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REPORT FROM THE MONTREAL TRUST MEMBER SURPLUS COMMITTEE[1]

RE: THE MONTREAL TRUST PENSION PLAN (the "Plan")

TO: All Plan Members and Eligible Former Members (the "Surplus Sharing Group")

This is a joint report from the Montreal Trust Member Surplus Committee (the "Committee"), and legal counsel retained by the Committee - Koskie Minsky - regarding a conditional agreement reached with the Montreal Trust Company of Canada ("Montreal Trust") about sharing surplus in the Plan (the "Proposal").

The Committee is comprised of former employees and pensioners of Montreal Trust. The Committee members include **Don Large, Bill Henderson, Jean-Marc Page, Bob Armstrong** and **Terry McLeod** in the Greater Toronto Area, **Ken Hutton** in Vancouver, **Ken McGregor** in Calgary, **Jean Lagace, Rosaire Proulx** and **Yvon Caron** in Montreal, **Fred Turnbull** in Ottawa and **Fred Cosgrove** in Halifax. Their contact information is listed on the final page of this document.

The legal team at **Koskie Minsky LLP** are lawyers **Mark Zigler, Susan Philpott**, and **Leanne Hull**, together with **Susan Ballantyne** whose team manages communications with members. Koskie Minsky is working with **Marcel Rivest of Rivest Schmidt** in Montreal, a lawyer who is advising the Committee as to the laws applicable in Quebec, where the Plan is registered. The Committee also has an independent actuary, **Steve Eadie** of **Robertson•Eadie & Associates Ltd.**

The purpose of this report is to inform all Plan members and eligible former members of the Proposal and to provide you with sufficient information so that you can decide whether you wish to support the Proposal. Please read this Report carefully, as you will be asked to vote on the Proposal.

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[1] The enclosed information is also available at www.koskieminsky.com/Clients/Clients_MontrealTrust.htm; If you require a French language version of this Report, please contact Koskie Minsky at 1-888-723-4305, or print a copy from the website.

1. INTRODUCTION

When we last reported to you in the Fall of 2002, the Committee was in the process of negotiating a surplus sharing agreement with Montreal Trust. Those negotiations were initiated after members of the Committee became aware that the assets of the Plan were considerably higher than its liabilities – in other words, the Plan had a "Surplus" - and raised with Montreal Trust a question about how those extra monies would be used. Montreal Trust agreed to discuss sharing the Surplus with members and eligible former members of the Plan.

Late in the Summer of 2002, the Committee and Montreal Trust reached a preliminary agreement to terminate the Plan and share the resulting Surplus equally (50/50) between eligible Plan members and Montreal Trust. We then invited you to sign an "Authorization and Membership Form" which allowed you to join the Montreal Trust Pension Surplus Resolution Group to indicate support for the continued negotiations. Since then, we have received membership forms from 2525 of those eligible indicating their support. Information sessions were held throughout the country in November and December of 2002 to provide more information on the discussions with Montreal Trust, while the Committee and Montreal Trust continued to work on the remaining details of an agreement to share the Surplus.

We are pleased to announce that we have concluded negotiations with Montreal Trust and have an agreement in principle which is conditional on a number of things, including obtaining sufficient support from the eligible Plan members. That conditional agreement forms the Proposal. We and our legal counsel Koskie Minsky support the Proposal and recommend that you consent to it. Its essential components are described in the next section of this Report, and more details are contained in the document enclosed with this package entitled "Detailed Description of the Surplus Sharing Proposal" – the green document.

Please read this Report carefully, and ensure that you have reviewed all of the documents in the package, including:

- green **Detailed Description of the Surplus Sharing Proposal.**
- blue **Personal Information Statement** which includes an estimate of your anticipated share of the Surplus and a summary of your pension benefits.
- yellow **Authorization and Retainer Form.**
- pink **Schedule for the Information Sessions**, which will be held in April and May, 2004 in major cities where a significant number of Plan members and eligible former members reside.

The Surplus distribution and wind-up of the Plan can only occur if we receive support from a sufficient number of those eligible to satisfy the regulatory requirements of all jurisdictions in which there are Plan members. Although the requirements are different in each province, it will be difficult to proceed without the support of at least 70% of the eligible members. **To support the Proposal, check the "Yes" box on the enclosed yellow Authorization and**

Retainer Form, then sign it and return it to us in the enclosed yellow envelope. Please note that even if you signed the "Authorization and Membership" form in 2002, you still must sign the enclosed "Authorization and Retainer" form and check the "Yes" box to indicate your support for the Proposal.

2. RATIONALE FOR AGREEING TO A SURPLUS DEAL

Three questions have been raised over and over again since we announced the preliminary agreement with Montreal Trust in the Fall of 2002:

- "Why has there been a conditional agreement to a 50/50 split?"
- "Who owns the Surplus?"
- "Why must the Plan be wound up?"

The Committee sought a legal opinion on these issues. Our lawyers advise that while a pension plan is on-going, it is not possible to say that any party "owns" such surplus as may exist at any one time. Often, such as in the case of the Montreal Trust Pension Plan, it is lawful for an employer to use surplus for "contribution holidays" - as a credit or partial credit against its own contributions to the plan. Montreal Trust has been in this position for many years and could continue to take contribution holidays as long as there is sufficient surplus to pay its contributions in respect of members actively accruing service in the Plan. Given the small numbers of active members in the Plan, it could take a long time to use up Surplus that way. Neither the members nor Montreal Trust can unilaterally withdraw Surplus from the Plan.

The only way to require a distribution of Surplus from the Plan is to terminate it (wind it up). In a wind up, the Plan would be terminated, no further contributions would be made to it, and all of the vested and accrued rights and benefits would be crystallized, and secured or paid out as required. Any remaining assets not required to provide basic benefits would be available to distribute as surplus, following the payment of expenses. However, only Montreal Trust is in a position to wind up the Plan unilaterally. The Plan members do not have the same unilateral right, and would have to seek an order from the pension regulator. That would no doubt be contested by Montreal Trust, and the pension regulator might not approve such a wind-up. Therefore, the only way, absent lengthy and expensive litigation (in which there is no guarantee of success) to access Surplus for eligible Plan members is to reach an agreement with Montreal Trust.

Even in circumstances where a pension plan is wound up, the answer to "who owns the surplus?" is not straightforward. It is a complex legal question which requires a review and analysis of the plan's historical treatment and documentation. Koskie Minsky has advised us that while they believe that the Plan members may have a good claim for the entire surplus if the Plan were wound up, the Company does not agree. Since we cannot force a wind-up of the Plan, we cannot test that claim without litigation.

Moreover, time is a factor that the Committee considers quite important. The Surplus available may decrease over time because the longer the Plan continues, the longer Montreal Trust may use Surplus for contribution holidays. While the Plan continues, Surplus may also be used for any new Plan members Montreal Trust chooses to enrol or acquire through a merger with another plan. On the other hand, even if Montreal Trust chose to voluntarily initiate a wind up of the Plan, pension legislation and recent court cases dictate that it would need the support of the Plan members to access any of the Surplus – it cannot withdraw surplus unilaterally.

In the face of all of these factors, an agreement to wind-up the Plan and share the Surplus on a 50/50 basis is a compromise that avoids spending time and money on years of litigation at the risk of getting nothing, and benefits both the members and eligible former members as well as Montreal Trust – a "win-win" situation.

We believe very strongly that the set of terms contained in the Proposal is the best settlement available, and we encourage you to support the Proposal by returning your Authorization and Retainer Form to Koskie Minsky.

3. SURPLUS SHARING PROPOSAL – ESSENTIAL TERMS

We have asked the Plan actuary, Mercer Human Resource Consulting, to provide us with an updated estimate of the amount of Surplus in the Plan. As of December 31, 2003, there is a Surplus of approximately $34 million, if the Plan were wound up at that date. Once the terms of the Proposal are implemented, **including ensuring that there are sufficient funds available to pay all accrued pensions, paying certain guaranteed amounts from the surplus prior to the 50/50 surplus sharing ("off the top"), and paying the costs of negotiating and implementing the Proposal, the amount of surplus to distribute will be less than $34 million.** The final surplus amount cannot be calculated with certainty at this time as there are also various market forces that will impact upon the final number, such as annuity rates and investment returns, and the actual costs associated with the wind up process and implementation of the Proposal are not yet known. Your Personal Information Statement enclosed in the package contains an estimate of your surplus share based on a divisible surplus of $24 million, which takes into account the guaranteed amounts payable under the Proposal (approximately $2 million), all expenses of the Proposal (approximately $5 million), and which also includes a cushion (approximately $3 million) for possible surplus fluctuations.

The details of the Proposal are described in the green document included in this package entitled "Detailed Description of the Surplus Sharing Proposal" (the "Detailed Description"). The key highlights are set out below:

a. **Wind up** - The Plan will be terminated in order to permit access to the Surplus.

b. **50/50 Split** – The Surplus remaining in the Plan will be split, with the eligible Plan members and Montreal Trust each receiving 50% of the Surplus, after costs have been taken "off the top" including the expenses of the wind-up, the costs of negotiating and implementing the surplus deal, and other guaranteed amounts to be paid out under the Proposal.

c. **Eligibility for Sharing -** To be eligible to be part of the Surplus Sharing Group you must have been a member of the Plan on or after December 2, 1993. Individuals who took their pension entitlement from the Plan before December 2, 1993 are not eligible. The Detailed Description includes descriptions of each class of eligible members, including active members, disabled members, transfers to The Bank of Nova Scotia or its affiliates, suspended members with frozen benefits, deferred vested members, pensioners, survivors of certain pensioners, cash-outs, non-vested unpaid members, non-vested partially paid members and beneficiaries.

d. **Costs** – Both Montreal Trust's and the Committee's reasonable legal, actuarial, and other fees and expenses incurred in connection with the negotiation and implementation of the Proposal will be paid "off the top" from the Surplus prior to splitting the remaining Surplus 50/50.

e. **Distribution among Surplus Sharing Group** – The members' 50% share of Surplus will be allocated to the Surplus Sharing Group in accordance with a pro-rata distribution based on the value of each member's entitlement. This is the most equitable approach available and it is the one most commonly used (and accepted by pension regulators) in surplus distributions across Canada. It is required by law in Quebec. While there are alternative formulas for sharing surplus, only this method ensures both fairness and compliance with applicable laws without undue delay.

   For all those Surplus Sharing Group members whose benefits remain in the Plan on the Wind-Up Date, their entitlement will be valued as at the Wind-Up Date. For those who have "cashed-out", their Surplus share will be based upon the value of their entitlement at the date of their termination of Plan membership.

   There are two exceptions to this strictly pro-rata approach. A <u>minimum</u> surplus allocation of $500 has been established, which means that each member of the Surplus Sharing Group will receive at least $500 in Surplus. The Committee agreed to a minimum share of $500 in order to obtain broad member support for the Proposal. There is also a minimum for certain Pensioners or their surviving spouses, so that, in addition to the $500 minimum, they will receive an amount not less than the cost of purchasing a 1% annual cost of living adjustment of their pension.

As noted above, more details regarding the surplus sharing proposal are contained in the green document enclosed with this package entitled "Detailed Description of the Surplus Sharing Proposal". If, after reading these documents, you still have questions about the Proposal, please contact Koskie Minsky at 1.888.723.4305 or via email at <u>montrealtrustpension@koskieminsky.com</u>.

4. THE COMMITTEE RECOMMENDS THE PROPOSAL

We strongly recommend this Proposal to everyone in the Surplus Sharing Group. As indicated above, there is no guarantee that the Company will wind up the Plan by itself, and if it doesn't, the Surplus cannot be accessed unilaterally by either the members or Montreal

Trust. Furthermore, the Surplus cannot be accessed by the members unless the Plan is wound up, and the only way to avoid protracted litigation and to guarantee that the eligible members will receive a share of the surplus is to reach an agreement with Montreal Trust.

We have taken steps to ensure that all categories of eligible members are protected as much as possible from any potential loss as a result of winding up the Plan. Pensions will be guaranteed through the purchase of an annuity with a reputable insurance company. Those amounts will also be insured through CompCorp, an insurance industry guarantee fund. Those pensioners who are presently eligible for ad hoc increases will receive at least as much Surplus as it would cost to purchase 1% cost of living protection. This is consistent with Montreal Trust's approach over at least the past 10 years of providing *ad hoc* inflation increases. As mentioned in the key highlights at point "3" above, some members have entitlements to replacement benefits, which are guaranteed amounts payable under the Proposal. The Active members, Disabled members, and Transfers to the Bank have future salary accruals which will be protected through an improvement to those members' pensions from the Plan – and those improvements are included in the liabilities for purposes of the pro-rata allocation of Surplus, and will be paid from the Surplus prior to the 50/50 division. The loss of future service in the Plan is dealt with for Active members by putting them in a new pension plan; for Disabled members, by allocating them an additional amount of Surplus which is the present value of their expected future accruals.

The Committee has had the benefit of legal counsel and independent actuarial advice throughout the discussions with Montreal Trust. Both our lawyers and actuary, Steve Eadie, recommend this Proposal. We believe that, under all of the circumstances, the Proposal is reasonable and fair and a good deal for the members and eligible former members of the Plan. The Proposal is the result of months of negotiation and we do not believe that further negotiations would have led to a better deal. **We unanimously recommend that you consent to the Proposal by checking the "Yes" box on the yellow Authorization and Retainer Form that is included in this package, signing the form, and returning it to Koskie Minsky in the enclosed yellow envelope. You must return the Authorization and Retainer even if you previously returned a membership form to Koskie Minsky in 2002, as the 2002 form does not constitute your consent to the Proposal.** Every vote counts: if you do not check the "Yes" box and return your yellow Form to us (and if you do not otherwise communicate your consent to the Proposal - see the green document for information on how to do this), we will assume you do not support the Proposal.

If the Proposal does not receive the requisite level of support from the Surplus Sharing Group, it cannot go forward. It will be difficult to proceed without the support of at least 70% of the eligible members. We encourage everyone to reply.

5. INFORMATION SESSIONS

There will be information sessions so that you may attend in person and hear an explanation of the Proposal by our lawyers. The details of the information sessions, including times and locations, are described on the enclosed pink sheet. Members from the Committee, a lawyer from Koskie Minsky, as well as representatives of Montreal Trust and their legal advisors, and the Plan's actuary, will be at the information sessions to describe the Proposal to you and to answer your questions. **You will have an opportunity at the information sessions, without Montreal Trust's presence, to speak with lawyers retained by the Committee.**

If there is an information session scheduled in your area, please try to attend, if at all possible. You may send your Authorization and Retainer Form to Koskie Minsky beforehand, but you can also deliver it at the session. We look forward to seeing you there. If you cannot attend, and you have questions about the Proposal, please contact Koskie Minsky at 1.888.723.4305 (toll-free) or by e-mail at montrealtrustpension@koskieminsky.com. If you have questions about your pension benefits or your surplus estimate, you may contact the Plan actuaries, Mercer Human Resource Consulting, at 1.866.685.8787 (toll-free) or by e-mail at montreal.trust@mercer.com.

6. NEXT STEPS

Once you have read this Report and the rest of the information in this package, please fill out and execute the enclosed yellow Authorization and Retainer Form if you support the Proposal (make sure to check the "Yes" box) and return it to Koskie Minsky in the yellow envelope. The form will authorize Koskie Minsky to:

1. continue to act on your behalf;
2. receive all notices and formal documentation relating to the settlement as may be required by a court or pension regulators;
3. sign a formal Surplus Sharing Agreement (which will implement the terms of the Proposal) on your behalf;
4. release claims in exchange for your share of Surplus; and
5. represent you before the regulators and/or the courts, as necessary, in order to obtain their approval of the Proposal.

Once we have received a sufficient number of signed Authorization and Retainer Forms, we will enter into a formal Surplus Sharing Agreement with Montreal Trust. That agreement, and the associated request to wind up the Plan and withdraw the Surplus, must then be approved by the regulators and the courts. We anticipate that, even if the Proposal is accepted by the Surplus Sharing Group quickly, it will likely be the second half of 2005 before any Surplus distribution can take place.

There is no cost to you for the services of Koskie Minsky. Montreal Trust and the Committee have agreed that the legal and actuarial costs of the Committee and the members of the Surplus Sharing Group who retain Koskie Minsky will be paid from the Surplus as part of the implementation of the Proposal. As well, reimbursement will be made to those who contributed to legal fees earlier in the process.

We ask that you return your completed yellow Authorization and Retainer form to Koskie Minsky as soon as possible, but in any event no later than May 31, 2004 in the self-addressed, stamped envelope provided (the yellow envelope).

If you have any questions about the Proposal, please contact Koskie Minsky at 1.888.723.4305 or montrealtrustpension@koskieminsky.com.

Yours truly,

The Montreal Trust Member Surplus Committee

Per: Don Large

KOSKIE MINSKY LLP

Per: Mark Zigler and Susan Philpott

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