

**THE QUEEN'S BENCH
Winnipeg Centre**

BETWEEN:

CALVIN ALBERT HALSTEAD,

plaintiff,

- and -

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

defendants.

OCT 17 2011

STATEMENT OF DEFENCE

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STATEMENT OF DEFENCE

1. The defendants MTS Allstream Inc. ("MTS Allstream") and The Civil Service Superannuation Board ("CSSB") admit the allegations contained in paragraphs 2 and 4 of the Statement of Claim.

2. The defendants deny the allegations contained in paragraphs 3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25 of the Statement of Claim, and deny that the plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim, or to any relief at all, and accordingly puts the plaintiff to the strict proof thereof.

3. In further reply to paragraph 3 of the Statement of Claim, and to the Statement of Claim as a whole, the defendants admit only that the defendant MTS Allstream is a corporation duly incorporated pursuant to the laws of Canada and that it is a successor to MTS Communications Inc., MTS Mobility Inc. and MTS Advanced Inc.,

but denies that it is, or at any time was the Administrator of the New Pension Plan (to be hereinafter defined). The defendants further state that Manitoba Telecom Services Inc. ("Manitoba Telecom"), a corporate entity that is not a party to the within litigation, is and was at all material times the Administrator of the New Pension Plan.

4. In further reply to paragraph 5 of the Statement of Claim, and to the Statement of Claim as a whole, the defendants admit only that, pursuant to Clause 15(2)(a) of *The Manitoba Telephone System Reorganization and Consequential Amendments Act*, S.M. 1996 c. 79 (the "*Reorg Act*"), Manitoba Telecom was required to establish a new pension plan on or before the implementation date (the "New Pension Plan") in accordance with the terms and conditions of the *Reorg Act*. The defendants further state that Manitoba Telecom did establish a New Pension Plan, with an effective date of January 1, 1997 in accordance with the terms and conditions of the *Reorg Act*.

5. In further reply to paragraph 6 of the Statement of Claim, and to the Statement of Claim as a whole, the defendants admit only that the New Pension Plan includes the wording set out in paragraph 6 of the Statement of Claim, but further states that the said wording is to be construed and interpreted in the context of the New Pension Plan as a whole, and in accordance with the laws of the Province of Manitoba and the laws of Canada applicable thereto.

6. In further reply to paragraph 7 of the Statement of Claim, and to the Statement of Claim as a whole, the defendants admit only that the New Pension Plan includes the wording set out in paragraph 7 of the Statement of Claim, but further states that the said wording is to be construed and interpreted in the context of the New Pension

Plan as a whole, and in accordance with the laws of the Province of Manitoba and the laws of Canada applicable thereto.

7. In further reply to paragraphs 8 and 9 of the Statement of Claim, and to the Statement of Claim as a whole, the defendants admit only that the New Pension Plan was subject to a trust, but denies that MTS Allstream is or was ever the Administrator or Trustee of the New Pension Plan. The defendants further state that, pursuant to a written agreement dated January 1, 1997 between Manitoba Telecom, the Administrator of the New Pension Plan and a corporate entity who is not a party to the within litigation, and Royal Trust Corporation of Canada ("Royal Trust"), Royal Trust was and is the Trustee of the New Pension Plan. The defendants further state that the plaintiff is one of many beneficiaries of the trust so created.

8. In further reply to paragraphs 10 and 11 of the Statement of Claim, the defendants state, pursuant to a written agreement dated January 1, 1997, between Manitoba Telecom, the Administrator of the New Pension Plan and a corporate entity who is not a party to the within litigation, and the CSSB, which agreement was renewed from time to time, the CSSB provided administrative services to Manitoba Telecom in respect of the New Pension Plan, which administrative services are set out in Schedule A to the January 1, 1997 agreement.

9. In further reply to paragraphs 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 of the Statement of Claim, and to the Statement of Claim as a whole, the defendants:

- (a) deny that MTS Allstream is or was ever the Administrator of the New Pension Plan;
- (b) deny that MTS Allstream owed a duty to the plaintiff in respect of the administration of the New Pension Plan, as alleged or at all, and puts the plaintiff to the strict proof thereof;
- (c) in the alternative, if MTS Allstream did owe a duty to the plaintiff in respect of the administration of the New Pension Plan, which is not admitted but expressly denied, deny that MTS Allstream breached any duty owed to the plaintiff, as alleged or at all, and puts the plaintiff to the strict proof thereof;
- (d) deny that the CSSB was negligent, as alleged or at all, and put the plaintiff to the strict proof thereof;
- (e) state that MTS Allstream and the CSSB at all times acted in good faith and that their actions were reasonable in the circumstances;
- (f) state that the plaintiff's Year's Maximum Pensionable Earnings ("YMPE") and Best Average Earnings ("BAE") were calculated by the CSSB and Manitoba Telecom in accordance with the New Pension Plan text and applicable pension law principles;
- (g) in addition, or in the alternative, state that the plaintiff's YMPE and BAE were calculated by the CSSB and Manitoba Telecom in a fair, equitable and even handed manner;
- (h) deny that the defendants have breached the New Pension Plan text and pension law principles, as alleged or at all, and put the plaintiff to the strict proof thereof;
- (i) deny that the plaintiff has sustained any loss or damage, as alleged or at all, and put the plaintiff to the strict proof thereof; and
- (j) in the alternative, state that if any amount is owing to the plaintiff, as alleged or at all, which is not admitted but expressly denied, any such amount would be payable by the New Pension Plan trust, and not by the defendants herein.

10. In further reply to the Statement of Claim as a whole, the defendants state that the plaintiff's claim, in whole or in part, is statute barred by operation of *The Limitation of Actions Act*, C.C.S.M. L150, upon which *Act* the defendants plead and rely.

11. The defendants accordingly deny that the plaintiff is entitled to the relief claimed in paragraph 1 of the Statement of Claim herein, or to any relief at all, and submit that the plaintiff's claim should be dismissed, with costs.

October 17, 2011

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