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Dear TEAM Member,

## **TEAM Pension Report**

Please accept my apologies for the delay in getting the TEAM Pension Report to you, but as you can appreciate, since the decision of the Manitoba Court of Appeal a lot has been happening.

This report will be of particular interest to those whose MTS NCS date is prior to January 1, 2010 that are members of the MTS Defined Benefit Pension Plan.

The intent of this report is to bring you up to date on recent developments relating to the pension plan, and to provide information regarding the security of your retirement income.

This report includes:

- The Pension Lawsuit and Q&A
- There's a Problem with the Pension Formula?
- Is My Pension Safe?

Regards,

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TEAM Pension Representative  
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## **The Pension Lawsuit and Q&A**

The following is a brief history of your MTS Defined Benefit pension plan, before and after privatization, the ensuing lawsuit and the recent decision of the Manitoba Court of Appeal.

Prior to privatization, MTS employees were members of the provincial government pension plan established under the Civil Service Superannuation Act (CSSA). The CSSA plan continues to this day, with approximately 48,000 members who work for employers such as Manitoba Hydro, Manitoba Lotteries and the Winnipeg Regional Health Authority.

The hallmark of the CSSA plan is the 50/50 cost sharing arrangement that funds benefits in a unique way compared to other plans. Employee contributions go into a trust fund: the Civil Service Superannuation Fund (CSSF). All of the money in the CSSF is employee money. 50% of the retirees' monthly pension benefit is paid from the CSSF, the other 50% is paid by the employer.

In the CSSA plan, when employee contributions plus investment returns exceed 50% of the pension benefit obligations, a surplus is declared to exist by the plan's actuary. This surplus has always been, and continues to be, treated as belonging to the plan members (employees and retirees). The employers cannot touch this money, and have never claimed otherwise. Surplus has only been used to improve benefits, never to reduce the employers' 50% of costs.

On privatization, MTS plan members' assets in the CSSA plan were transferred to the new MTS plan. It was known at the time that plan members were contributing more than their 50% share of the costs of the new plan benefits, the "initial surplus". The amount was later calculated to be approximately \$49M.

Representatives for members in the plan secured assurances from MTS and the government that the initial surplus, was protected and could only be used to provide pension benefit improvements, consistent with the long history of surplus use in the CSSA plan. The government, MTS and plan member representatives entered into a Memorandum of Understanding (the "MOU"), agreeing on how the initial surplus would be protected. MTS also promised that it would not use the initial surplus to reduce its costs or share of contributions to the pension plan. The government of the day then passed a law requiring the Provincial Auditor to appoint an "independent actuary" to ensure that benefits in the MTS plan were equivalent in value to those of the CSSA plan.

At the 2008 Pension trial, the judge, Justice Bryk, found that despite the MOU and assurances provided to plan members, MTS' cost or share of contributions to the plan was reduced by the amount of the initial surplus. Plan members did not receive any benefits in return for MTS' use of the initial surplus.

The trial was to recover the initial surplus and to retain the same level of control over the pension plan that plan members enjoyed prior to privatization. The trial judge returned the initial surplus plus lost interest (almost \$100M) to the plan members and gave them control over the funds.

During the trial, evidence demonstrated that the process surrounding the work of the independent actuary was flawed and the independent actuary's conclusion that the benefits were equivalent in value was not the product of a fair or impartial process. The trial judge struck down the actuary's decision. MTS did not appeal this finding.

The trial judge also found that the mechanism set up by MTS to use the initial surplus was flawed such that it could never produce additional benefits.

These decisions were overturned by the Court of Appeal. Justice Bryk's decision was based on numerous findings of fact, whereas the decision by the Court of Appeal focused on pension law as it applies to private pension plans, ignoring or dismissing important trial findings regarding the origins and history of the plan. The Appeal Court also agreed with MTS' argument that the initial surplus was only a surplus on paper; an actuarial surplus, and not an actual surplus.

If the surplus was indeed only on paper, then how is it that just a few short years after MTS' privatization, the Provincial employees in the CSSA plan were able to use their portion of the surplus to provide a "real" and tangible 6%-14% improvement in their pension benefit? The answer is that prior to privatization MTS employees and retirees had real money in the form of a surplus that was accessible and regularly used to improve their pensions, but after privatization MTS took control of the money.

In our opinion the Court of Appeal's decision ignores all of the factual findings made by the trial judge, and as such is in error. The legal issues are complex; however, the lawyers for TEAM, IBEW, CEP and the retirees all agree that there are strong grounds for an appeal to the Supreme Court of Canada.

Members have asked a number of questions regarding the decision; below are the answers that I can provide at this time:

- **What does this mean to me?**

That money that would otherwise have been used to improve your pension is no longer available, nor will it be, unless the decision is overturned by the Supreme Court of Canada.

- **Why do the lawyers think we won at trial but lost on appeal?**

That is broadly covered in the above report. The Court of Appeal got it wrong because they ignored the trial judge's findings of fact.

- **What are the next steps?**

Seek leave of the Supreme Court to file an appeal.

- **If we decide to go to the Supreme Court of Canada how long will the process take until we get a decision?**

The leave to appeal process takes approximately six months. If leave is granted, it could take up to two years to get a final decision from the Supreme Court.

- **Who decides what happens next?**

As your elected representatives, the Boards of the respective Unions will make the final decision on whether to appeal.

- **Is my pension safe?**

See the section of the report that deals with that question.

Facta for the Plaintiff's and Defendant, and the decisions of the Court of Queen's Bench and Court of Appeal are available on the TEAM website.

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### **There's a Problem with the Pension Formula?**

The method MTS uses to calculate a retirees' pension can result in some employees who retire part way through the year, and some part-time employees, receiving a lower pension than they would have received if the calculation was consistent with the plan text and pension law principles.

The problem relates to the part of the formula that takes into account a plan member's contributions to the Canada Pension Plan (CPP). The maximum income on which we pay CPP contributions, the Year's Maximum Pensionable Earnings (YMPE), is set annually by the Canada Revenue Agency. If the YMPE average is prorated based on the employee's final year of service, as opposed to the methodology used by MTS, then a larger pension benefit results.

The following is an example provided by MTS to the Pension Committee. If a regular full-time employee earning \$67,400 retires part way through the year, his/her annual pension would be \$39,085. However, if the YMPE is prorated, then the annual pension increases to \$39,470.

At the December 2008 Pension Committee meeting, MTS admitted that its method of calculating the pension amount was not fair or optimal. The company conceded that this was because of the YMPE problem. MTS promoted changing the formula by prorating the YMPE to produce a simplified, streamlined and more intuitive calculation. This method is apparently common practice in similar pension plans, and most accurately replicates the methodology for calculating the Best Average Earnings which is a requirement in the MTS Pension Plan text.

However, after recognizing the inequity in the formula and then proposing to change it, in September 2010 MTS advised that it was withdrawing its proposal because the main pension lawsuit was not resolved.

MTS contracts the Civil Service Superannuation Board (the "CSSB") to calculate and pay out pension benefits. The CSSB is also responsible for calculating pension benefits for members of the CSSA plan. The CSSB used to calculate the pension formula for the CSSA plan members the way MTS currently does, but in June 2011, the CSSA was amended to permit the YMPE to be prorated, resulting in a fairer pension calculation for retirees in the CSSA plan.

In November 2011, a lawsuit against MTS on this issue was filed by a retired TEAM member. TEAM supports the lawsuit and is being kept apprised of developments.

A copy of the Statement of Claim is available on request.

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## Is my Pension Safe?

Regarding a total loss of pension income or severely reduced pension, the answer is yes, it's very safe. There are a number of protections in place:

- **Pension Legislation:** The Pension Plan falls under the jurisdiction of The Office of the Superintendent of Financial Institutions (OSFI), an independent agency of the Government of Canada reporting to the Minister of Finance, responsible for the regulation of pension plans. The plan is governed in accordance with the *Pension Benefits Standards Act, 1985*.
- **Reputable Trust Fund Custodian:** RBC Dexia Investor Services Trust, a joint venture equally owned by Royal Bank of Canada and Dexia, holds our pension money in a trust fund which isn't tied to the Company's financial results. RBC Dexia Investor Services Trust is regulated by OSFI.
- **Reporting:** MTS is required by law to hire an actuary to report to the regulators on the pension fund. The actuary reviews how much money is in the trust fund, future pension benefit obligations, and how the plan will be funded to meet those obligations, including making up for any funding deficiencies.
- **Funding obligations:** MTS is required to ensure there is enough money in the pension trust fund to meet all the pension obligations, even in the event of a plan windup resulting from the unlikely event of a bankruptcy. The most recent actuarial report states that on a going concern basis the plan had a surplus of \$39 million.
- **A Second Opinion:** TEAM engages its own actuary to review the plan valuations each year to determine the status of the Plan, and to confirm MTS' funding obligations to be compliant with the law.
- **Pension Committee:** The committee is made up of a representative from TEAM, IBEW, CEP, a retiree, representatives for MTS, and a chairperson. The committee is required to meet twice a year, at which time the Plan's investment performance and membership statistics are reviewed. This committee is purely advisory in nature and thus powerless, for example, when MTS modified the Plan text to exclude new employees from the DB plan, neither the detailed proposed amendments nor the amended text were shared with the committee members, even though these changes affect future TEAM members.

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For more information about your MTS DB Pension Plan visit:

<http://www.mtspensionplan.ca>