

Nortel pension fears mount

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The judge who granted Nortel Networks Corp. protection from its creditors on Wednesday has allowed the company the freedom to stop contributing to its Ontario pension plans.

That is an obvious concern for pensioners, says Toronto lawyer Mark Zigler, who has been retained by some of the company's 16,000 Canadian pensioners.

Judge Geoffrey Morawetz of the Ontario Superior Court of Justice ordered that the company "shall be entitled but not required to pay" wages, salaries and employee benefits, as well as current service and special payments to pension plans.

"At this point, except maybe for severance pay, I have no reason to believe that they aren't going to pay anybody's (wages), pension or health benefits," Zigler said in a telephone interview.

But he said other companies in Nortel's deteriorating condition have tried to get relief from making the special payments required under pension law to eliminate any shortfall in funding of the pension plan. "That just deepens the hole in the pension plan," he said.

Then, if the company failed to restructure and fell into bankruptcy, the pension plan would rank as an unsecured creditor for all but the latest few months of regular contributions.

Nortel has estimated its two pension plans in Canada and those elsewhere had a combined shortfall of \$1.8 billion last fall, but that situation would now be much worse as a result of the global stock-market crash and decline in bond yields.

Zigler predicts lawyers for the Financial Service Commission of Ontario will attempt to have Morawetz amend his order with regard to pension payments, but a FSCO spokesperson has declined to comment on actions the regulator may or may not take.

"Sometimes, the government intervenes and tries to get an order that they keep making special payments as well, and that's an entirely possible scenario. But I don't know whether the court will order it. In these restructuring situations, it is too easy to take things away from employees and retirees, all in the name of trying to save the company," said Zigler. "That's my perception, but I should be careful what I say because I could be before the court arguing.

"I am not saying that will happen here, I am just saying that it often happens in these restructurings that attempts are made to take things away."

Pension plans are separate from the companies that sponsor them, and Nortel's pension plans for salaried and former unionized workers are not subject to the court under the federal Companies Creditors' Arrangement Act, said Zigler.

"I don't think they can cut the pensions. Although the company administers the plan, the plan is not the company's assets. Our bigger concern is the funding level."

If Nortel were to fail, or could not find a buyer who was prepared to assume all of its obligations, there would be a risk of having pensions cut. Ontario's Pension Benefits Guarantee Fund only provides for closing a funding gap for the first \$12,000 a year of a pension.

Nortel's largest Ontario plan covers 13,000 active employees, former employees, pensioners and survivors, including employees at the company's research and development campus in Ottawa.

That plan had about \$2.4 billion in assets at the end of 2006, about 86 per cent of what it would have needed if it had been wound up then. If it has suffered losses similar to the typical Canadian pension plan, it could now be short by 40 per cent, or more than \$1 billion.

Making up for that shortfall over a five- to 10-year period could be difficult for a company that is likely to exit the restructuring process smaller in size.