

When Is Disability Insurance Not Insurance?

By: Priscilla H. Healy

The plight of the Nortel employees who were on long-term disability when the company filed for CCAA protection will have to be resolved by the courts, at least for the 40 employees who did not consent to the settlement reached last March, and are taking their complaints to the Supreme Court of Canada.

Nortel's health and welfare trust was wound up with liabilities of \$548 million and assets of \$80 million. Under the settlement, Nortel employees on long-term disability received payments until the end of December, 2010, and will receive a portion of the \$80 million. The Nortel directors were released from liability as part of the settlement.

Not Insurance At All

Disabled Nortel employees are now facing years of living on social assistance instead of receiving disability benefits. The disability "insurance" they thought they had, and had paid for in part, was not insurance at all.

Those circumstances should not be allowed to happen again.

Should there be priority for long-term disability claimants in insolvency proceedings? Bill S-216, a private members' bill introduced in the Senate by Senator Art Eggleton that would have given disability claimants preferred status, and which would have helped the Nortel disabled employees, was narrowly defeated by the Senate. The same provisions are contained in Bill C-610 which is now before the House as a private members' bill, introduced by The Hon. Judy Sgro, M.P.

When dealing with priorities in insolvencies, of course, the horse is already out of the barn. It is preferable to prevent the problem from arising.

Should there be full funding of employer sponsored self-insured disability plans? In part this is a taxation issue. There have been recent amendments to the Income Tax Act giving increased tax relief for funding health and welfare trusts. Those changes are insufficient. There is no reason why full funding on an actuarial basis for these trusts, which are used to fund disability plans, should not be tax deductible, just as are payments into pension fund, and as would be premiums paid by that same employer to an insurance company for true disability insurance.

Even so, the funding would be permissive and not mandatory. Query whether there is the political will to make funding mandatory.

Fully Fund

Would warnings to employees be sufficient? Suppose employees of employers who offer disability plans, but do not fully fund or insure those plans, are warned that they are receiving at best an 'if and when' promise: if and when they become disabled and if there is enough money in the fund or otherwise available from the employer at that time or during the period of disability, they will receive the disability benefits they have been promised.

Realistically, employees will rely on their employer's plan, funded or not, rather than purchase their own disability insurance. Disability insurance on an individual basis is expensive.

There are apparently more than one million Canadians whose employers provide self-insured, long-term disability plans. The inescapable conclusion is employer-sponsored long-term disability plans should either be insured, or if self-insured, be fully funded. Legislation should facilitate, not discourage that funding. ■

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