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in October of last year, right after
Nortel's stock price tumbled 30 per
cent following the company's

• Nortel third in fibre-optic sales.
B3

Court rules regulator not liable in Eron case

BY RICHARD BLACKWELL
AND PETER KENNEDY

The Supreme Court of Canada says a British Columbia regulator is not responsible for huge losses faced by investors in failed **Eron Mortgage Corp.**

Investors in the B.C. company have been pursuing the case because they sank about \$222-million

into the mortgage investment firm, losing about \$182-million of those funds. The class-action suit was initially filed in B.C.'s Supreme Court in 1999, alleging that the province's registrar of mortgage brokers, Robert Hobart, should have warned investors that Eron was being investigated.

See ERON on page B2

Decision seen as blow to investors

ERON from page B1

The suit alleges that he was therefore partly responsible for the losses.

By August, 1996, the registrar knew there were problems at Eron but investors were never told, the suit alleged. The company wasn't shut down until October, 1997.

The trial judge said the class action could go ahead, but the B.C. Court of Appeal reversed that decision and the Supreme Court has now upheld that view.

The Supreme Court judges based their decision on the reasoning that a regulator does not have a "duty of care" exclusively to investors, but instead has a wider responsibility to the public as a whole.

"Indeed a duty to investors would potentially conflict with the registrar's overarching duty to the public," the judges said in their decision.

In addition, they said, if regulators were liable for losses in these kinds of cases, that would effectively create "an insurance scheme for investors at great cost to the tax-paying public."

Neil Finkelstein, a Toronto lawyer who intervened in the case on behalf of the Ontario Securities Commission, said the decision protects regulators' rights to make policy decisions that involve more than the rights of investors.

"They are saying [that] where a securities commission or other regulatory authority is balancing com-

peting public interests, you can't sue them for negligence," Mr. Finkelstein said. "The regulator has to consider a whole bunch of things, including the efficient allocation of capital."

David Church, the Vancouver lawyer who led the class-action suit on behalf of Eron investors, said the decision is a warning that regulators may not be held liable even in circumstances where their own inaction results in damage to investors.

'These were smart people who thought they were doing the right thing with their money, putting it in secure mortgages on land, and they were defrauded.'

"So if you are an investor or a person who is placing confidence in the regulatory framework, you better be prepared to look after yourself financially," he said.

Mr. Church said the Supreme Court decision is especially disappointing in light of the fact that Eron investors face huge losses as a result of events they could have done nothing to prevent.

"It wasn't for lack of them being careful, it wasn't for lack of due dili-

gence, it wasn't as a result of them being greedy and trying to get high interest rates," Mr. Church said.

"These were smart people who thought they were doing the right thing with their money, putting it in secure mortgages on land, and they were defrauded."

Investors' money was allegedly spent on interest payments that had nothing to do with the properties Eron claimed to be developing, and on personal items bought by the company's principals.

Mr. Church said he received a call yesterday from a 66-year-old woman from Kamloops, B.C., who delivers newspapers every morning and lost \$20,000. "At the other end of the spectrum I had clients who lost \$1-million," he said.

Mr. Church said the penalties meted out by the British Columbia Securities Commission against Eron's principals are minute in comparison with the losses suffered by investors, and that the fines may never be collected.

Two years ago, Eron's president Brian Slobogian and vice-president Frank Biller were each fined \$300,000 after the BCSC ruled that they had perpetrated a massive fraud on investors.

Mr. Biller's fine was reduced to \$100,000 by the B.C. Court of Appeal after his lawyer argued that the BCSC did not have the authority to enforce multiple penalties.

Yesterday's Supreme Court decision sparked calls for tighter regulations.