

**THE QUEEN'S BENCH  
Winnipeg Centre**

File No. CI 11-01-71534

BETWEEN:

**CALVIN ALBERT HALSTEAD**

plaintiff,

- and -

**MTS ALLSTREAM INC. and THE CIVIL SERVICE SUPERANNUATION BOARD**

defendants

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**STATEMENT OF CLAIM**

**FILED**  
**MAY 03 2011 - 228.00**

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**STATEMENT OF CLAIM**

TO THE DEFENDANTS

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or a Manitoba lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Queen's Bench Rules, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Manitoba.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$300.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the plaintiff's claim and \$300.00 for costs and have the costs assessed by the court.

May 3, 2011

Issued S. STRITZ  
DEPUTY REGISTRAR  
COURT OF QUEEN'S BENCH  
FOR MANITOBA  
Deputy Registrar  
100C - 408 York Avenue  
Winnipeg, Manitoba  
R3C 0P9

TO: **MTS Allstream Inc.**  
c/o Taylor McCaffrey LLP  
9<sup>th</sup> Floor – 400 St. Mary Ave  
Winnipeg, MB, R3C 4K5  
Attention: Kevin T. Williams

AND TO: **The Civil Service Superannuation Board**  
c/o Thompson Dorfman Sweatman LLP  
2200-201 Portage Ave  
Winnipeg, MB, R3B 3L3  
Attention: E. William Olson, Q.C.

**CLAIM**

1. The plaintiff claims:
  - (a) A declaration that the defendants, either individually or jointly, have breached their duties and/or contractual obligations owed to the plaintiff, under the MTS Defined Benefit Pension Plan and the underlying trust and at law, by not prorating the Yearly Maximum Pensionable Earnings component of the benefit entitlement formula/calculation;
  - (b) A declaration that the defendants, either individually or jointly, have breached their duties and/or contractual obligations owed to the plaintiff, under the MTS Defined Benefit Pension Plan and the underlying trust and at law, by not using the plaintiff's actual earnings in the first six months of the 60 month period used to calculate the plaintiff's Best Average Earnings;
  - (c) A declaration that the defendant MTS Allstream Inc. has breached its duty of good faith as the Administrator of the MTS Defined Benefit Pension Plan;
  - (d) A mandatory injunction directing the defendants to pay the plaintiff additional pension benefits retroactive to June 30 2006, the date of the plaintiff's retirement, plus interest at the Pension Plan rate of return on the basis of a prorated calculation of the Yearly Maximum Pensionable Earnings component of the benefit entitlement formula/calculation; and on

the basis of his actual earnings during the 60 month period used to calculate Best Average Earnings;

- (e) Any and all necessary orders, including an accounting and/or reference, to ensure that benefits under said Pension Plan are calculated properly and in accordance with the Pension Plan text and pension law principles in order to put the plaintiff in the position he would have been in had the defendants not breached their obligations;
- (f) Costs on a solicitor and his own client basis; and
- (g) Such further and other relief as this Honourable Court may order.

2. The plaintiff, Calvin Albert Halstead, is a retired employee of the defendant MTS Allstream Inc. and resides in Winnipeg, Manitoba.

3. The defendant, MTS Allstream Inc. ("MTS"), is a company duly incorporated pursuant to the laws of Canada. It is the successor to MTS Communications Inc., MTS Mobility Inc. and MTS Advanced Inc. and is the Administrator of the MTS Defined Benefit Pension Plan ("the Pension Plan").

4. The defendant, The Civil Service Superannuation Board ("the Sup Board"), is a body corporate constated pursuant to the *Civil Service Superannuation Act R.S.M. 1988, c.C120* ("CSSA") and has all of the capacity, rights, powers and privileges of a natural person.

5. In or about May, 1996, the Manitoba Government announced its intention to divest itself of MTS through privatization. As a result, MTS was statutorily obligated to

develop a new employee pension plan for the privatized company. Accordingly, the Pension Plan was established and became effective January 1, 1997.

6. The Pension Plan is a contributory defined benefit plan which guarantees a benefit entitlement for members calculated on the basis of the following formula:

**8.1** ...[T]he annual amount of the Pension Benefit shall be equal to:

(a) 2.0% of the Member's Best Average Earnings multiplied by the Credited Service, minus

(b) 0.6% of the Member's YMPE Average multiplied by the Credited Service after December 31, 1965

but shall not be greater than 70% of the Member's Best Average Earnings.

7. Average Earnings, Best Average Earnings, Credited Future Service, YMPE and YMPE Average are defined in the Pension Plan as follows:

**"Annual Earnings"** means an Employee's hourly, daily, weekly or bi-weekly rate of Earnings, as the case may be, multiplied by the number of basic hours, days, weekly, or bi-weekly periods in one year of Continuous Service, which amount shall not be less than the Employee's Earnings during the immediately preceding twelve (12) months, subject to the following.....

**"Best Average Earnings"** means the average Annual Earnings of a Member during the five (5) calendar years of Credited Service which afforded the highest average, or where the Member's Credited Service is less than five years, the average of the Member's Annual Earnings during the Member's actual years of Credited Service.

**"YMPE"** means the lesser of the Member's Annual Earnings or the Year's Maximum Pensionable Earnings established each year under the Canada Pension Plan Act

**"YMPE Average"** means the average of the YMPE during the period over which the Best Average Earnings are determined.

**"Credited Future Service"** means the number of years and completed days, counted as fractions of years, of Continuous Service for which the Member has made contributions in accordance with Article 5.

8. At all material times, the funds in the Pension Plan constituted and were the subject of a trust. As Administrator of the plan MTS is and was at all material times the trustee of all contributions made for deposit into the Pension Plan, whether made by the employee or MTS itself. The plaintiff is a beneficiary of the trust.
9. As the Administrator of the Pension Plan, MTS at all material times owed a duty to the plaintiff to exercise the utmost good faith in all dealings relating to the administration of the Pension Plan in general and the methodology for calculating benefit entitlements in particular.
10. Upon implementation, the day to day administration of the Pension Plan was delegated to the Sup Board pursuant to a contract between the defendants. The Sup Board calculates and remits individual pensions to the retired members of the Pension Plan.
11. As the delegate of MTS for the purposes of administering the payment and processing of pensions, the Sup Board owes a duty to the plaintiff to ensure that the calculation and payout of his pension benefit is in strict compliance with the Pension Plan text and pension law principles.
12. In calculating the "YMPE Average" in section 8.1(b) of the benefit entitlement formula, the defendants use the lesser of the full YMPE or the actual partial salary earned in the retirement year to determine the YMPE Average.
13. The plaintiff retired from MTS on June 30, 2006. In determining his benefit entitlement, the defendants calculated his YMPE average using the full YMPE value for the entire retirement year (2006) notwithstanding that he retired half way through the

year. The plaintiff states that the defendants ought to have used a prorated calculation of the YMPE for his retirement year.

14. Pursuant to the Pension Plan text, the YMPE Average is to be calculated using the same methodology over the same period as the Best Average Earnings. Best Average Earnings are prorated based on the number of days worked in the partial year in which the retirement occurred.

15. The plaintiff states that MTS's methodology for calculating the YMPE Average is inequitable and discriminatory, particularly for part-time employees and those employees who retire part way through a year, such as the plaintiff. The MTS methodology is in breach of the Pension Plan text and pension law principles.

16. The methodology used by the defendants provides the plaintiff with a lesser benefit and is not authorized by the Pension Plan text. Since there is no express provision, the Administrator of the Pension Plan is bound to calculate the YMPE Average in the manner that is most fair to the members and the manner that makes the most sense and conforms to the reasonable expectations of the parties.

17. In the alternative, the defendants have an obligation to apply the Pension Plan text in a way that is even handed amongst the members. As such, if one interpretation leads to fairness and equity amongst the members more so than another, that interpretation should be followed. The MTS method of calculating YMPE Average results in unfairness to those who retire in partial years and in particular to part-time employees retiring after a partial year. The prorated method of calculating YMPE treats members equally, and therefore ought to be preferred. It generates a higher benefit for part-time employees and employees who retire part way through a year compared to

the current MTS methodology.

18. At the Pension Plan Pension Committee meeting held in December of 2008, MTS advised that the MTS methodology of YMPE Averaging was not equitable or optimal. MTS proposed a simplified, streamlined and more intuitive method of calculating the YMPE Average. The method MTS proposed was to prorate YMPE in partial years. This methodology is standard practice in similar pension plans. Subsequently, MTS communicated to Pension Committee members its view that the prorating method most accurately replicates the methodology for calculating the Best Average Earnings as required by the Pension Plan text.

19. For illustrative purposes, an application of the two methodologies follows. The plaintiff earned \$49,460.85 from January 1, 2006 to June 30, 2006 (his final year of service). He retired on June 30<sup>th</sup> 2006. The YMPE maximum for the year 2006 was \$42,100.00. Under the current MTS methodology, the 5<sup>th</sup> year YMPE used in the 5 year average YMPE is \$42,100.00 (lesser of salary or full YMPE). Under the prorated approach, the 5<sup>th</sup> year YMPE used in the 5 year average is \$21,050.00 (YMPE of \$42,100 prorated for an approximate half year of service [ $\$42,100 \times .5000$ ]).

20. Prorating the YMPE in the plaintiff's partial retirement year results in a higher benefit entitlement of approximately \$36.00 per month for the remainder of his and/or his widow's life.

21. The plaintiff says that in order for MTS to avoid prorating the YMPE, the Pension Plan text would have to have a specific provision permitting same, as is the case in the predecessor plan, i.e. section 26(4) of the CSSA.

22. The plaintiff further alleges that MTS breached the Pension Plan text and pension law principles by using his annualized earnings rather than his actual earnings for the first six months of the 60 months preceding his retirement when calculating his Best Average Earnings in section 8.1(a) of the Pension Plan text.

23. The plaintiff states that his actual Best Average Earnings based on his paystubs was higher than the \$67,417.68 that he believes the defendants used to calculate his monthly pension.

24. After recognizing the inequity in the MTS methodology and then proposing to the Pension Committee to correct the methodology by prorating YMPE, MTS advised that it would not change the formula because of a separate and unrelated lawsuit involving the Pension Plan. The plaintiff states that this too is a breach of MTS's duty to act in good faith as Administrator of the Pension Plan in that MTS recognized an inequity but choose not to address it for ulterior purposes.

25. As a consequence of the Sup Board's negligence and/or MTS's breach of contract and breach of duty, the plaintiff has sustained loss and damages and seeks the relief set out in paragraph 1 herein.

May 3, 2011

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