

Pensioners crossing their fingers

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Nortel Networks Corp. will have more pensioners than active employees crossing their fingers in Canada as one of its leading global corporations struggles for survival under court protection.

Company treasurer John Doolittle informed the Ontario Superior Court of Justice yesterday that Nortel has 5,943 of its 30,000 employees working in Canada – but 16,000 of its pensioners live here.

Many of the 5,000 active members in two Ontario pension plans dating back to 1976 would also have earned partial pension entitlements before last year when the company stopped all but the oldest of employees from earning additional credit toward a defined-benefit pension.

A court-appointed monitor points out that the cost of meeting ongoing pension obligations here and in other countries was a major factor in Nortel's decision that it needed shelter from creditors during the current recession.

"The decline in sales, along with Nortel's increasing restructuring and pension costs, in part has led to an increase in operating and net losses and an increase in the cash burn of the company," reported monitor Murray McDonald, president of Ernst & Young Inc.

Nortel calculated as of last Sept. 30 it would need to put up an additional \$1.8 billion (U.S.) to meet about \$10 billion in pension and other post-retirement and post-employment benefits here and in other countries.

The calculation was done according to U.S. accounting rules, which would underestimate the shortfall based on an assumption the company could cease to operate. The calculation was also done before the worst of last year's global stock market crash.

"The company has indicated ... funding deficits, as at Dec. 31, 2008, will have significantly increased," added McDonald.

But Nortel will not say whether the company will seek court approval to get some relief from topping up its pension plans.

Spokesperson Jamie Moody said that "as part of our restructuring we will be reviewing options to reduce costs – so I can not comment/speculate on future changes that may be made at our campuses – or to head count – but yes, there will likely be more layoffs. As for impact to retirees/pensions, that's an internal HR (human resources) matter. We don't comment publicly."

Rowena McDougall of the Financial Services Commission of Ontario said she could only say that, as an active company, Nortel would have to comply with the Pension Benefits Act.

That law would require Nortel to close an estimated solvency funding gap within five years, but the province intends to allow companies an extra few years, and up to 10 years with the agreement of plan members and retirees.

Pension lawyer Murray Gold of Koskie Minsky LLP said pension law and the nature of pension promises should protect pensioners and employees as long as a company remains operating. But bankruptcy protection falls under federal law and a decision of the courts and, in at least one case, a company was excused from its funding obligations, he said.

Bruce Leonard, an insolvency lawyer with Cassels Brock & Blackwell LLP, was more pessimistic, knowing Nortel's difficult financial situation and repeated attempts to earn a profit. "I think they (employees and retirees) would be pretty much out of luck for the deficiency.

They can get pensions based on assets currently in the plans, but I can't think of any way they could ask anyone to top up the deficiency" (apart from having Ontario close any funding gap for the first \$12,000 a year of each pension).