

COURT FILE NUMBER 1801-10956  
COURT COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL CENTRE CALGARY  
PLAINTIFF(S) RENÉE DELORME as Representative Plaintiff  
DEFENDANT(S) HER MAJESTY THE QUEEN IN RIGHT OF CANADA, IBM CANADA LIMITED.  
DOCUMENT **APPLICATION OF THE PLAINTIFF FOR SETTLEMENT AND FEE APPROVAL**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
NAPOLI SHKOLNIK CANADA  
Attention: Clint Docken, Q.C. and Mathew Farrell  
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A Class Proceeding pursuant to the *Class Proceedings Act*, Chapter S.A. 2003 ch C-16.5

#### NOTICE TO RESPONDENT(S)

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Judge.

To do so, you must be in Court when the application is heard as shown below:



\$50.00  
CMH  
Sept 7 2022

Entered

Date: September 7<sup>th</sup>, 2022  
Time: 10:00 a.m.  
Where: Calgary Court Center  
Before Whom: Associate Chief Justice J. Rooke

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

**The Applicant seeks an Order:**

1. Approving the settlement agreement (the “Settlement Agreement”) made between the Representative Plaintiff and the Class in this class action with the defendant, IBM Canada Limited (“IBM”), as set out in the attached Schedule “A”; and
2. Approving the Class Counsel fees of 25% of the Settlement Amount, as defined below, plus applicable taxes and disbursements, plus applicable taxes.

**Grounds for making this Application:**

1. This action relates to IBM’s computer program for the Government of Canada, which was intended to automate the payments of wages for all employees and contractors employed by the Government of Canada throughout the country (the “**Phoenix Pay System**”).
2. The Plaintiff alleges that the Phoenix pay system, when delivered to the Government of Canada in or around 2014, was fraught with errors and would frequently either overpay, underpay or fail to pay at all.
3. The Plaintiff alleges that IBM failed to take reasonable steps to ensure that the Phoenix Pay System would accurately and reliably remit the amounts due to various employees and contractors for their relevant pay periods.
4. IBM denies the Plaintiff’s allegations and denies all allegations of wrongdoing.
5. This proceeding is being pursued on a national basis out of Alberta.

6. The settlement class is defined as all individuals, whether unionized or non-unionized, who worked for the Government of Canada at any time between January 1, 2014 through until the date of settlement approval..

### **The IBM Settlement Agreement**

7. On April 21, 2022 the Representative Plaintiff and IBM entered into the Settlement Agreement.
8. The Settlement Agreement provides, among other things, that the parties will take all necessary steps to obtain an Order from the Court approving the Settlement Agreement pursuant to the *CPA*.
9. The Settlement Agreement is conditional upon its approval by this Court and the dismissal of these proceedings against IBM with prejudice and without costs.
10. The Settlement Agreement provides for the payment by IBM of \$100,000.00 (the “Settlement Amount”) for the benefit of the Settlement Class Members across Canada.
11. The Pre-Approval Notice advised the Settlement Class of:
  - a) The material terms of the Settlement Agreement;
  - b) The right of Class Members to opt-out if they did not wish to participate
  - c) Their right to object to the Settlement Agreement

### **Opt-Outs and Objections**

12. The deadline for submitting objections to the approval of the Settlement Agreement was September 1, 2022. Class Counsel have not received any objections to the Settlement Agreement.

### **Class Counsel Fees and Disbursements**

13. Class Counsel seek payment of legal fees, disbursements and taxes from the monies payable under the Settlement Agreement in accordance with the retainer agreement entered into with the Representative Plaintiff.

### **Approval of Settlement Agreement**

14. The proposed Settlement Agreement is fair, reasonable and in the best interest of the Settlement Class and ought to be approved. The Settlement Agreement achieves the goals of the *Class Proceedings Act*, SA 2003, c C-16.5 and provides substantial benefits to members of the Settlement Class.
15. Counsel of sufficient experience and ability has undertaken sufficient investigations to satisfy the Court that the Settlement Agreement is based on a proper analysis of the claim.
16. No collusion or extraneous considerations have influenced negotiations such that the Settlement Agreement would have been inappropriately reached.
17. On a cost/benefit analysis, the Class are well-served by accepting the Settlement Agreement rather than proceeding with the litigation.

### **Approval of Fees and Disbursements**

18. Class Counsel fees at 25% are fair and reasonable in the circumstances. Class Counsel has spent many hours in order to advance the litigation to the settlement that has been achieved to date.

### **Material or evidence to be relied on:**

19. Affidavit of Renée Delorme.
20. The pleadings and proceedings herein; and
21. Such further and other material as counsel may advise and this Honourable Court may permit.

### **Applicable Rules**

22. Rule 2.6 (1) and (2) of the *Alberta Rules of Court*.

**Applicable Acts and Regulations:**

23. Class Proceedings Act, SA 2003, c C-16.5.

**Any irregularity complained of or objection relied on:**

24. None.

**How the application is proposed to be heard or considered:**

25. Virtually on WebEx before Associate Chief Justice J.D. Rooke.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to rely on an affidavit or other evidence when the application is heard or considered, you must reply by giving reasonable notice of the material to the applicant.