

## TEAM, IBEW & TRAM COMMUNICATION

In a historic decision rendered on January 19, 2010, the Court of Queen's Bench of Manitoba ruled in favour of the members of the MTS Allstream Inc. ("MTS") pension plan by requiring MTS to return to the plaintiffs \$43.343 million from January 1, 1997, with interest at the plan rate of return until payment (approximately \$100 million to date). In addition, the Court ruled that the plan members would have control (governance) over how these funds would be utilized. Mr. Justice Bryk held that the money represented an initial employee owned surplus of money the plan members paid into the MTS Plan over the amount MTS paid into the Plan, after MTS privatized on January 1, 1997.

Mr. Justice Bryk, in a well reasoned and thorough judgment found that:

*As a result of the privatization of Manitoba Telephone System (MTS) and its subsidiaries, their employees/retirees were forced to change pension plans. They were assured by the Government of the Province of Manitoba (Government) and by MTS that the new pension plan (New Plan) would have benefits which were at least equivalent in value to those enjoyed under the old pension plan (Old Plan) - that the New Plan would "mirror" the Old Plan. Moreover, as the employees/retirees were transferring more assets into the New Plan than was MTS, they were promised that "initial surplus" would be used for their benefit and would not be used by MTS to reduce its cost or share of contributions to the New Plan.*

*(483) ...Ultimately, the initial surplus resulted in a financial status for the New Plan which enabled MTS to take contribution holidays for several years after the plan's inception. That was precisely what they and the Government agreed not to do and what they told the employees/retirees would not happen.*

This decision represents the culmination of a 13-year struggle emanating from the legacy of a decision of the then Auditor General, Jon Singleton, and his appointed "independent actuary" Clifford Fox, who had been asked by the government in 1996-97 to rule on the issue as to whether the MTS Plan was equivalent to the government plan which the members had enjoyed historically. The Court found that Mr. Singleton overstepped his authority by interfering in the deliberations and findings of Mr. Fox, who ultimately determined that the plans were equivalent. Mr. Fox's tampered ruling caused

a subsequent 10-year court battle on behalf of the plan members, as represented by the unions and retirees.

The Court has ordered the precise amount of the plaintiffs' entitlement be determined and that negotiations take place between MTS and the plaintiffs to arrive at a mutually agreeable implementation process.

In terms of ongoing surplus, the Court found that once MTS repays the money, since MTS bears the risk for ongoing deficits, it is entitled to the use of ongoing surplus. In that regard, the role of the pension committee representing the plan members remains one of proposing recommendations for change to MTS. As a result of the market declines in 2008, the MTS plan is in a substantial deficit position on a solvency basis. It would appear therefore to be a pyrrhic victory for MTS in maintaining its governance over that aspect of the Plan.

The plaintiffs are ecstatic about the outcome of the Court decision as it represents a vindication of their rightful claim to initial surplus which has been denied them for many years, over the course of which time they have spent substantial sums of money to recoup what had been taken from them. Lawyers for the plaintiffs TEAM, IBEW and the retirees, Brian Meronek, Q.C. and Kris Saxberg of D'Arcy & Deacon, said that this decision represents one of the highest judgment amounts ever awarded by a Manitoba Court.