

Do executive bonuses threaten the rule of law?

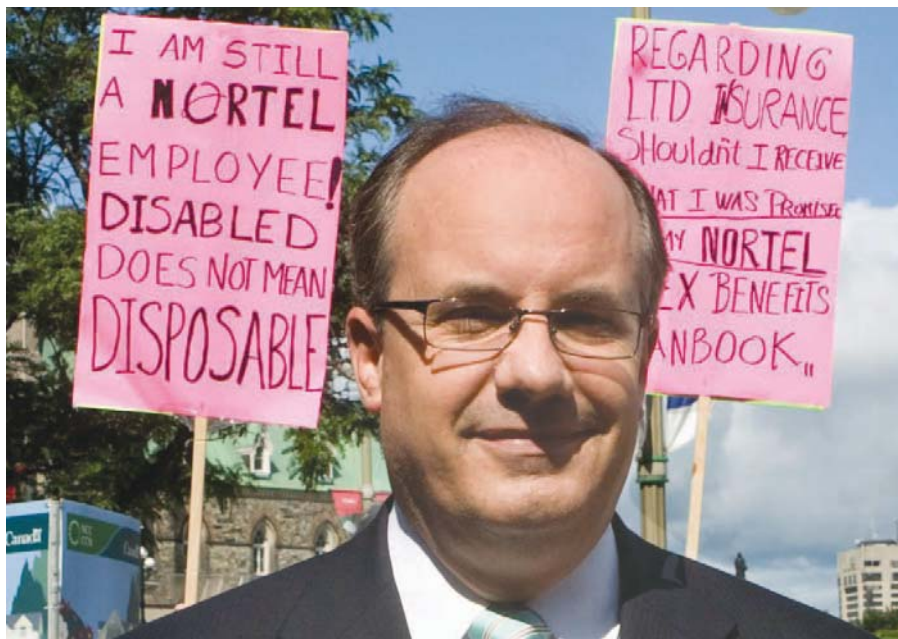


OFF THE RECORD

JEFFREY MILLER

We have a mantra in my law and literature course: Law is prose, justice is poetry. The entire 13 weeks are premised on the idea that, in an imperfect, human world, positive law is necessary, but the very humanness of the system means it is bound to come up short. We have to use our imaginations to bridge the gap between law and justice.

Which is exactly what has been lacking so miserably for more than a decade at Nortel Networks. It takes little imagination to see that firing thousands of middle-income earners from your company while your executives pay themselves premium bonuses and severance—even as they wind the company down after “managing” it through a lingering, agonized collapse—is simply unjust. What is breathtaking, dumbfounding, awe-striking is that our society and government continue to venerate the people who do this in publicly owned companies. Panicked with denial, we tell ourselves that executives who preside over failure that decimates the global economy are wizards who cannot be replaced for less than a million or so a year, plus golden parachutes.



George Riedel, senior vice president and chief strategy officer for Nortel Networks Corp., is followed by a disabled Nortel employee as he leaves Parliament Hill after appearing as a witness at a parliamentary committee.

Yes, the Ontario Court of Appeal has ruled, correctly, that there is nothing illegal in any of this—demarking precisely the shortfall between law and justice. Frequently, it is a gap between law and morality or ethics. A child can see this. Even our most highly paid, most venerated busi-

ness executives and academics see it, but, operating viscerally, they don't see why they should care. They're all right, Jack, and that's how the market works. Money has no morality.

In other words, they'll take all the credit (and cash) for the work of tens of thousands in the

trenches, but none of the responsibility when it all goes bust. Greed is good. The markets must not be touched. Justice is open to all, just like the Ritz Hotel.

History teaches us that social revolution is also at the heart of this gap between law and moral-

ity. But North Americans are heavily bought into such Friedmanomics, largely because we have convinced ourselves that capital is democratic: We, too, have access to the gravy train, if only we work hard and smart enough. Look at Oprah Winfrey. Barack Obama. Ray Crock (the founder of McDonald's). So it will take some time and doing to stimulate true revolutionary anger. But the magicians who run our modern multinationals and investment banks are working diligently at that, no doubt about it. In the end, this will be their memorable “achievement.” Viva Enron. *Vinceremos*, Lehman Brothers.

In part of the recent Ontario appeal—*Sproule v. Nortel Networks Corporation*, 2009 ONCA 833—former Nortel employees argued that, though a subsisting court order stayed Nortel's obligation to pay creditors while it crafted bankruptcy protection under the *Companies' Creditors Arrangement Act* (CCAA), Nortel should still be liable to pay out statutory termination and severance claims under Ontario's *Employment Standards Act* (ESA). The ESA debts were basic statutory liabilities, the appellants argued, that Nortel could not contract out of. The court reasonably concluded that Nortel still

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LETTER TO THE EDITOR

Re: “Major changes coming to Ontario's small claims courts”, *The Lawyers Weekly*, Dec. 11, 2009

Dear Editors,

[Michael] Rappaport questions whether or not lawyers will still be needed with the rise in small claims court jurisdiction from \$10,000 to \$25,000. To me, the answer is simple.

For the person who values legal advice, he will certainly seek representation because, with the small claims court's streamlined system, it will now cost him even less to litigate than it would have in simplified procedure. For the

person who does not value legal advice, then he will certainly try his luck on his own regardless of the amount of the claim.

Rappaport “accuses” himself of “self-interest” in asking the question. But I think this article raises an important issue that is more about public interest than self-interest. It is crucial, particularly with the stakes being raised, that the public is educated about the hazards of litigating on one's own and the value of good legal advice.

Sure, there will always be accusations against lawyers for “self-serving” opinions, but I believe, as a profession with intimate understanding of how courts work, we

have a duty to warn the public about the risks of self representation even if it means getting mud slung at us. And, hey, it wouldn't be the first time!

Jordan Farkas
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{ We have the right people to do the job right }

Barbara Legate is an acknowledged leader in the fields of personal injury and medical negligence litigation and advocacy. L'Expert has listed her as “most frequently referred to,” its highest designation, on an ongoing basis, and she has been listed in The Best Lawyers in Canada since its inception. You can refer to Legate & Associates knowing that your client will have the best legal team available and optimal recovery. At Legate, we pay referral fees and respect your solicitor-client relationship.

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