, par la présente, l'autorisation de reproduire la totalité ou une partie de ce document à des fins éducatives et à des fins d'étude privée, de recherche, de critique, de compte rendu ou en vue d'en préparer un résumé de journal. Toute reproduction de ce document à des fins commerciales ou autres nécessite l'obtention au préalable d'une autorisation écrite du Président.