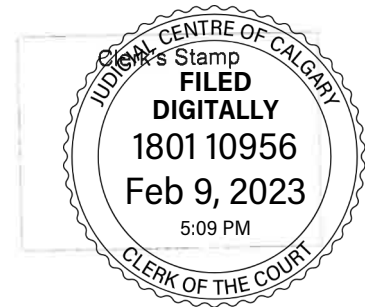


Form 10
[Rule 3.25]

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 **SUPPLEMENTAL AFFIDAVIT OF RENÉE DELORME IN SUPPORT OF CERTIFICATION OR SETTLEMENT PURPOSES, SETTLEMENT APPROVAL, and FEE APPROVAL**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT NAPOLI SHKOLNIK CANADA
Attention: Clint Docken, K.C.
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Ph: (403) 457-7778
Fax: 1-877-517-6373



James H. Brown & Associates
Attention: Rick Mallett
2400 Sun Life Place
10123-99 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788

A Class Proceeding pursuant to the *Class Proceedings Act*, S.A. 2003, C-16.5

SUPPLEMENTAL AFFIDAVIT OF RENÉE DELORME
Sworn on January 13, 2023

I, Renée Delorme, of the Hamlet of Bragg Creek, in the Province of Alberta, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am the proposed representative plaintiff in this action. I currently reside in Bragg Creek, Alberta. I am a former employee of the Government of Canada.
2. I have reviewed the Amended Statement of Claim filed in this proceeding, spoken with my lawyers via phone and email multiple times, and reviewed and approved the settlement agreement reached between IBM Canada Limited ("IBM") and I. My lawyers have informed me about the certification process, settlement approval process, and fee approval process, and they have answered all of my questions. As such, I have personal knowledge of the facts and matters to which I hereinafter depose, except where stated to be on information and belief, in which case I disclose the source of my information and believe them to be true.
3. I swear this affidavit in support of applications for certification of this matter as a class proceeding for settlement purposes only, settlement approval, and fee approval.
4. In swearing this affidavit, I do not intend to waive privilege over any communications with my legal counsel. The information provided in this affidavit is also based on the terms in the Settlement Agreement with IBM that render this affidavit inadmissible in future steps in these proceedings, if the Settlement Agreement is not approved by this Court.

Overview

5. This is a proposed class action brought on behalf of employees of the Government of Canada against IBM and the Government of Canada in connection with the implementation of the Phoenix Pay System.
6. I instructed my lawyers to enter into a Settlement Agreement with IBM, a copy of which is attached as Exhibit "A". In brief, the Settlement Agreement would have IBM make a payment of \$100,000 in resolution of this matter. That amount would be used in part to pay my lawyers' fees and disbursements, and the balance would be provided to Food Banks Canada.
7. I understand that this means that members of the proposed class will not receive any compensation from IBM in respect of the Phoenix Pay System. Despite this, I am of the view that the proposed settlement is fair, reasonable, and in the best interests of the class, for the reasons set out below.
8. In connection with the approval of the settlement agreement with IBM, I am also seeking certification of this case as against IBM Canada, as well as approval of fees and disbursements to be paid to my lawyers.

The Claim

9. This action was originally commenced by Statement of Claim filed with the Court on August 2, 2018. A copy of the Statement of Claim is attached as Exhibit "B".
10. The Statement of Claim was amended on March 21, 2019. A copy of the Amended Statement of Claim is attached as Exhibit "C".
11. The allegations in this claim relate to the implementation of a computerized payroll system by the Government of Canada starting in 2014. In brief, the Amended Statement of Claim alleges as follows:
 - a. In or about 2014, IBM wrote a computer program, known as the Phoenix Pay System, for the Government of Canada. The Phoenix Pay System was intended to automate the payments of wages for all employees and contractors employed by the Government of Canada throughout the country. At the time that IBM implemented the system, it knew that the system contained numerous faults because they had experienced similar problems in Australia and other jurisdictions.
 - b. 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.
 - c. As a result, the Phoenix Pay System, when delivered to the Government of Canada was fraught with errors and would frequently either overpay, underpay or fail to pay at all.
 - d. Upon receiving the faulty product and knowing of these faults, the Government, in breach of its duties in contract, tort and otherwise at law, implemented the Phoenix Pay System for all of its employees and contractors.
 - e. At the time that the Phoenix Pay System was implemented, the Government of Canada knew or ought to have known that it contained faulty programming such that it would frequently overpay, underpay or not pay its employees or contractors at all.
 - f. As a result of the systemic flaws of the Phoenix Pay System, the members of the class were repeatedly either overpaid, underpaid, or not paid at all during various pay periods over the course of the Class Period, resulting in significant financial hardship, and loss suffered by the members of the class.
 - g. Compounding this problem, the Phoenix system precluded employees and managers from effectively accessing records of when and how much time was worked, approved or paid out making it more difficult and time consuming to address, detect and resolve these errors.

- h. During the Class Period, both the Government of Canada and the Defendant IBM, failed to take reasonable steps to ensure that the errors being made by the Phoenix system did not reoccur or to fix the problems with the code and further failed to replace the Phoenix Pay System with a system that did not result in repeated instances of being overpaid, underpaid, or not paid at all during a pay period.
- i. When the class members were in situations where they were overpaid, the Government of Canada would demand return of amounts overpaid, including in some cases requiring the employee to reimburse for statutory withholdings, resulting in the employee repaying more than they mistakenly received. This often occurred in a situation where such amounts had already been spent and the class members were not in a position to easily repay the amounts.
- j. I worked in various positions as a unionized worker, and as a non-unionized contract employee during the Class Period and in each case I experienced a number of instances of either overpayment, underpayment, misreporting in pay stubs or T4's or not being paid at all during a pay period.
- k. As results of these failures to pay the appropriate amounts due, I suffered significant financial hardship but for the fact that my husband and I have lived below our means for most of our lives and are near retirement, therefore having some income from investments and savings.
- l. When I was underpaid or not paid at all, I nonetheless suffered hardship by finding it more difficult and sometimes impossible to pay for planned expenses or investments as and when I had intended.

12. While both IBM and the Government of Canada were named as defendants in the action, my lawyers' primary focus in this case was on the Government of Canada. It is the Government of Canada that has contractual relationships with class members to pay us appropriately in accordance with our contracts. Consequently, while IBM was named on the basis that it had been involved in the rollout of the Phoenix Pay System, IBM was never the primary target of the claim.

The Quebec Action

- 13. There is a parallel class action in Quebec in respect of these same issues (the "Quebec Action"). A copy of the Demand for Authorization is attached as Exhibit "D".
- 14. The Quebec Action was only commenced against the Government of Canada. IBM is not a defendant in the Quebec Action.
- 15. The Quebec Action was certified on April 3, 2018. However, the class that was certified was smaller than originally sought by the Plaintiff in the Quebec Action. The Plaintiff had sought to certify a class consisting of all persons who worked for the Government of Canada from 2016 onward. However, the Quebec Superior Court of Justice excluded from the scope of the class those persons who are subject to the grievance procedure

under Part 2 (sections 206, 208, 209) under the *Federal Public Sector Labour Relations Act*. A copy of the Quebec Superior Court's decision is attached as Exhibit "E".

16. The impact of the Court's decision was to exclude a substantial percentage of the Government of Canada's employees from the scope of the proposed class. The Plaintiff appealed the certification decision as to the scope of the class size. The Quebec Court of Appeal dismissed the appeal. A copy of the Quebec Court of Appeal's reasons are attached as Exhibit "F".
17. The Plaintiff's application for leave to appeal that decision to the Supreme Court of Canada was dismissed on April 23, 2020.
18. I understand that the Quebec Action against the Government of Canada remains ongoing.

Investigation into IBM Canada Limited

19. IBM has consistently denied any liability for any problems with the Phoenix Pay System. While there have been numerous government investigations and reports into the problems with the Phoenix Pay System, those reports point the finger at the Government of Canada, rather than IBM.
20. In March 2018, IBM executives stated publicly that the problems with the system were not the fault of the software developed by IBM, but rather the rollout by the Government. Attached as Exhibit "G" is a Toronto Star article dated March 28, 2018, reporting on those developments. Among other things, that Toronto Star article stated as follows:

Computer systems giant IBM says the company is not to blame for the disastrous rollout of the Phoenix pay system because it was not responsible for key elements of the scheme that has left tens of thousands of public servants shortchanged across Canada.

Speaking publicly for the first time prior to Senate testimony Wednesday night, IBM executives say the company flagged concerns nearly three years ago to top federal bureaucrats and urged Ottawa to delay the launch of Phoenix.

In interviews with the Toronto Star and Global News, IBM said the company's warnings were communicated verbally and in writing to senior officials within the public services department from July and August 2015, and continued until January 2016, a period that spanned the federal election that saw the Conservative government replaced by the Liberals.

IBM said it told senior federal project managers the Conservative decision to start rolling out a new pay system in October 2015, which was slated to be fully in place in December 2015, was "not realistic." The company says it advised the federal government should delay the 2015 launch for at least six to eight months, until July or August 2016.

But IBM's advice was rejected, senior executives said.

Federal officials told IBM the project start could be delayed only until February 2016, and the second phase that would see all departments using the new software had to “go live” by April 2016 because the government had already sent out notifications to the hundreds of clerks who processed paycheques in the federal government that their jobs were being eliminated by April. IBM dealt with senior officials at the assistant deputy minister level, and did not directly deal with ministers, the company said.

[...]

IBM warned the government that not all the requested software changes could be made on time for the 2016 rollout, and asked the government to prioritize the changes it wanted.

By the time the system went “live,” many functions, such as how to account for and process retroactive pay, were not in place, the Senate committee has heard. Since then, backlogs have grown and compounded what IBM said are human errors. IBM said responsibility for training — originally part of its contract — was removed in 2014 when the federal project managers said the government would take over that aspect of the transformation in-house.

21. The Auditor General prepared two reports regarding the implementation of the Phoenix Pay System:
 - a. The first report was from fall 2017 and was entitled “Report 1—Phoenix Pay Problems”. A copy of that report is attached as Exhibit “H”.
 - b. The second report was from spring 2018 and was entitled “Report 1—Building and Implementing the Phoenix Pay System”. A copy of that report is attached as Exhibit “I”.
22. Both Auditor General reports identified deficiencies by the Government of Canada in respect of the implementation of the Phoenix Pay System. Neither report criticized IBM’s conduct in any way.
23. The Senate Standing Committee on National Finance also conducted an investigation into the causes of the failure of the Phoenix Pay System. The Committee prepared a report entitled “The Phoenix Pay Problem: Working Toward a Solution”, which was released in July 2018. A copy of that report is attached as Exhibit “J”.
24. Again, that report identified deficiencies by the Government of Canada in respect of the implementation of the Phoenix Pay System, but it did not criticize IBM’s conduct in any way. That report repeatedly referenced testimony that IBM had warned the Government of Canada that the Phoenix Pay System was not ready to launch on the timeline that had been set by the Government of Canada, but that the Government of Canada ignored IBM’s warnings. That report also summarized testimony from a third-party evaluator of the Phoenix Pay System that confirmed that IBM did precisely as expected:

Representatives from Goss Gilroy, who evaluated the pay transformation initiative for the government, concluded that the initiative had not taken into

account the vast scope of the transformation, which was not simply a software replacement or a relocation of employees but was a complete reworking of a complex pay system. Many witnesses, including labour organizations, pointed out that the government did not understand what pay advisors did on a daily basis.

When asked about the performance of IBM, Jim Alexander, an associate at Goss Gilroy, said that after looking at the various documents and talking to stakeholders, it was clear that the government had spent many years developing extremely detailed requirements that specified exactly what a private sector company should do if it won the contract. In his view, IBM did precisely what the government specified, responding to multiple requests for changes throughout the length of the contract. [emphasis added]

25. I understand that at the time the Statement of Claim was issued, IBM was added as a defendant because, as was publicly reported: a) they had been involved in the rollout of the Phoenix Pay System; and b) there was a public report of difficulties in the rollout of a similar pay system in Australia. Given IBM's involvement in the Phoenix Pay System, and the possibility that new evidence might emerge, my lawyers felt it prudent to include IBM as a defendant.
26. My understanding is that, since the Statement of Claim was issued, my lawyers have not obtained any evidence that IBM's conduct in the rollout of the Phoenix Pay System was inappropriate. To the contrary, since the claim was issued, I am not aware of there being any new third-party reports or evaluations that have criticized IBM's conduct in relation to the Phoenix Pay System in any way.
27. Other than this proceeding, I am not aware of any other litigation brought by anyone else against IBM in respect of the implementation of the Phoenix Pay System by the Government of Canada.

Other Settlements with Class Members

28. Independent of this class action or the Quebec Action, all Government of Canada employees have the ability to submit claims for various expenses they have incurred due to the Phoenix Pay System. The Government of Canada first made this available in October 2016. Attached at Exhibit "K" is a news release put out by the Professional Institute of the Public Service of Canada describing the initial Treasury Board announcement.
29. The nature of that reimbursement process has evolved over time. At present, the Government of Canada makes the following categories of compensation available to all Government of Canada Employees:
 - a. Claims for out-of-pocket expenses—all employees who experienced problems with the Phoenix Pay System can submit a claim for compensation for out of pocket expenses. Attached as Exhibit "L" is a Treasury Board document that explains the compensation to which they are entitled.

[<https://www.canada.ca/en/treasury-board-secretariat/services/pay/submit-claim-pocket-expenses-phoenix.html>]

- b. Claims for impacts to income taxes and government benefits—Employees who were supposed to receive their salary in one year but only received it in a following year may have paid a higher rate of income tax or received reduced government benefits and credits. The Government of Canada allows individuals to submit claims for these losses. Attached as Exhibit “M” is a Treasury Board document that explains the compensation to which they are entitled.
[<https://www.canada.ca/en/treasury-board-secretariat/services/pay/submit-impacts-income-taxes-government-benefits-credits.html>]
 - c. Reimbursement for tax advice—Employees who sought tax advice to understand tax implications caused by errors in their pay could receive up to \$200 per year for various tax years. Attached as Exhibit “N” is a Treasury Board document that explains the compensation to which they are entitled.
[<https://www.canada.ca/en/treasury-board-secretariat/services/pay/submit-claim-fees-tax-advisory-services.html>]
 - d. Advances on government benefits—Employees who received a reduction in government benefits due to an overpayment could receive an advance until all Phoenix issues were resolved. Attached as Exhibit “O” is a Treasury Board document that explains the compensation to which they are entitled.
[<https://www.canada.ca/en/treasury-board-secretariat/services/pay/submit-request-recoverable-advance-social-benefits.html>]
30. All of the aforementioned programs are available to all Government of Canada employees, irrespective of whether they are covered by particular collective agreements.
31. In addition, the Government of Canada has also entered into agreements to provide additional compensation to members of various public sector unions. While I do not have a precise breakdown, I expect that the vast majority of members of the proposed class in this case are members of various public sectors therefore benefit from one of these agreements.
32. In June 2019, the Government of Canada reached an agreement with several public sector unions to provide them with compensation. A copy of the agreement is enclosed at Exhibit “P”. [<https://www.canada.ca/en/treasury-board-secretariat/topics/pay/phoenix-pay-system/damages-caused-phoenix-pay-system.html>] A copy of a webpage that explains the terms of the agreement is attached at Exhibit “Q”.
[<https://www.canada.ca/en/treasury-board-secretariat/topics/pay/phoenix-pay-system/compensation-federal-employees-impacted-phoenix-pay-system.html>]
33. In 2020, the Government of Canada and the Public Service Alliance of Canada (PSAC) reached a joint agreement to compensate current and former employees who may have been impacted by the Phoenix Pay System. To my understanding, PSAC is the largest public sector union representing employees working for the Government of Canada. A

copy of the agreement is enclosed at Exhibit “R”. [<https://www.canada.ca/en/treasury-board-secretariat/topics/pay/phoenix-pay-system/phoenix-pay-system-damages-agreement-2020.html>] A copy of a webpage that explains the terms of the agreement is attached at Exhibit “S”. [<https://www.canada.ca/en/treasury-board-secretariat/topics/pay/phoenix-pay-system/compensation-eligible-employees-impacted-phoenix-pay-system-2020-agreement.html>]

34. In general terms, under those agreements, current and former government of Canada employees who are covered by those agreements have the ability to receive various forms of compensation, including:
 - a. Lump sum general damages for stress, aggravation, pain and suffering; and
 - b. Additional compensation, evaluated on a case-by-case basis, for those who have suffered severe personal or financial impacts or financial costs and lost investment income.
35. These amounts are in addition to the amounts that all government employees can claim, as described above.
36. While the Government of Canada’s program to reimburse claims for various expenses pre-dated the issuance of the Statement of Claim in this action, the settlements with the public sector unions post-date the issuance of the Statement of Claim.

IBM’s Application to Strike the Claim

37. On March 25, 2021, IBM delivered an application to strike the Plaintiff’s Amended Statement of Claim. A copy of the application to strike is attached as Exhibit “T”.
38. The basis of IBM’s application was that the Amended Statement of Claim did not disclose a cause action. IBM’s application contended that there were no facts pleaded in the Amended Statement of Claim that, if true, would establish a relationship of proximity between any member of the proposed Class and IBM.
39. I am advised by my counsel that in two relatively recent Supreme Court of Canada decisions—*Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63 and *1688782 Ontario Inc. v. Maple Leaf Foods Inc.*, 2020 SCC 35—the Supreme Court held that “[i]n cases of negligent misrepresentation or performance of a service, two factors are determinative of whether proximity is established: the defendant’s undertaking, and the plaintiff’s reliance.”
40. The Amended Statement of Claim does not plead either that IBM made any specific undertaking to class members, nor does it plead that I or any other class members relied on that undertaking. In addition, I understand that neither I nor my counsel are aware of any material facts that they could plead as to any express undertaking provided by IBM or any reliance on such an undertaking by me or other class members.

41. As a result, my counsel advised me that there was significant risk that IBM's application to strike the claim would be successful.

Settlement Negotiations with IBM

42. After IBM delivered its application to strike the Amended Statement of Claim, my lawyer began having settlement discussions with counsel to IBM.
43. I understand that IBM felt confident about its chances of success on both its application to strike and, even if that was unsuccessful, in defending the case on the merits. IBM's counsel was initially sceptical about the value of any settlement discussions at all. IBM's counsel initially advised that their client was not willing to pay any settlement whatsoever.
44. However, after an extended period of negotiation, Mr. Docken and IBM's counsel ultimately agreed on June 28, 2021 in a non-binding term sheet to resolve the matter in exchange for a payment by IBM of \$100,000.
45. It then took several months to formalize that non-binding term sheet into a formal settlement agreement. I understand that, even after that non-binding term sheet was signed, it took several months for IBM's counsel to secure sign-off from IBM to a fulsome settlement agreement that included any payment whatsoever, given IBM's views on liability.
46. I understand from Mr. Docken that he does not believe that there is any reasonable prospect of securing additional payment by IBM as part of a settlement at this stage of the proceeding. I understand that IBM may be less motivated to settle at a later stage, after they have incurred additional cost in defending the proceeding.

Experience of Counsel

47. My lawyers are experienced class actions counsel. Napoli Shkolnik Canada is working with the law firm of James H. Brown and Associates in the prosecution of the within Action.
48. Clint Docken, K.C., is the lead counsel in this action. He was called to the bar in 1974, and he has since had extensive experience in litigation, including class proceedings. Mr. Docken has acted as counsel in a number of major mass tort actions including the Provincial Training School (Sterilization) and Indian Residential School cases, Hepatitis C (tainted blood), and the Bre-X litigation. He has also participated in a number of significant class actions including Menu Foods, Maple Leaf Foods, and XL Foods.
49. In addition to Mr. Docken, Rick Mallett at James H. Brown and Associates, and other lawyers at that firm, have acted along with Mr. Docken. Mr. Mallett is the head of the class actions team at James H. Brown and Associates and an experienced class actions lawyer. James H. Brown and Associates has been counsel on a number of significant class actions, including long-term care class actions, the XL Foods class action, the Robin Hood Flour class action, and the Onion Salmonella outbreak class action.

50. I understand that all members of the counsel team in this action recommends the proposed settlement with IBM.

Risks of Proceeding with the Litigation Against IBM

51. I understand from my lawyers that there are a number of risks if the litigation against IBM were to continue.
52. First, I understand that if this matter is not resolved with IBM, IBM intends to proceed with its application to strike. There is the risk that IBM would be successful on its application to strike, as described above. If IBM were successful on that application, that would end the proceedings as against IBM.
53. Second, there is the risk that we would not be successful in an application to certify this case as a class action as against IBM. We have not yet delivered our certification application, and accordingly the defendants have not yet responded to the certification application. Moreover, given that no settlement has been reached with the Government of Canada, I do not want to include any information that might prejudice our position on a certification application. However, it suffices to say that certification is never a foregone conclusion.
54. While the Quebec class action was authorized, my understanding is that the bar for authorization in Quebec is lower than the bar for certification in other provinces. Moreover, IBM is not a defendant in the Quebec Action. Consequently, the successful authorization in Quebec is no guarantee that this proceeding would be certified as against IBM.
55. Third, even if the action were to be certified as against IBM, there is a risk that the class would be unsuccessful on the merits against IBM and that this action would be dismissed either at a summary judgment motion or at a common issues trial. As described above, there is a significant body of evidence that points away from IBM's responsibility for the problems with the Phoenix Pay System, and my understanding is that we do not presently have any evidence to the contrary.
56. Fourth, even if the class were successful on the merits of their claims as against IBM, there is significant uncertainty as to the quantum of damages to which class members would be entitled. As described above, the Government of Canada has also made several different types of compensation available to class members, and IBM will no doubt argue that all of those forms of compensation would have to be taken into account in considering the amount of damages award that class members would receive. As a result, there is a risk that the class as a whole might receive only modest compensation, even if the class were to be successful in establishing IBM's liability.
57. Finally, leaving aside the risks described above, there was a risk of prolonged and expensive litigation, if the litigation were to continue. Continued pursuit of this action would have involved the expense of arguing a contested certification application, holding oral discoveries, obtaining documentary discovery and reviewing the materials produced pursuant to those processes, attending a trial of the common issues, and finally, if

necessary, holding trials to make determinations regarding any individual issues. As noted above, IBM has consistently denied any liability, and I have no reason to believe that they would be prepared to a larger settlement at any later stage.

58. Even if we were to be successful at each and every one of these stages of the proceeding, and even without taking into account the likelihood of further appeals, the action would have taken a number of additional years to come to a resolution, and cause this matter to remain outstanding for several additional years.

Notice to Class Members

59. The form of notice of hearing the impending settlement approval motion was approved by the Court by Order dated July 29, 2022. A copy of that Order is attached as Exhibit "U".

60. Consistent with that Order, a Notice of Hearing was published in the Globe & Mail on August 12, 2022. A copy of the tear sheet received from the Globe & Mail evidencing such publication is attached as Exhibit "V".

61. In addition, I understand that my lawyers have prepared the website www.phoenixibmsettlement.com as another means of notifying class members about the settlement with IBM Canada. I understand that the Settlement Agreement and Notice of Hearing have been posted on that website since August 24, 2022.

62. I am advised by my lawyers that since that time, no class member has contacted them to object to or raise any concerns about the proposed settlement.

Opt Outs

63. The Settlement Agreement contemplates that the opt-out period will run after Settlement Approval is granted. In particular, the Settlement Agreement contemplates that, after Settlement Approval is granted, Class Members will be able to opt out for 60 days after the date on which the Notice of Certification and Settlement Approval is publicized. Consequently, to the extent that any individual class member wishes to bring their own claim against IBM, they have the ability to opt out of the class and do so.

64. The only caveat is that if more than 10% of the total number of Class Members opt out, IBM has the right to terminate the Settlement Agreement. If that occurs and IBM decides to terminate the Settlement Agreement, the Settlement Agreement will come to an end, and all orders made in furtherance of settlement will automatically be set aside, and the litigation will resume. However, in that case, Class Members will be in no worse position than if the Settlement Agreement is not approved.

The Certification Criteria

65. I am prepared to act as a Representative Plaintiff in this matter.

66. I have reviewed the proposed class definition, and I believe that I am a member of the proposed class.
67. I have been advised by my lawyers that, while I can ask the Court to be reimbursed for my time and expenses incurred in prosecuting this class action, I will not be entitled to any recovery on account of these expenses unless the Court so orders.
68. I have been advised by my lawyers that the major steps in a class action are generally as follows:
- a. the action starts by the issuance of the Statement of Claim (completed);
 - b. the Court is asked to certify this action as a class proceeding by way of an application for certification;
 - c. if the Court certifies the action as a class proceeding, notice of the certification order is given to class members who are given the opportunity to opt-out of (exclude themselves from) the class action within a fixed time period;
 - d. each of the parties must produce their relevant documents;
 - e. questioning will be held, during which lawyers for the Defendant will ask me questions and my counsel will ask questions of the Defendant's representative;
 - f. conferences will be held with the case management judge from time to time;
 - g. from time to time, court applications may be held;
 - h. if the action is not settled, there will be a trial. The trial will determine the common issues;
 - i. if the class is successful at trial, notice must be given to the class members to give them the opportunity to participate because their involvement may be necessary at that stage to prove their damages;
 - j. class members will be required to file claims in order to prove their entitlement to damages;
 - k. appeals may be taken at various stages of the action; and
 - l. the action may be settled, but only with court approval, at any stage.
69. I also understand that, in agreeing to seek and accept an appointment by the Court as representative plaintiff, it is my responsibility, among other things, to:
- a. become familiar with the issues to be decided by the Court;
 - b. review the Statement of Claim and amendments;

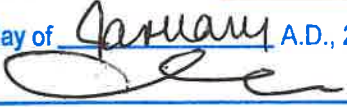
- c. assist in the preparation and execution of an affidavit in support of the application for certification;
- d. attend, if necessary, with my counsel to be questioned on my affidavit;
- e. attend, if necessary, with my counsel for my questioning after certification;
- f. assist, if necessary, in the preparation and execution of an affidavit listing relevant documents I have or previously had in my possession or under my control;
- g. attend, if necessary, with counsel at trial and give evidence;
- h. receive briefings from my counsel from time to time;
- i. express my opinions on strategy to my counsel;
- j. express my opinion to my counsel and to the Court if offers to settle are made;
and
- k. assist in the preparation of and sign an affidavit in support of Court approval of any settlement.

70. To date, I have taken several steps to fairly and adequately represent the interests of potential class members. These include:

- a. retaining the law firms of Napoli Shkolnik Canada and James H. Brown and Associates;
- b. communication with counsel to inform myself about the litigation and advise counsel about my personal circumstances;
- c. consulting with counsel via telephone, email, and video-conferencing;
- d. reviewing the Statement of Claim before filing;
- e. locating additional class members and information potential class members of the Action;
- f. assisting in the drafting of this affidavit.

71. Throughout the litigation, I will continue to fairly and adequately represent the interests of class members by interacting with and instructing class counsel as necessary and ensuring, through counsel, that the class is kept apprised of developments. I will also make myself available for court matters as required.

72. I understand that the *Class Proceedings Act*, SA 2003, c-1 6.5 requires a workable Litigation Plan to be put into place as part of the certification process. I understand that such a Litigation Plan will be filed with the court. I do not have expertise which would permit me to evaluate the legal aspects of the Litigation Plan, but I accept that the

THIS IS EXHIBIT " A "
referred to in the Affidavit of
RENEE DELORME
Sworn before me this 13th
day of January A.D., 2023


SETTLEMENT AGREEMENT

Made as of this 21st day of April, 2022

B E T W E E N:

Renee Delorme

Plaintiff

and

IBM Canada Limited

Defendant

WHEREAS the Plaintiff was an employee of the Federal Government;

AND WHEREAS the Plaintiff is the proposed representative plaintiff in the Action, which advances claims for alleged losses against the Federal Government and IBM relating to the Phoenix Pay System;

AND WHEREAS IBM has brought an application to strike the Plaintiff's claim against IBM as disclosing no reasonable cause of action;

AND WHEREAS the Parties wish to conclusively resolve the issues which were or could have been advanced against IBM in the Action;

NOW THEREFORE in consideration of the mutual agreements set forth below, the Parties agree as follows:

DEFINITIONS

1. In this Agreement, including the Recitals and Schedules hereto:

- (a) **Action** means the proposed class action styled as *Delorme v Her Majesty the Queen in Right of Canada et al* bearing Court file number 1801-10956 commenced in the Alberta Court of Queen's Bench at Calgary;
- (b) **Agreement** means this settlement agreement, including the recitals and schedules;
- (c) **Certification and Approval Order** means an order of the Court substantially in the form attached as Schedule A certifying the Action as a class proceeding for the sole purpose of giving effect to and implementing this Agreement, providing a process for Class Members to opt-out of the Action, approving this Agreement, declaring this Agreement to be binding upon all Settlement Class Members, and dismissing the Action with prejudice and without costs as against IBM;
- (d) **Class** means all individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 through until the date of settlement approval;
- (e) **Class Counsel** means Guardian Law Group LLP and James H. Brown and Associates;
- (f) **Class Counsel Fees** mean the fees, disbursements, costs, and all other applicable taxes or charges of Class Counsel;
- (g) **Class Member(s)** means, individually or collectively, any member or members of the Class;
- (h) **Common Issue** means: "Did IBM Canada Limited owe a duty of care to Class Members in respect of the Phoenix Pay System?"
- (i) **Court** mean the Alberta Court of Queen's Bench;
- (j) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Certification and Approval Order have expired or the Certification and Approval Order is affirmed upon a final disposition of all appeals;

- (k) **Federal Government** means the defendant, Her Majesty the Queen in Right of Canada;
- (l) **IBM** means IBM Canada Limited;
- (m) **Notice of Certification and Settlement Approval** means the form(s) of notice as may be agreed to by the Plaintiff and IBM and approved by the Court, which informs the Class of the principal elements of this Agreement, the certification of the Action as a class proceeding, approval of this Agreement, and the right to opt-out of the Action;
- (n) **Opt-Out Period** means the period of time commencing on the date on which the Notice of Certification and Settlement Approval is first sent to any Class Member and ending sixty (60) days thereafter, or such other period as approved by the Court;
- (o) **Parties** mean the Plaintiff, the Settlement Class Members, and IBM;
- (p) **Plaintiff** means Renee Delorme;
- (q) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Court would have apportioned to the Releasees;
- (r) **Released Claims** mean any and all manner of claims, crossclaims, counterclaims, demands, actions, suits, charges, demands, obligations, debts, setoffs, rights of recovery, causes of action, or liabilities for obligations of any kind whatsoever whether class, individual or otherwise in nature, whether personal or subrogated, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, asserted or unasserted, personal or subrogated, liquidated or unliquidated, in law or equity, under statute, regulation, ordinance, contract, or otherwise in nature—for relief of any kind—including without limitation compensatory, punitive or other damages, declaratory or injunctive relief, liabilities of any nature whatsoever, interest, costs, expenses, penalties, and lawyers' fees (including Class Counsel Fees)—that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or

hereafter can, shall, or may have at any time in the future, relating in any way to any conduct occurring anywhere, from the beginning of time relating in any way to the Phoenix Pay System—including, without limitation, the development, implementation, maintenance, or administration of the Phoenix Pay System by IBM Canada and/or the Federal Government, and all claims that were raised or which could have been raised in the Action. For purposes of clarity, Released Claims include, but are not limited to, claims that arise after the Effective Date;

- (s) **Releasees** mean jointly and severally, individually and collectively, IBM and its past, present, and future, direct and indirect, parents, subsidiaries, affiliates, joint venturers, and related entities, including all of their respective former, present, and future principals, officers, directors, employees, supervisors, shareholders, members, representatives, partners, agents, lawyers, insurers, reinsurers, subrogees, successors, executors, administrators, beneficiaries, and assigns;
- (t) **Releasors** mean individually and collectively, the Plaintiff and each of the Settlement Class Members and their respective predecessors, next of kin, wards, agents, representatives of any kind, insurers, beneficiaries, successors, heirs, executors, administrators, and assigns, whether or not such Settlement Class Members receive any portion of the Settlement Amount;
- (u) **Settlement Amount** means the sum of CDN \$100,000;
- (v) **Settlement Class** mean all Class Members, except persons who validly opt-out of the Settlement Class in accordance with the Certification and Approval Order;
- (w) **Settlement Class Member(s)** means, individually or collectively, any member or members of the Settlement Class;
- (x) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class Members.

BEST EFFORTS TO EFFECT SETTLEMENT

2. The Parties shall use their best efforts to effect the terms of this Agreement and the settlement described herein, including securing the Certification and Approval Order in accordance with this Agreement, and shall coordinate in making any presentations to the Court regarding the Agreement.

3. All motions, pleadings, filings, reports, forms, and other documents related to approval or implementation of this Agreement and settlement shall be provided to IBM for review prior to submission or transmission to the Court. This includes, but is not limited to, the motion for the Certification and Approval Order.

PAYMENT OF SETTLEMENT AMOUNT

4. Within 15 days of the Effective Date, IBM will pay the Settlement Amount to Class Counsel to be held in the Trust Account in accordance with the terms of this Agreement.

5. Class Counsel shall maintain the Trust Account as provided for in this Agreement. Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Agreement and any related Orders of the Court.

6. All interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Trust Account.

7. The Releases shall bear no risk related to the management or investment of the Trust Account. The Releasees shall not be required to deposit additional funds as a result of investment or other losses to the Trust Account.

THE CERTIFICATION AND APPROVAL ORDER

8. At a time mutually agreed to by the Plaintiff and IBM after this Agreement is executed, and which is as soon as practical, the Plaintiff shall bring an application before the Court for the Certification and Approval Order. The Certification and Approval Order shall be substantially in the form set out in Schedule A to this Agreement.

9. The Parties agree that the Action shall be certified solely for purposes of settlement of the Action against IBM and the approval of this Agreement by the Court.

10. The only common issue the Plaintiff shall seek to certify in connection with such application shall be the Common Issue.

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

11. At the same time the Plaintiff applies for the Certification and Approval Order, the Plaintiff shall also apply for approval of a Notice of Certification and Settlement Approval in a form that has been approved by IBM.

12. The Notice of Certification and Settlement Approval will be distributed in such manner as the Plaintiff may propose and IBM may agree, subject to approval of the Court. The Releasees shall not be required to take any steps to disseminate the Notice of Certification and Settlement Approval, nor shall the Releasees be required to contribute to the costs of effecting any dissemination of the Notice of Certification and Settlement Approval as the Court might order.

13. The Plaintiff shall disseminate such other notices as the Court might require in connection with the implementation of this Agreement. The Releasees shall not be required to take any steps to disseminate any such notices as might be ordered by the Court, nor shall the Releasees be required to contribute to the costs of effecting such dissemination of any such notices as might be ordered by the Court or to any other costs or fees associated with administration or implementation of this Agreement.

14. It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by IBM in performance of this Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offence.

OPTING OUT

15. At the same time the Plaintiff applies for the Certification and Approval Order, the Plaintiff shall also apply for approval of an opt-out request form in a form that has been approved by IBM.

16. A Class Member may opt-out of the Action by sending a signed opt-out request form in a form approved by the Court by pre-paid mail, courier, fax, or email to Class Counsel at an address and coordinates to be identified in the Notice of Certification and Settlement Approval.
17. Opt-out requests must contain:
- (a) A statement requesting that the person opting out be excluded from the Settlement Class; and
 - (b) The full name, current address, telephone number, and e-mail address of the person who is opting out.
18. An opt-out request may be, but is not required to be, in substantially the form approved by the Court, provided the opt-out request contains all or substantially all of the information listed in paragraph 17 of this Agreement.
19. An opt-out request will only be effective if the executed opt-out request is postmarked or emailed to Class Counsel on or before the end of the Opt-Out Period.
20. Within twenty-one (21) days of the end of the Opt-Out Period, Class Counsel shall notify IBM of each person, if any, who has opted out of the Action.

DISTRIBUTION OF SETTLEMENT AMOUNT

21. At a time solely within the discretion of Class Counsel, which may be at the same time the Plaintiff moves for the Certification and Approval Order, the Plaintiff will seek an Order on notice to IBM regarding the manner of distribution of the Settlement Amount. The Plaintiff agrees to seek an Order that the Settlement Amount, net of Class Counsel Fees, be paid cy-pres to Food Banks Canada.
22. The approval of this Agreement is not conditional upon any particular distribution of the Settlement Amount. For greater certainty, the Court approving or failing to approve any particular manner of distribution of the Settlement Amount shall not be grounds for either the Plaintiff or IBM to terminate this Agreement.

RELEASE AND DISMISSAL

23. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors finally, fully, forever, and absolutely release and forever discharge and release the Releasees from the Released Claims. The Parties intend that the releases in this Agreement be interpreted and enforced broadly and to the fullest extent permitted by law. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including without limitation through the Claim Process, any distribution from the Settlement Amount.

24. The Releasors shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, whether before any court, tribunal, administrative agency, regulatory body, or other body in any jurisdiction, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or against any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee relating in any way to any Released Claims, except for the continued prosecution of the Action against the Federal Government or participation in similar such action proceeding in Quebec.

25. Each Releasor may hereafter discover facts other than or different from those which he or she knows or believes to be true with respect to Released Claims. Nevertheless, each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

26. Upon the Effective Date, the Action shall be dismissed as against IBM with prejudice and without costs.

27. Notwithstanding any other provision of this Agreement, nothing in this Agreement will prevent Releasees from pleading this Agreement as a full and complete defence to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to

any of the Released Claims and may be filed, offered, and received into evidence, and otherwise used for such defence.

BAR ORDER

28. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating in any way to Released Claims which were or could have been brought in the Action by the Federal Government or any other person or Party against a Releasee, or by a Releasee against the Federal Government or any other person or Party (excepting (i) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against the Federal Government; and (ii) a claim brought by a person who has validly and timely opted-out of the Settlement Class) are barred, prohibited, and enjoined in accordance with the terms of this section.

29. The Settlement Class Members shall not be entitled to claim or recover from the Federal Government that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest or costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise. The Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action, and any determination by the Courts in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.

EFFECT OF SETTLEMENT

30. The Parties acknowledge that IBM denies the truth of the allegations in the Action and denies any liability or wrongdoing whatsoever.

31. The Plaintiff and IBM expressly reserve all of their rights if this Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, including rights in opposition to certification of any class. Further, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement,

and any action taken to carry out this Agreement, shall not be deemed, construed or interpreted to be an admission by IBM or any Releasee (or evidence thereof) of any violation of any statute or law, of any wrongdoing, or of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiff or any other person.

32. Whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (i) by the Parties in a proceeding to approve or enforce this Agreement; (ii) by a Releasee to defend against the assertion of any Released Claims; (iii) by a Releasee in any insurance-related proceeding; or (iv) as otherwise required by law or as provided in this Agreement.

33. Except insofar as such a term is prohibited by law, Class Counsel will hereafter not institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or against any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee which relates to or arises from the Released Claims, except for the continued prosecution of the Action against the Federal Government and the related Quebec action.

34. In the event that this Agreement is not finally approved, is terminated in accordance with its terms, or otherwise fails to take effect, this Agreement shall, subject to an agreement by the Plaintiff and IBM to the contrary, be null and void and of no force and effect and any order certifying or authorizing a class proceeding shall be set aside and the Parties agree that all Parties shall be put in the position they were in before this Agreement was executed and nothing in this Agreement shall prejudice any position that any of the Parties or any Releasee may take on any issue in the Action or any other litigation.

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

35. Class Counsel may on notice to IBM seek the Court's approval of Class Counsel Fees contemporaneous with seeking the Certification and Approval Order, or at such other time as they shall determine in their sole discretion. Class Counsel Fees, in such amount as may be approved by the Court, shall be paid solely from the Settlement Amount. IBM shall take no position on such an application.

36. The failure of the Court to approve a request for Class Counsel Fees has no impact or effect on the rights and obligations of the Parties to this Agreement and shall not be grounds for either the Plaintiff or IBM to terminate this Agreement.

37. Except for payment of the Settlement Amount, the Releasees shall not be liable for or required to pay any amounts, damages, costs, fees, disbursements, or taxes arising in any way under this Agreement or the Action, including but not limited to Class Counsel Fees and other any costs, fees, disbursements, or taxes of the Plaintiff or any Settlement Class Members, including any expenses or costs incurred by any lawyers, experts, advisors, agents, or representatives of the Settlement Class Members. No Releasee shall have any responsibility, financial obligations, or liability whatsoever relating to the dissemination of the Notice of Certification and Settlement Approval, the administration of this Settlement, or any distribution that might be made of the Settlement Amount.

38. Releasees do not warrant to Plaintiff, Settlement Class Members, or Class Counsel any tax benefits or consequences arising from this Agreement or any of the payments made pursuant to this Agreement. All federal, provincial, and local taxes owed by Plaintiff, Settlement Class Members, or Class Counsel on any of the amounts paid pursuant to this Agreement are the responsibility of Plaintiff, Settlement Class Members, and Class Counsel, and not the Releasees.

TERMINATION OF AGREEMENT

39. The Plaintiff may terminate this Agreement only in the event that:

- (a) The Court declines to grant the Certification and Approval Order substantially in the form attached as Schedule A, or if any such Certification and Approval Order

is modified, overturned, or reversed in whole or in part on appeal, provided that a modification or reversal on appeal of any Class Counsel Fees or expenses awarded by the Court shall not provide any termination right.

40. IBM may terminate this Agreement in the event that:
- (a) The Court declines to grant the Certification and Approval Order substantially in the form attached as Schedule A, or if any such Certification and Approval Order is modified, overturned, or reversed in whole or in part on appeal, provided that a modification or reversal on appeal of any Class Counsel Fees or expenses awarded by the Court shall not provide any termination right, unless such modification or reversal has the effect of increasing IBM's financial obligation under this Agreement;
 - (b) The Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Agreement, or the scope of the Settlement Class is modified, overturned, or reversed in any way on appeal;
 - (c) The Court, or another Court on appeal, makes a further Order in respect of this Action which imposes obligations on IBM or deprives IBM of benefits that are materially inconsistent with the terms of this Agreement; or
 - (d) The total number of Class Members who opt-out of the Action exceeds 10% of the total number of Class Members.

41. To exercise a right of termination under paragraphs 39 or 40, a terminating party shall deliver a written notice of termination pursuant to paragraphs 39 or 40 of this Agreement within thirty (30) days of the ground for termination becoming known to the terminating party. Upon delivery of such a written notice, this Agreement shall be terminated, shall be null and void and have no further force or effect, and shall not be binding on the Parties.

42. If this Agreement is not approved, is terminated by the Plaintiff or IBM in accordance with its terms, or otherwise fails to take effect for any reason, all orders made in respect of this

Agreement shall be set aside and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future.

43. If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 31-32, 34, and 42, and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Agreement. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

MISCELLANEOUS

44. The Plaintiff and Class Counsel shall not make or cause to be made any public statement or comment regarding this settlement or Agreement until after the motion for Certification has been filed with the Court.

45. The Plaintiff and Class Counsel agree not to disparage, criticize, or denigrate Releasees (individually or collectively) to any person or entity (including but not limited to any media outlet, television station or program, radio station or program, newspaper, magazine, website, editor, reporter, journalist, photo-journalist, interviewer, author, columnist, blogger, mobile application (e.g., Facebook, Twitter, Instagram), writer, or current or former employee or customer of any Releasee regarding any matter related to the Agreement or the Action.

46. Excluding the communications authorized by the Court-approved plan for issuing Notice of Certification and Settlement Approval, all Parties and their counsel will mutually agree upon the content of all website postings and communications to public-facing third parties regarding any matter related to this Agreement or any of the allegations in the Action. The foregoing does not apply to Defendants' communications with their employees, auditors, or regulatory bodies.

47. The Plaintiff or IBM may apply to the Court for directions in respect of the interpretation, implementation, and administration of this Agreement.

48. All applications contemplated by this Agreement shall be on notice to both the Plaintiff and IBM.

49. In this Agreement:

- (a) The division of the Agreement into paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
- (b) The terms “this Agreement”, “hereof”, “hereunder”, “herein” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.

50. In the computation of time in this Agreement, except where a contrary intention appears:

- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) Only in the case where the time for doing an act expires on a statutory holiday, the act may be done on the next day that is not a holiday.

51. The Court shall retain exclusive jurisdiction over this Agreement and the Parties hereto.

52. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Alberta.

53. This Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.

54. This Agreement may not be modified or amended except in writing and on consent of the Plaintiff and IBM.

55. This Agreement shall be binding upon, and enure to the benefit of the Plaintiff, IBM, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by IBM shall be binding upon all of the Releasees.

56. This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Agreement.

57. This Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Agreement.

58. The recitals to this Agreement are true and form part of the Agreement.

59. The Schedules annexed hereto form part of this Agreement.

60. Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

FOR THE PLAINTIFF AND FOR CLASS COUNSEL:

Clint Docken, Q.C./Mathew Farrell
Guardian Law Group LLP
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Tel: 403-457-7778
Fax: 1-877-517-6373
Email: cdocken@guardian.law

FOR IBM:

J. Thomas Curry/Paul-Erik Veel
Lenczner Slaght
130 Adelaide Street W.
Suite 2600
Toronto, Ontario M5H 3P5
Tel: (416) 865-3096
Fax: (416) 865-9010
Email: tcurry@litigate.com and pveel@litigate.com

61. Each of the Parties hereby affirms and acknowledges that:
- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Agreement;
 - (b) The terms of this Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
 - (c) He, she, or the Party's representative fully understands each term of this Agreement and its effect; and
 - (d) No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Agreement, with respect to the first Party's decision to execute this Agreement.

62. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified above their respective signatures below.

63. The Parties have executed this Agreement as of the date on the cover page.

Date: _____

Witness

RENEE DELORME

Date: _____

IBM CANADA LIMITED

Per:

 E-SIGNED by Dave McCann

Name: Dave McCann

Position: President

2022-04-21 20:43:57 GMT

SCHEDULE "A" TO AGREEMENT – CERTIFICATION ORDER

COURT FILE NUMBER 1801-10956

COURT COURT OF QUEEN'S BENCH OF
ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF RENEE DELORME as
Representative Plaintiff

DEFENDANTS Her Majesty the Queen in Right of
Canada, IBM Canada Limited

DOCUMENT **ORDER FOR CERTIFICATION
AND SETTLEMENT APPROVAL
AS AGAINST IBM CANADA
LIMITED**

ADDRESS FOR SERVICE
AND CONTACT
INFORMATION OF PARTY
FILING THIS DOCUMENT

Clint Docken, Q.C./Mathew
Farrell
Guardian Law Group LLP
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Tel: 403-457-7778
Fax: 1-877-517-6373

J. Thomas Curry/Paul-Erik Veel
Lenczner Slaght LLP
130 Adelaide Street West
Suite 2600
Toronto, ON M5H 3P5
Tel: 416-865-9500
Fax: 416-965-9010
Email: tcurry@litigate.com and
pveel@litigate.com

DATE ON WHICH ORDER WAS PRONOUNCED: ●

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: ●

UPON THE APPLICATION of the Plaintiff; and on being advised that IBM Canada Limited consents to the order and Her Majesty the Queen in Right of Canada does not oppose the order; and on hearing the submissions from counsel for the Plaintiff and the counsel for the Defendants; and on reading the pleadings and materials filed; and on being advised that the Plaintiff and IBM Canada Limited have entered into a settlement agreement dated ● (the "Agreement");

THIS COURT ORDERS that:

1. Except to the extent that they are set out in or modified by this Order, the definitions set out in the Agreement, as attached at Schedule "A", apply to and are incorporated into this Order.
2. In the event of a conflict between this Order and the Agreement, this Order shall prevail.
3. The Action is certified as a class proceeding for settlement purposes only as against IBM Canada Limited.
4. The Class is defined as:

All individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 to the date of this order.

5. Renee Delorme is appointed as the representative plaintiff for the Class.
6. The following issue is common to the Class:

Did IBM Canada Limited owe a duty of care to Class Members in respect of the Phoenix Pay System?

7. Any member of the Class who wishes to opt-out of the Action must do so by sending a signed written election to opt-out, together with the information required in the Agreement, to the Class Counsel, postmarked, couriered, faxed, or emailed on or before the end of the Opt-Out Period.

8. Any member of the Class who validly opts out of the Action is not bound by the Agreement.
9. The Agreement is fair, reasonable and in the best interests of the Settlement Class and is hereby given Settlement Approval pursuant to section 35 of the *Class Proceedings Act*, SA 2003, c 0-16.5 and shall be implemented in accordance with its terms and the terms of this Order.
10. This Order, including the Agreement, is binding upon the Parties and on every Settlement Class Member, whether or not the Settlement Class Member receives monetary compensation or value.
11. This Order, including the Agreement, is binding upon each such Settlement Class Member including those persons who are minors or mentally incapable, and the requirements of Rule 2.11 and Rule 2.19 of the Alberta Rules of Court are dispensed with in respect of this proceeding.
12. Upon the Effective Date, the Releasees are forever, finally and absolutely released by the Settlement Class Members from the Released Claims.
13. Upon the Effective Date, this Action is dismissed as against IBM with prejudice and without costs.
14. Upon the Effective Date, Settlement Class Members are barred from making any claims or taking or continuing any proceeding arising out of, or relating to, the Released Claims, except as otherwise expressly provided for in the Agreement, against any Releasee or Party.
15. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Action by the Federal Government or any other person or Party, against a Releasee, or by a Releasee against the Federal Government or any other person or Party (excepting (i) a claim by a Releasee pursuant to a policy of insurance, provided any

such claim involves no right of subrogation against the Federal Government; and (ii) a claim in respect of a person who has validly and timely opted-out of the Settlement Classes) are barred, prohibited, and enjoined in accordance with the terms of this section.

16. The Settlement Class shall not be entitled to claim or recover from the Federal Government that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise.
17. The Court shall determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.
18. This Court will retain continuing jurisdiction over the Settlement for the purposes of implementing, interpreting and enforcing the Agreement and this Order subject to the terms and conditions set out in the Agreement and this Order.
19. On notice to the Court, but without further order of the Court, the Parties to the Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Agreement.
20. The distribution of the Settlement Amount and any claim for Class Counsel Fees shall be the subject of further applications by the Plaintiff, on notice to IBM Canada Limited.
21. The manner of dissemination of the Notice of Certification and Settlement Approval shall be subject to a separate Order of this Court.
22. No Releasee shall have any responsibility, financial obligations, or liability whatsoever relating to the dissemination of the Notice of Certification and Settlement Approval, the administration of this Settlement, or any distribution that might be made of the Settlement Amount.

23. This Order may be executed in counterpart, electronically or by facsimile.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

J.C.Q.B.A

<p>CONSENTED TO this ___ day of _____, 2022 by</p> <p>GUARDIAN LAW</p> <p>Per: _____ Clint G. Docken, Q.C. Counsel for the Plaintiff</p>	<p>CONSENTED TO this ___ day of _____, 2022 by</p> <p>LENCZNER SLAGHT</p> <p>Per: _____ Paul-Erik Veel Counsel for the Defendant IBM Canada Limited</p>
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CLERK OF THE COURT
FILED

AUG 02 2018

CALGARY, ALBERTA

COURT FILE NUMBER 801 18950

COURT COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE CALGARY

PLAINTIFF(S) RENÉE DELORME (as Rep Plaintiff)

DEFENDANT(S) Her Majesty the Queen in Right of Canada, IBM
Canada Limited.

A Class Proceeding under the *Class Proceedings*
Act

DOCUMENT **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND CONTACT GUARDIAN LAW GROUP LLP
Attention: Clint Docken, Q.C. and Mathew Farrell
INFORMATION OF PARTY 342 – 4 Avenue S.E.
FILING THIS DOCUMENT Calgary, Alberta T2G 1C9
Ph: (403) 457-7778
Fax: 1-877-517-6373
Box: 7

This is Exhibit "B" to the Affidavit
of RENÉE DELORME sworn
before this 13 day of January,
2023



A Commissioner for Oaths in and for
the Province of Alberta

NOTICE TO DEFENDANT(S)

You are being sued. You are a defendant.

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

Note: State below only facts and not evidence (Rule 13.6)

The Plaintiff and the Class:

1. The proposed Representative Plaintiff, RENEE DELORME, resides in the Province of Alberta.
- 2.
3. The Defendant, Her Majesty the Queen in Right Canada, is the lawful government of the State of Canada.

4. The Defendant IBM is a Corporation validly incorporated in accordance with the laws of Canada and having a registered office in the City of Markham, in the Province of Ontario and is in the business of writing computer programs.
5. The proposed Class Period is 2014 up to and including the present time (Class Period).
6. The Proposed Class is all individuals, whether unionized or non-unionized, who worked for the Government of Canada during the Class Period.
7. The Representative Plaintiff, RENÉE DELORME, is a resident of Alberta, who worked as both a unionized and non-unionized employee of the government during the Class Period and experienced overpayments, underpayments, missed payments and faulty pay stubs and T4's with respect to her regular payment during pay periods within the Class Period.

Claim:

8. In or about 2014, IBM wrote a 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"). At the time that IBM implemented the system it knew that the system contained numerous faults because *inter alia* they had experience similar problems in Australia and other jurisdictions.
9. The Defendants stood in a relationship of proximity to the Class such that their actions could reasonably be expected to affect the Class.
10. In breach of its obligations, 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.
11. As results of the negligence of IBM, the Phoenix pay system, when delivered to the Government of Canada was fraught with errors and would frequently either overpay, underpay or fail to pay at all.

12. Upon receiving the faulty product and knowing of these faults, the Government, in breach of its duties in contract, tort and otherwise at law, implemented the Phoenix pay system for all of its employees and contractors.
13. At the time that the Phoenix pay system was implemented, the Government of Canada knew or ought to have known that it contained faulty programming such that it would frequently overpay, underpay or not pay its employees or contractors at all.
14. As a result of the systemic flaws of the Phoenix pay system, the members of the class were repeatedly either overpaid, underpaid, or not paid at all during various pay periods over the course of the Class Period, resulting in significant financial hardship, and loss suffered by the members of the class.
15. Compounding this problem, the Phoenix system precluded employees and managers from effectively accessing records of when and how much time was worked, approved or paid out making it more difficult and time consuming to address, detect and resolve these errors.
16. During the Class Period, both the Government of Canada and the Defendant IBM, failed to take reasonable steps to ensure that the errors being made by the Phoenix system did not reoccur or to fix the problems with the code and further failed to replace the Phoenix pay system with a system that did not result in repeated instances of being overpaid, underpaid, or not paid at all during a pay period.
17. When the Plaintiff were in situations where they were overpaid, the Government of Canada would demand return of amounts overpaid, including in some cases requiring the employee to reimburse for statutory withholdings, resulting in the employee repaying more than they mistakenly received. This often occurred in a situation where such amounts had already been spent and the Plaintiffs were not in a position to easily repay the amounts.

18. The Representative Plaintiff worked in various positions as a unionized worker, and as a non-unionized contract employee during the Class Period and in each case experienced a number of instances of either overpayment, underpayment, misreporting in pay stubs or T4's or not being paid at all during a pay period.
19. As results of these failures to pay the appropriate amounts due to her, pursuant to her employment contract as and when due, the Representative Plaintiff would have suffered significant financial hardship but for the fact that she and her husband have lived below their means for most of their lives and are near retirement, therefore having some income from investments and savings.
20. When the Representative Plaintiff was underpaid or not paid at all, she nonetheless suffered hardship by finding it more difficult and sometimes impossible to pay for planned expenses or investments as and when she had intended.

Breaches by the Defendants:

21. The Defendant, IBM, owed a duty of care to the Plaintiff class to ensure that the Phoenix pay system was reasonably fit for the purposes to which it was expected to be put when it delivered that product to the Canadian government for the purposes of paying the employment income of the members of the Plaintiff class and IBM breached their standard of care by failing to use reasonable efforts to ensure that the Phoenix paid program would not repeatedly overpay, underpay, or not pay class members at all.
22. The Defendant, Government of Canada owed contractual duties to all of its employees and contractors whether unionized or nonunionized pursuant either to their individual employment contracts or their collective Agreements to properly remunerate those employees and contractors in accordance with the various agreements and breached those contractual obligations each time it overpaid underpaid or failed to pay the Class Plaintiffs during the Class Period.

23. The Government of Canada owed a duty of care to its unionized, nonunionized and contract-based employees which arises independently and separate from either the contracts or the collective agreements which govern their respective employment relationships to ensure that the pay system which is utilized will not consistently overpay, underpay, or fail to pay the Class Plaintiffs.
24. The Defendants further breached their obligations to the Class Plaintiffs by failing to promptly and accurately advise the Class Plaintiffs of the problem, failing to be forthright about the realistic amount of time that it was going to take to fix the problem, failing to be forthright about the likelihood that the problem would reoccur, and failing to take appropriate steps to rectify underpayments and missed payments within reasonable timeframes, and acting in a callous and highhanded manner with respect to the recovery of amounts overpaid in error.
25. As a result of these actions, the Class Plaintiffs did not know that they had a cause of action which reasonably warranted bringing a proceeding until the said errors continued to occur on multiple occasions, or in the alternative, the actions and inactions of the Defendants constituted a continuing tort.

Remedy Sought:

26. The Representative Plaintiff and the Class Plaintiffs claim against the Defendants jointly and severely:
 - a) an Order pursuant to the Class Proceedings Act, certifying this action as a class proceeding and appointing the Plaintiff as the Representative Plaintiff,
 - b) Damages and compensation in the aggregate amount of 1,000,000,000 (one billion) dollars.
 - c) An accounting for and payment of all amounts not yet paid but due and owing to class members
 - d) Punitive and exemplary damages in the amount of 5 million dollars, or such other sum as the Court finds appropriate.

- e) In the alternative, damages assessed on an individual basis with respect to the particular damages and prejudice suffered by each class members as a result of the actions of the government.
- f) An order for the aggregate assessment of money relief and distribution thereof to the Plaintiffs and to the class members.
- g) An Order directing a reference or giving such other direction as necessary to determine issues not determined at the trial of common issues.
- h) Prejudgment and post judgment interest
- i) Cost of this action on a solicitor-client basis.
- j) Costs for the distribution of an award under the Class Proceedings Act including the cost of a notice associated with a distribution and fees payable to a person administering the distribution
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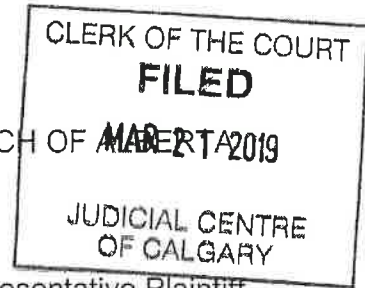
2 months if you are served outside Canada.

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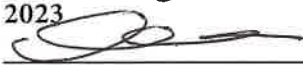
COURT FILE NUMBER 1801-10956
COURT COURT OF QUEEN'S BENCH OF ALBERTA 2019
JUDICIAL CENTRE CALGARY
PLAINTIFF(S) RENÉE DELORME as Representative Plaintiff
DEFENDANT(S) Her Majesty the Queen in Right of Canada, IBM
Canada Limited.
A Class Proceeding under the *Class Proceedings Act*



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INFORMATION OF PARTY FILING THIS DOCUMENT Attention: Clint Docken, Q.C. and Mathew Farrell
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
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Fax: 1-877-517-6373
Box: 7

James H. Brown & Associates
Attention: Rick Mallett
2400 Sun Life Place
10123-99 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788

This is Exhibit "C" to the Affidavit
of RENÉE DELORME sworn
before this 13 day of January,
2023


A Commissioner for Oaths in and
for the Province of Alberta

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This is Exhibit "D" to the Affidavit of
RENÉE DELORME sworn before this
13 day of January, 2023

Cliff Dooker
Barrister & Solicitor

A Commissioner for Oaths in and for
the Province of Alberta

CANADA

COUR SUPÉRIEURE

(Action collective)

PROVINCE DE QUÉBEC

DISTRICT DE QUÉBEC

No.: 200-06-000214-174

EZMIE BOUCHARD, résidant et
domiciliée au 8-955, rue Lienard à
Québec dans le district judiciaire de
Québec, province de Québec, G1V 2W6

Demanderesse

c.

This is Exhibit "D" to the
Affidavit of RENÉE DELORME
sworn before this ___ day of
January, 2023

A Commissioner for Oaths in
and for the Province of Alberta

**PROCUREUR GÉNÉRAL DU
CANADA**, ayant une place d'affaires au
9^e étage, tour Est du complexe Guy-
Favreau sis au 200, boul. René-
Lévesque Ouest à Montréal dans le
district de Montréal, province de
Québec, H2Z 1X4

Défendeur

**DEMANDE POUR AUTORISATION D'EXERCER UNE ACTION COLLECTIVE ET
POUR ÊTRE REPRÉSENTANTE (Art. 574 et suivants C.p.c)**

À L'UN DES HONORABLES JUGES DE LA COUR SUPÉRIEURE SIÉGEANT DANS LE
DISTRICT JUDICIAIRE DE QUÉBEC, LA DEMANDERESSE EXPOSE
RESPECTUEUSEMENT CE QUI SUIT :

INTRODUCTION

En février 2016, le gouvernement du Canada a implanté un système de gestion de la paye nommé « Phénix » (ci-après « **Phénix** »). Dès lors, les employés de la fonction publique fédérale ont commencé à recevoir des sommes ne leur étant pas destinées ou pire, à ne plus recevoir leur salaire. Malgré l'urgence de la situation, le gouvernement fédéral a laissé perdurer cette situation depuis le 24 février 2016 jusqu'en date des présentes, accumulant au plus fort de la crise près de 200 000 demandes non traitées. Plusieurs employés sont demeurés plusieurs mois sans revenu et certains ont même dû se départir de leur résidence ou d'autres biens. La présente action vise notamment à indemniser le préjudice moral subi par les employés du Gouvernement du Canada.

1. La Demanderesse souhaite obtenir l'autorisation d'exercer une action collective pour le compte des trois sous-groupes ci-après :

- 1.1. Toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada à tout moment depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours (le « **Groupe** ») ;
- 1.2. Toutes les personnes qui, depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours, ont été touchées par une ou plusieurs erreurs liées à leur rémunération alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada (le « **Premier sous-groupe** ») ;
- 1.3. Toutes les personnes qui, depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours, ont reçu 50% ou moins de leur rémunération, de leurs prestations d'assurance-emploi ou de leur rémunération de congé pendant quatre semaines ou plus alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada (le « **Deuxième sous-groupe** ») ;
- 1.4. Selon les informations obtenues par la Demanderesse, le Groupe visé par l'action collective serait composé d'environ 295 000 membres ;
- 1.5. Selon les informations obtenues par la Demanderesse, environ 80 000 membres ont connu des erreurs de paye durant la Période du recours ;
- 1.6. La « **Période du recours** » débute le 24 février 2016 et se terminera à une date à venir, telle qu'elle sera déterminée par cette Cour après avoir entendu les représentations des parties à cet égard ;

2. Les faits qui donnent ouverture à l'action que veut tenter la Demanderesse sont les suivants :

LA FONCTION PUBLIQUE FÉDÉRALE ET LE SYSTÈME DE PAYE PHÉNIX

- 2.1. Le Gouvernement du Canada est l'un des plus gros employeurs au Canada et est réputé pour offrir des emplois bien rémunérés, une excellente sécurité d'emploi et de bonnes conditions de travail ;
- 2.2. Le Système Régional de Paye utilisé par le Gouvernement fédéral jusqu'en 2016 a été implanté dans les années 1970, tel qu'il appert de la page 1 de la mise à jour du 19 septembre 2016 du Gouvernement du Canada, produite comme pièce **R-1 (19-09-2016)** ;
- 2.3. Au fil des ans, ce système a fait l'objet d'un nombre croissant de critiques à cause de son âge, des erreurs qu'il occasionnait et de la main-d'œuvre

importante qu'il requérait, soit plus de 1700 employés, tel qu'il appert de la pièce R-1 (19-09-2016) ;

- 2.4. En 2009, le Gouvernement décide de remplacer le système de paye et de centraliser les activités des centres de paye du Canada en un seul centre situé à Miramichi au Nouveau-Brunswick ;
- 2.5. Le fournisseur retenu pour livrer le nouveau système de paye, désormais baptisé Phénix, est IBM ;
- 2.6. L'implantation d'une nouvelle technologie de paye devait permettre, selon les estimations du Gouvernement, de ramener les besoins en personnel à 590 employés et d'économiser 70 millions de dollars annuellement, tel qu'il appert de la pièce R-1 (19-09-2016) ;
- 2.7. Le dossier de l'implantation du système Phénix a été placé sous la responsabilité du ministère des Services publics et de l'Approvisionnement ;
- 2.8. En 2014, le système Phénix commence à faire l'objet de tests ;
- 2.9. À cette époque, la première vague d'implantation du système Phénix était prévue pour le mois d'octobre 2015 et la deuxième vague d'implantation était prévue pour le mois de décembre 2015, tel qu'il appert de la pièce R-1 (19-09-2016) ;
- 2.10. Durant la période d'essai ayant duré environ 18 mois, le système fait l'objet de plusieurs défaillances ;
- 2.11. En mai 2015, IBM recommande au Gouvernement de retarder l'implantation du système Phénix de quatre mois, tel qu'il appert notamment de la mise à jour du 19 septembre 2016 du Gouvernement, pièce R-1 (19-09-2016), et de l'article de Ian Austen paru le 17 novembre 2016 dans le New York Times et produit comme pièce **R-2** ;
- 2.12. À cette même époque, en raison des défaillances observées, plusieurs syndicats ont demandé au Gouvernement fédéral de retarder l'implantation du système Phénix pour éviter de porter préjudice aux employés ;
- 2.13. Malgré tout, le 24 février 2016, les responsables du projet sont allés de l'avant en implantant un système de paye dysfonctionnel dans 34 départements comprenant environ 120 000 employés, tel qu'il appert notamment de la pièce R-1 (19-09-2016) ;

- 2.14. Le 21 avril 2016, 67 départements, comprenant plus de 170 000 nouveaux dossiers, sont ajoutés au système Phénix malgré les problèmes déjà occasionnés aux employés précédents, tel qu'il appert notamment de la pièce R-1 (19-09-2016) et de l'article de Kathryn May intitulé « Government expanding new pay system to 67 departments despite fact it's been a disaster so far », publié par le National Post le 18 avril 2016 et produit comme pièce **R-3** ;

LA DEMANDERESSE

- 2.15. La Demanderesse Ezmie Bouchard a travaillé environ 3 ans et demi pour le Gouvernement du Canada ;
- 2.16. De Janvier jusqu'au 6 mai 2016, la Demanderesse occupait un emploi étudiant à Passeport Canada à Québec, à raison de 15h par semaine et à un salaire horaire de 16,72\$;
- 2.17. Par la suite, la Demanderesse a débuté un contrat occasionnel de 90 jours allant du 9 mai 2016 au 30 décembre 2016 au salaire horaire de 25,33\$;
- 2.18. Au cours de la période de paye du 4 au 18 mai 2016, du 19 mai au 1^{er} juin 2016 et du 2 juin au 15 juin 2016, malgré qu'elle n'ait travaillé en tout que 7 heures à un taux de 25,33\$ de l'heure, la Demanderesse a continué de recevoir son salaire d'emploi étudiant, soit 15 heures à 16,72\$ de l'heure ;
- 2.19. Puis, pour les périodes de paye allant du 16 au 29 juin 2016, du 30 juin au 13 juillet 2016, du 14 au 27 juillet 2016 et du 27 juillet au 10 août 2016, elle a continué de recevoir une paye pour 15 heures par semaine à 16,72\$ de l'heure tout en ayant travaillé plus de 30 heures par semaine incluant à deux reprises des heures supplémentaires ;
- 2.20. Le 18 août 2016, la Demanderesse a cessé de travailler pour le Gouvernement du Canada ;
- 2.21. En recevant ses premiers talons de paye erronés, la Demanderesse s'est adressée à ses supérieurs chez Passeport Canada ;
- 2.22. Ces derniers lui ont admis qu'ils n'étaient pas en mesure de l'aider et qu'ils n'étaient pas bien au courant de la situation, et ils lui ont recommandé de contacter le Service de paye ;
- 2.23. Le Service de paye lui recommande alors de suivre le processus d'« escalade » afin de solutionner le problème ;

- 2.24. Au cours de l'été, la Demanderesse a donc fait plusieurs appels au centre de paye et complété les quatre étapes du processus d'escalade ;
- 2.25. Malgré toutes ces démarches, la Demanderesse n'a vu aucun résultat et aucune correction n'a été apportée à son dossier ;
- 2.26. Au cours de ses démarches, la Demanderesse a pu constater que les agents qu'elle contactaient n'avaient jamais accès à des informations pertinentes dans son dossier et qu'il ne semblait y avoir aucun suivi, ce qui obligeait la Demanderesse à expliquer son histoire de nouveau à chaque fois ;
- 2.27. La Demanderesse a aussi constaté qu'il régnait une parfaite confusion au sein du personnel censé être en mesure de lui porter assistance, et elle recevait à l'occasion des réponses partielles ou contradictoires, quand elle n'était pas référée d'un département à l'autre ;
- 2.28. Lors de son emploi chez Passeport Canada, la Demanderesse a aussi remarqué que plusieurs de ses collègues ont eu des problèmes similaires de trop-payé ou d'arrérages de salaire ; certains employés n'étaient pas payés du tout ;
- 2.29. Au sein de son milieu de travail, il y avait beaucoup de discussions et de questionnements au sujet de Phénix et le nouveau système de paye est devenu une préoccupation constante pour la Demanderesse et ses collègues ;
- 2.30. Après avoir été informée par le Service de paye qu'ils ne pouvaient rien faire avant que son dossier ait été corrigé auprès de la Direction des services en ressources humaines, la Demanderesse s'est vue répondre par la Direction des services en ressources humaines que son dossier semblait correct et que s'il y avait des corrections à faire, il lui faudrait appeler le Service de paye pour mettre à jour son taux horaire puisque les ressources humaines ne peuvent pas faire cette correction, tel qu'il appert notamment d'un courriel daté du 9 août 2016 produit comme pièce R-4 ;
- 2.31. Cette nouvelle tentative de la Demanderesse fut ultimement aussi vaine que les précédentes ;
- 2.32. Le 31 octobre 2016, malgré l'engagement du Gouvernement du Canada à cet effet, les problèmes de Phénix et de la Demanderesse étaient loin d'être réglés et on devait toujours à la Demanderesse un peu plus de 4800\$;
- 2.33. De plus, n'étant plus en emploi, la Demanderesse n'avait alors plus accès à son dossier sur Phénix ;

- 2.34. Le 22 novembre 2016, la Demanderesse a appelé une fois de plus le service de paye afin de trouver une solution à son problème ;
- 2.35. Avec le préposé, qui ne semblait avoir aucune information pertinente sur son dossier, la Demanderesse a dû passer 45 minutes à expliquer à nouveau sa situation et à tester différentes hypothèses pour solutionner le problème ;
- 2.36. Le préposé lui a alors précisé que le département de « compensation » allait la contacter par courriel ;
- 2.37. Le 16 janvier 2017, n'ayant toujours pas de retour concernant son dossier, la Demanderesse a utilisé le formulaire disponible sur le site du Gouvernement en suivant le lien « Phoenix Feedback » pour demander de l'aide :

Hello,

I had an occasional 90-day contract this summer at Passport Canada (Québec Office). Before that, I had a student contract from January to May 2016. This summer, I continued getting paid as if I was still on my student contract. Thus, my paychecks were much less than what I was supposed to be getting. I am owed approximately 2 500\$ in unpaid salary. I contacted the pay center many times, did all 4 steps of the pay escalation process. I do not understand what I am supposed to do next. I no longer work for the government of Canada, so I do not have access to the network to track my case. I would really like to get this situation settled and get paid. I spoke to Euni from the Pay center on November 22nd for about 45 minutes. Thank you for taking the time to study my case and fix this. - Ezmie Bouchard

- 2.38. Le 7 mars 2017, la Demanderesse a eu une conversation téléphonique avec une préposée du service de paye qui lui a indiqué qu'elle travaillait sur son dossier ;
- 2.39. Au moment de déposer la présente demande, le dossier de la Demanderesse n'est toujours pas réglé et ses arrérages de paye lui sont toujours dus ;
- 2.40. La Demanderesse n'a aucune certitude sur le traitement fiscal que les autorités fiscales lui réserveront ;
- 2.41. Depuis le mois de mai 2016, la Demanderesse vit un stress constant à cause des erreurs de paye dont elle continue d'être l'objet ;

- 2.42. Lorsqu'elle a initialement constaté qu'il y avait une erreur dans sa paye, la Demanderesse n'a pas trop été inquiétée, confiante que son employeur pourrait régler la situation rapidement ;
- 2.43. Cependant, à sa surprise, elle a dû entreprendre de lourdes et de nombreuses démarches administratives afin de corriger la situation, affectant sa motivation au travail et lui causant une préoccupation constante, des troubles et des inconvénients ;
- 2.44. Rapidement, la Demanderesse a appris qu'un nombre important d'employés du Gouvernement étaient victimes d'erreurs similaires à la sienne depuis février 2016, que ces erreurs répandues étaient dues au nouveau système de paye et que la situation prenait du temps à se régler ;
- 2.45. Malgré tout, la Demanderesse s'est dit que son employeur était le Gouvernement du Canada et qu'il parviendrait bientôt à corriger la situation ;
- 2.46. Cependant, au fil de ses démarches, la Demanderesse a pu constater la confusion ambiante, les rapports multiples concernant les défaillances liées à Phénix et l'apparente inaction ou inhabilité de l'administration à instaurer des mesures adéquates pour gérer la crise ;
- 2.47. De plus, la Demanderesse a rapidement pris connaissance des histoires de ses collègues rapportées dans son milieu de travail et dans la sphère médiatique, et elle n'a pas échappé à l'accroissement du stress, de la colère et du découragement qui gagnait progressivement les employés du Gouvernement ;
- 2.48. Les sommes dues à la Demanderesse ne sont pas suffisamment importantes pour compromettre sa solvabilité, contrairement à certains cas rapportés notamment dans les médias ;
- 2.49. Cependant, le manque à gagner de la Demanderesse lui a occasionné, alors qu'elle était en emploi, un stress important lié au fait de travailler sans être rémunérée adéquatement, en plus d'une frustration importante et de la perte de confiance envers son employeur ;
- 2.50. Ce stress et cette préoccupation constants ont suivi la Demanderesse même après la cessation de son emploi, jusqu'au point où la Demanderesse ne savait plus quoi faire pour régler la situation et a songé plusieurs fois à renoncer ;

- 2.51. La Demanderesse a finalement décidé d'exercer une action envers son ancien employeur afin d'être compensée pour le préjudice qu'elle a dû subir ;
- 2.52. Pour le stress qui lui a été occasionné à titre d'employée du Gouvernement du Canada, la perte de confiance en son employeur et la dégradation de son milieu de travail, la Demanderesse réclame la somme de 500\$ à titre de préjudice moral ;
- 2.53. Pour le stress, les troubles et inconvénients et les pertes de temps liés à la présence d'au moins une erreur dans sa paye, la Demanderesse réclame la somme de 1000\$ à titre de préjudice moral ;
- 2.54. Pour le stress et la frustration qui lui ont été occasionnés par le fait de recevoir moins de 50% de son salaire pour un total de 4 périodes de paye, la Demanderesse réclame un total de 1200\$;
- 2.55. De plus, étant donné qu'elle n'a toujours pas été payée en date des présentes, la Demanderesse réclame le paiement de ses arrérages de salaire, évalués à 4 818,40\$, sauf à parfaire, avec l'intérêt et l'indemnité additionnelle prévue par la *Loi* à partir de la demeure ;

LE GOUVERNEMENT A MANQUÉ À SES OBLIGATIONS ENVERS LES MEMBRES

- 2.56. Avant même l'implantation du système Phénix le 24 février 2016, il était manifeste que le système souffrait de multiples défaillances qui allaient perturber le service de paye ;
- 2.57. Escomptant que la mise en place d'un système plus moderne allait, à terme, entraîner une réduction importante de la quantité de main-d'œuvre requise, Services publics et Approvisionnement procède, au cours de 2015, à réduire le personnel des Services de paye,
- 2.58. Le Service de paye passe alors de 1700 employés basés dans 100 localisations différentes au Canada à 590 employés basés à Miramichi au Nouveau-Brunswick, tel qu'il appert notamment de la mise à jour du 19 septembre 2016 du Gouvernement, pièce R-1 (19-09-2016), et de l'article de Ian Austen paru le 17 novembre 2016 dans le New York Times, pièce R-2 ;
- 2.59. De plus, Services publics et Approvisionnement a choisi d'accorder moins de formation à son personnel que ce qui était recommandé par IBM, tel qu'il appert notamment d'une déclaration de la Ministre Judy M. Foote lors de l'audience d'un comité parlementaire le 19 septembre 2016 et de la mise à jour du 19 septembre 2016, pièce R-1 (19-09-2016) ;

- 2.60. De plus, au moment de la mise en place de Phénix en février 2016, « un arriéré de près de 40 000 cas d'employés, qui avait déjà été entré dans le système, devait être traité lorsque Phénix est entré en fonction », tel qu'il appert de la mise à jour du Gouvernement publiée le 18 juillet 2016, produite comme pièce **R1 (18-07-2016)** ;
- 2.61. Le 18 janvier 2016, des cadres de la fonction publique ont été avisés que le système Phénix présentait des failles exposant les données personnelles des employés, dont leur numéro d'assurance sociale, tel qu'il appert notamment d'un article publié sur le site de Radio-Canada le 20 juillet 2016, produit comme pièce **R-5** ;
- 2.62. Toujours d'après l'article R-5, « Les documents obtenus par CBC montrent que l'information concernant cette atteinte à la vie privée avait été retirée d'un important document d'évaluation des facteurs relatifs à la vie privée. [...] Les détails du problème avaient été retirés du rapport le 21 janvier, après que des représentants du gouvernement eurent assuré que le problème avait été résolu » ;
- 2.63. Toujours d'après l'article R-5, jusqu'à 70 000 fonctionnaires ont eu accès aux détails personnels de la totalité des 300 000 employés dont la paye était traitée par le système Phénix ;
- 2.64. Le 24 février 2016, malgré que tout semble aligné pour qu'il survienne un désastre, Services publics et Approvisionnement décide tout de même d'aller de l'avant avec la mise en œuvre massive de Phénix, visant 120 000 employés ;
- 2.65. Dès l'implantation de février 2016, une vague de problèmes nouveaux et de mouvements non traités se manifeste et vient donner l'alerte aux employés, aux syndicats et aux responsables du projet ;
- 2.66. Malgré tout, Services publics et Approvisionnement décide d'aller de l'avant, le 21 avril 2016, avec la deuxième vague d'implantation de Phénix, ajoutant plus de 170 000 employés dans le système ;
- 2.67. En juin 2016, constatant l'inaction du Gouvernement malgré leurs interventions répétées, plusieurs syndicats déposent une requête en *mandamus* dans le dossier T-1021-16 de la Cour fédérale, tel qu'il appert d'une copie de cette requête produite comme pièce **R-6(A)** ;
- 2.68. Dans la requête R-6(A), les syndicats demandent à la Cour fédérale d'obliger le Gouvernement à mettre en place les ressources administratives nécessaires pour remplir ses obligations envers ses employés en vertu de

la *Financial Administration Act*, S.R.C. 1985, c. F-11, et de la *Directive on Terms and Conditions of Employment* ;

- 2.69. Le 11 août 2016, Services publics et Approvisionnement annonçait qu'il prévoyait régler les problèmes du système Phénix avant l'échéance du 31 octobre 2016, tel qu'il appert de la mise à jour du 11 août 2016, produit comme pièce **R-1 (11-08-2016)** ;
- 2.70. Au cours de l'automne 2016, l'implantation de Phénix à la GRC et aux Forces armées, prévue pour novembre 2016, a été retardée, tel qu'il appert notamment de l'article de Ian Austen paru le 17 novembre 2016 dans le *New York Times*, pièce R-2 ;
- 2.71. Le 31 octobre 2016, malgré la promesse faite par le Gouvernement, les problèmes vécus par les membres sont loin d'être réglés ;
- 2.72. Le 22 décembre 2016, la Cour fédérale ordonnait notamment, avec le consentement des parties, l'ajournement de la requête en mandamus et la mise sur pied de mécanismes de gestion, tel qu'il appert d'une copie de cette ordonnance produite comme pièce **R-6 (B)** ;
- 2.73. Dans l'ordonnance R-6 (B), la Cour fédérale ordonnait aussi, notamment :

Le défendeur maintiendra une équipe spécialisée de conseillers en rémunération aussi longtemps qu'il le faudra pour remédier aux perturbations de revenu subies par toute personne qui prend un congé d'invalidité, un congé de maternité ou un congé parental. Le défendeur prendra les mesures nécessaires pour voir à ce que de tels problèmes se règlent le plus rapidement possible. Le défendeur discutera par l'entremise du CCSP de la possibilité d'établir un mode d'accès direct pour assurer que les personnes dont le revenu est perturbé en pareilles circonstances peuvent communiquer directement avec les membres de cette équipe spécialisée pour régler les problèmes qui les touchent ;

Le défendeur veillera à ce que toute personne qui prend un congé d'invalidité, un congé de maternité ou un congé parental ne se voie pas refuser les « services de paiement d'urgence » ou la « paye prioritaire » au motif qu'elle est en congé;

Tel qu'il appert de la pièce R-6 (B) à la page 3 ;

- 2.74. Tel qu'il sera établi ci-après, en date du 8 mars 2017, le Gouvernement prévoyait atteindre l'état d'équilibre à la fin mars 2017 pour les congés de maternité et les congés parentaux, et à la mi-avril en ce qui concerne les congés d'invalidité ;

- 2.75. En février 2017, soit un an après l'implantation de Phénix, le Gouvernement dénombre encore 290 000 mouvements qui ne sont pas encore traités et qui ont dépassé les délais prévus par les normes de service, tel qu'il appert notamment d'un article publié sur le site de Radio-Canada le 8 mars 2017, produit comme pièce **R-7** ;
- 2.76. Le 8 mars 2017, Services publics et Approvisionnement Canada publiait une mise à jour concernant le système Phénix, produite comme pièce **R-1 (08-03-2017)** ;
- 2.77. Lors de cette mise à jour, la sous-ministre Marie Lemay annonce :
- 2.77.1. que le Gouvernement prévoit réussir à respecter ses cibles d'attente pour le traitement des problèmes de paye aux environs de la fin de l'été 2017 ;
 - 2.77.2. que 284 000 mouvements non traités ne respectent pas les normes de service ;
 - 2.77.3. que 6000 dossiers qui étaient en cours le 24 février 2016 sont toujours en attente ;
- 2.78. Le 13 mars 2017, Services publics et Approvisionnement Canada publie une mise à jour concernant le système Phénix, produite comme pièce **R-1 (13-03-2017)** ;
- 2.79. La mise à jour R-1 (13-03-2017) révèle :
- 2.79.1. Qu'à cette date, près de 100 000 affectations intérimaires sont en attente de traitement au Centre de services de paye ;
 - 2.79.2. Que Services publics et Approvisionnement Canada prévoit atteindre, à la fin mars, l'état de stabilité dans le traitement des congés parentaux et que les employés devraient commencer à recevoir leurs paiements complémentaires le 22 mars 2017 ;
 - 2.79.3. Que l'on encourage les employés à soumettre leur déclaration de revenus avant la date limite du 1^{er} mai 2017, en fonction des feuillets qu'ils ont en leur possession, et qu'en cas de modification leur déclaration de revenus fera l'objet d'un recalcul ;
- 2.80. La sous-ministre Marie Lemay conclut cette mise à jour comme suit : « Je reconnais qu'il faudra du temps avant que tous les employés commencent

à voir le résultat de nos efforts, des signes d'amélioration seront de plus en plus évidents au cours des prochains mois » ;

2.81. Le 6 avril 2017, Radio-Canada révèle qu'un système parallèle à Phénix, décrit comme le « petit livre noir », a été développé dans plusieurs ministères afin de noter les heures supplémentaires et de les compenser en parallèle du système, en procédant parfois par un « remboursement en temps », tel qu'il appert d'une copie de cet article produit comme pièce **R-8** ;

2.82. Toujours dans l'article R-8 du 6 avril 2017, une fonctionnaire ajoute :

C'est tellement long avant de recevoir le montant qui est dû pour les heures supplémentaires, ça ne vaut pas la peine de les entrer dans le système, parce qu'on ne verra probablement jamais la couleur de cet argent-là ;

LES FAUTES ET LES DÉFAUTS RÉPÉTÉS DU DÉFENDEUR ONT CAUSÉ AUX MEMBRES UN PRÉJUDICE MAJEUR

2.83. Le Gouvernement du Canada est l'un des principaux employeurs au Canada et il est réputé pour offrir des emplois bien rémunérés, une excellente sécurité d'emploi et de bonnes conditions de travail ;

2.84. En choisissant de travailler pour le Gouvernement du Canada, les membres du Groupe pouvaient s'attendre à de bonnes conditions de travail et à être traités équitablement par leur employeur ;

2.85. D'ailleurs, dans son budget 2017, le Gouvernement du Canada insiste lui-même sur le respect de ces principes par les autres employeurs, prévoyant des mesures pour

Pour faire en sorte que les Canadiens qui travaillent fort puissent récupérer plus facilement les salaires qui leur sont dus par leur employeur, et pour veiller à ce que les employeurs récidivistes soient sanctionnés [...]

tel qu'il appert d'un extrait du budget 2017, à la page 71, produit comme pièce **R-9** ;

2.86. Vers qui les travailleurs doivent-ils se tourner lorsque c'est l'État qui déroge aux règles qu'il établit?

2.87. La subsistance des membres est assurée en quasi-totalité par leurs revenus d'emploi ;

- 2.88. Or, dès l'implantation du système Phénix en février 2016, d'importantes erreurs dans le paiement des salaires sont devenues la norme parmi les employés du Gouvernement ;
- 2.89. Malgré que la situation ait été à la fois urgente, prévisible et évitable, Services publics et Approvisionnement a négligé de répondre à ses obligations légales et contractuelles envers ses employés ;
- 2.90. À partir de ce moment, un vaste contingent d'employés du Gouvernement ont connu des erreurs dans leur rémunération, dont notamment :
- 2.90.1. Certains employés n'étaient simplement pas payés pour leur travail, d'autres étaient payés incorrectement ou en retard ;
 - 2.90.2. De nombreux changements de poste ou de conditions de rémunération n'étaient pas entrés dans le système et l'employé continuait de recevoir le salaire de son emploi précédent ;
 - 2.90.3. De nombreux départs en congé, ou une cessation d'emploi n'étaient pas entrés dans le système et l'employé ou ex-employé recevait des sommes en trop ;
 - 2.90.4. De nombreux retours de congé n'étaient pas entrés dans le système et l'employé travaillait sans être payé jusqu'à ce que sa demande soit traitée ;
 - 2.90.5. Plusieurs personnes n'ont pas eu accès au paiement de leurs congés parentaux, à de l'assurance-invalidité ou à de l'assurance-emploi, ou ont reçu des montants inexacts ;
 - 2.90.6. Une quantité importante d'heures supplémentaires n'ont pas été rémunérées ;
- tel qu'il appert notamment :
- de l'article de Ian Austen paru le 17 novembre 2016 dans le New York Times, pièce R-2 ;
 - de la mise à jour du Gouvernement en date du 7 septembre 2016, produite comme pièce **R-1 (07-09-2016)** ;
 - de la requête des syndicats le 28 juin 2016, pièce R-6 (A) ;
- 2.91. Plusieurs membres ayant reçu des sommes excédentaires ont été contraints de les rembourser y compris les retenues à la source, ces

dernières devant être compensées lors du traitement de leur déclaration d'impôt pour l'année pertinente, tel qu'il sera démontré lors de l'enquête ;

- 2.92. Prévoyant qu'ils auraient l'obligation de rembourser les sommes leur ayant été versées en trop, les membres ont dû mettre ces sommes de côté, sans pouvoir les dépenser et en ne sachant pas quand ni comment le Gouvernement les réclamerait ;
- 2.93. Plusieurs membres ont eu à la fois des paiements excédentaires et des arrérages de paye, causant un vrai casse-tête administratif étant donné l'imminence d'un remboursement et étant donné que le processus de recouvrement des sommes payées en trop n'était pas nécessairement coordonné avec le processus de paiement des arrérages ;
- 2.94. Les membres du Premier sous-groupe, qui seraient plus de 80 000, ont dû faire de nombreuses démarches dans le but de régler leurs problèmes de paye ;
- 2.95. Pendant plusieurs mois, leurs gestionnaires n'ont eu aucune information utile concernant le traitement des problèmes du système, tel qu'il sera démontré plus amplement lors de l'enquête ;
- 2.96. De plus, l'information rendue disponible aux membres était parcellaire et ne leur permettait pas de régler les enjeux auxquels ils faisaient face ;
- 2.97. Les membres du Premier sous-groupe, à l'instar de la Demanderesse, ont dû faire de nombreux appels et démarches administratives afin de tenter de solutionner leurs problèmes ;
- 2.98. En effet, seulement entre le 26 juillet 2016 et le 23 janvier 2017, le service d'appel mis sur pied pour traiter les erreurs de paye a reçu 184 752 appels, tel qu'il appert notamment d'un article de Joël-Denis Bellavance du 6 février 2017, produit comme pièce **R-10** ;
- 2.99. Malgré tous ces appels et démarches, les agents gouvernementaux ne pouvaient rien faire pour les membres du Premier sous-groupe et la vaste majorité de ceux-ci ont été contraints de conserver les sommes à rembourser au Gouvernement, ou d'attendre péniblement les arrérages de salaire qui leur étaient dus ;
- 2.100. À l'occasion de la période des impôts, plusieurs membres se sont retrouvés avec des relevés fiscaux incomplets ou faux, entraînant de nouveaux casse-têtes administratifs ;

- 2.101. À la lumière de ce qui précède, il apparaît que les membres du Premier sous-groupe ont tous subi, et de manière similaire, leur lot de troubles, de stress et d'inconvénients liés aux erreurs dans leur paye ;
- 2.102. La Demanderesse soutient que le préjudice moral minimal qu'ont subi les membres du Premier sous-groupe devrait être évalué à 1000\$ par membre ;
- 2.103. Les membres du Deuxième sous-groupe, en plus de connaître les mêmes troubles que les membres du Premier sous-groupe dont ils font partie, ont dû composer avec une paye réduite de plus de 50% pour deux périodes de paye de deux semaines ou plus ;
- 2.104. Certains d'entre eux ont été privés de leur paye en cours d'emploi, mais plusieurs ont plutôt été privés de revenus lors de congés parentaux, de congés de maladie ou à la suite de l'impossibilité de percevoir les versements d'assurance-emploi qu'ils devaient recevoir ;
- 2.105. Ceux-ci, en plus de se heurter à la même opacité et aux mêmes obstacles administratifs que ceux du Premier sous-groupe, se sont vus privés, en substance, du revenu dont ils prévoyaient tirer leur subsistance ;
- 2.106. Par la faute de l'intimé, de nombreuses familles canadiennes ont vécu un temps des fêtes difficile en 2016, sans parler des congés parentaux, des congés pour maladie ou des vacances obscurcis par le défaut du Gouvernement à payer ses employés, des difficultés financières vécues par plusieurs et des problèmes de liquidités qui ont été rencontrés dans certains cas ;
- 2.107. Pour pallier à la détresse de ces personnes, le Gouvernement a mis en place un système d'avance de paye d'urgence de même qu'un mécanisme d'indemnisation pour des frais de financement encourus par les membres ;
- 2.108. Malgré tout, les membres du Deuxième sous-groupe ont vécu des moments très difficiles et certains d'entre eux ont mis en péril leur situation patrimoniale ;
- 2.109. Dans le cadre de la présente action, certains dommages particuliers subis par certains membres du Deuxième sous-groupe se prêtent davantage à un recouvrement individuel qu'à un recouvrement collectif ;
- 2.110. Cela dit, il est manifeste que tous ont subi en commun un préjudice similaire : il s'agit du stress occasionné à toute personne privée de ses moyens de subsistance pendant une longue période de temps ;

- 2.111. Ce préjudice a une seule et même cause pour tous les membres du Deuxième sous-groupe ;
- 2.112. Comme ce préjudice s'amplifie en fonction du temps où un membre est demeuré sans revenu, la Demanderesse propose de l'évaluer comme suit :
- 2.112.1. Pour les quatre premières semaines, 500\$;
 - 2.112.2. Pour chaque semaine supplémentaire entre la cinquième et la dixième inclusivement, 175\$ de plus ;
 - 2.112.3. Pour chaque semaine supplémentaire, subséquente à la dixième semaine, 250\$ de plus chacune ;
- 2.113. La Demanderesse soumet qu'il s'agit du préjudice minimal qu'ont pu subir les membres du Deuxième sous-groupe et qu'en conséquence, il y a lieu de dédommager ceux-ci par le biais d'un recouvrement collectif ;
- 2.114. Au surplus, les membres du Deuxième sous-groupe sont en droit de recouvrer l'intégralité des sommes qui leur sont dues par le Gouvernement, avec les intérêts et l'indemnité additionnelle prévue par la loi, lorsqu'applicable, à compter de la demeure ;
- 2.115. À cet égard, la Demanderesse soumet que le Gouvernement était en demeure de plein droit de payer ses employés dès le premier chèque de paye en arrérages puisque cette obligation devait être exécutée immédiatement compte tenu de l'urgence ;
- 2.116. Subsidiairement, la Demanderesse soumet que le Gouvernement était en demeure de plein droit dès qu'un membre du Deuxième sous-groupe lui a rapporté la situation d'arrérages sur sa paye, ou dès la deuxième période de paye où il était en défaut ;
- 2.117. Les procureurs de la Demanderesse se sont engagés et s'engagent expressément et irrévocablement à ne percevoir aucun honoraire ou frais, ni aucune autre somme quelle qu'elle soit, sur les arrérages de paiement dus aux membres ;
- 2.118. Finalement, en ce qui concerne les membres du Groupe en général, ceux-ci ont tous subi les impacts de l'implantation du système Phénix ;
- 2.119. En effet, sur environ 300 000 membres du Groupe, un nombre estimé à 80 000, soit plus du quart, ont vu leur dossier directement affecté par les déficiences du système ;

- 2.120. Pendant cette période de plus d'un an, tous les membres ont vécu sous la menace d'être victime des ratés du système de paye Phénix et ont vu leur confiance dans leur employeur sévèrement atteinte ;
 - 2.121. Selon plusieurs entrevues rapportées par des journalistes, il est rapidement devenu notoire parmi les membres qu'il valait mieux refuser tout changement dans les conditions de son emploi, qu'il s'agisse d'un congé, d'un changement de poste, d'une promotion ou d'un remplacement temporaire ;
 - 2.122. Le 6 avril 2017, Radio-Canada révélait dans un article publié sur son site web qu'un système parallèle à Phénix, décrit comme le « petit livre noir », avait été développé dans plusieurs ministères afin de noter les heures supplémentaires et de les compenser en parallèle du système, en procédant parfois par un « remboursement en temps », tel qu'il appert de la pièce R-8 ;
 - 2.123. Cela illustre l'ampleur et la durée du problème, ainsi que le climat de crainte qui règne désormais au sein de la fonction publique fédérale ;
 - 2.124. De plus, des problèmes de confidentialité connus et évitables ont affecté le système après son implantation et ont rendu les informations personnelles des membres du Groupe visibles à environ 70 000 personnes ;
 - 2.125. Les ratés du système Phénix jumelés au défaut du Gouvernement à répondre à ses obligations envers ses employés n'ont pas manqué de nuire au climat de travail des membres et à leur confiance dans la qualité de leurs conditions d'emploi et dans leur sécurité d'emploi ;
 - 2.126. Pour ces raisons, la Demanderesse soumet que chacun des membres du Groupe a subi, pour l'ensemble de la Période du recours, un préjudice moral minimal évalué à 500\$;
- 3. Il est opportun d'autoriser l'exercice d'une action collective pour le Groupe et les deux sous-groupes :**
- 3.1. Étant donné le nombre important des membres du Groupe et étant donné que la Demanderesse ne peut pas contacter l'ensemble de ceux-ci, une action collective est nécessaire pour préserver les droits de tous ;
 - 3.2. De plus, les membres sont dispersés géographiquement à la grandeur du Canada et il serait impossible d'obtenir un mandat de la part de chacun des membres du Groupe ;

- 3.3. De plus, l'action collective permet aux membres du Groupe, dont plusieurs ont vu leurs capacités financières réduites, de pouvoir supporter et mettre en commun les coûts liés à une telle action ;
- 3.4. Finalement, la Demanderesse espère, par le biais d'une action collective, éviter la multiplication des actions individuelles et réduire le risque de jugements contradictoires, tout en dénonçant la situation actuelle et en donnant aux membres l'occasion de faire valoir leurs droits ;

4. La nature de l'action que souhaite intenter la Demanderesse pour le compte du Groupe

- 4.1. La Demanderesse souhaite intenter une action collective en dommages-intérêts contractuels résultant du préjudice moral subi par les membres du Groupe ;
- 4.2. La Demanderesse souhaite intenter une action collective en réclamation des sommes dues à ses employés par le Gouvernement du Canada, avec l'intérêt et l'indemnité additionnelle prévue par la loi, lorsqu'applicable ;

5. Les faits qui donneraient ouverture à une action individuelle de la part de chacun des membres du Groupe et des deux sous-groupes contre le Défendeur sont les suivants :

- 5.1. Chacun des membres du Groupe a été affecté par l'implantation fautive et la gestion négligente du système de paye Phénix, lui occasionnant un préjudice moral dû à la crainte, le stress et la dégradation de son milieu de travail ;
- 5.2. Chacun des membres du Premier sous-groupe a été affecté par une ou plusieurs erreurs du système de paye Phénix en lien avec sa rémunération et a été victime de la gestion négligente de cette situation, lui entraînant du stress, des tracasseries administratives, des pertes de temps et des troubles et inconvénients ;
- 5.3. Chacun des membres du Deuxième sous-groupe a été privé, pendant quatre semaines ou plus, d'au moins 50% de son revenu à la suite d'une ou plusieurs erreurs du système de paye Phénix, et a été victime de la gestion négligente de cette situation, lui entraînant la privation de son gagne-pain et un stress financier et psychologique important ;
- 5.4. Chacun des membres du Deuxième sous-groupe a droit au paiement des sommes qui lui sont dues par le Gouvernement du Canada, avec l'intérêt et l'indemnité additionnelle prévue par la loi, lorsqu'applicable ;

6. La Demanderesse est en mesure d'assurer la représentation adéquate des membres;

- 6.1. La Demanderesse est membre du Groupe et de chacun des deux sous-groupes et elle est capable de les représenter adéquatement ;
- 6.2. La Demanderesse a une bonne connaissance personnelle des faits en litige en ce qui concerne son action personnelle ;
- 6.3. La Demanderesse est prête à participer pleinement, avec l'assistance de ses procureurs, au bon déroulement de l'action collective ;

7. Les questions de fait ou de droit identiques, similaires ou connexes reliant chaque membre du Groupe au Défendeur et qui sont soumises à cette Cour pour être décidées collectivement sont les suivantes :

- 7.1. Le Gouvernement du Canada a-t-il manqué à son obligation de gérer correctement le traitement de ses employés?
- 7.2. Le Gouvernement du Canada a-t-il géré de manière négligente la crise générée par les défaillances du système de paye Phénix?
- 7.3. Les membres du Groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix, et si oui, à combien ce préjudice doit-il être évalué?
- 7.4. Les membres du Premier sous-groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix ayant affecté leur dossier, et si oui, à combien ce préjudice doit-il être évalué?
- 7.5. Les membres du Deuxième sous-groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix ayant entraîné une réduction d'au moins 50% de leur rémunération pendant une période de quatre semaines ou plus, et si oui, à combien ce préjudice doit-il être évalué?
- 7.6. Le Gouvernement fédéral est-il responsable, le cas échéant, du préjudice causé aux membres du Groupe et des deux sous-groupes, respectivement, par les défaillances du système de paye Phénix?
- 7.7. Le Gouvernement fédéral a-t-il l'obligation de verser, au complet et à temps, les salaires de ses employés?

7.8. Le cas échéant, la Cour doit-elle ordonner le paiement des arrérages de salaires et autres paiements dus aux employés du Gouvernement du Canada, avec les intérêts et l'indemnité additionnelle depuis la demeure?

7.9. Le cas échéant, à quelle date la demeure peut-elle être établie?

8. Les questions de faits et de droit particulières à chacun des membres sont les suivantes :

8.1. Pour chaque membre du Deuxième sous-groupe, quelles sont les sommes qui leur sont encore dues par le Gouvernement, s'il y a lieu, et à quelle somme ont-ils droit à titre d'intérêts et d'indemnité additionnelle?

8.2. Pour chaque membre du Deuxième sous-groupe et advenant la responsabilité du Gouvernement à leur égard, y a-t-il des circonstances particulières qui justifieraient l'octroi de dommages matériels ou moraux en sus des dommages réclamés collectivement?

9. Les conclusions recherchées par la Demanderesse sont détaillées dans les conclusions de la présente demande ;

10. La Demanderesse propose qu'une action collective soit exercée devant la Cour supérieure siégeant dans le district de Québec pour les raisons suivantes :

10.1. Plusieurs membres du Groupe résident dans ce district ou à proximité ;

10.2. La Demanderesse réside dans ce district ;

10.3. Les procureurs de la Demanderesse exercent leur profession dans ce district ;

10.4. Le Défendeur a une place d'affaires dans ce district ;

POUR CES MOTIFS, PLAISE AU TRIBUNAL:

ACCUEILLIR la présente demande ;

AUTORISER l'exercice de l'action collective ci-après :

Une action en dommages-intérêts invoquant la faute contractuelle du Gouvernement du Canada envers ses employés lors de l'implantation du système de paye Phénix et dans la gestion de la crise causée par les défaillances de ce système ;

ATTRIBUER à Ezmie Bouchard le statut de représentante aux fins d'exercer ladite action collective pour le compte des personnes physiques décrites ci-après :

Toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada à tout moment depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours (le « Groupe ») ;

Toutes les personnes qui, depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours, ont été touchées par une ou plusieurs erreurs liées à leur rémunération alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada (le « Premier sous-groupe ») ;

Toutes les personnes qui, depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours, ont reçu 50% ou moins de leur rémunération, de leurs prestations d'assurance-emploi ou de leur rémunération de congé pendant quatre semaines ou plus alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada (le « Deuxième sous-groupe ») ;

IDENTIFIER comme suit les principales questions de droit et de fait à être traitées collectivement :

1. Le Gouvernement du Canada a-t-il manqué à son obligation de gérer correctement le traitement de ses employés?
2. Le Gouvernement du Canada a-t-il géré de manière négligente la crise générée par les défaillances du système de paye Phénix?
3. Les membres du Groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix, et si oui, à combien ce préjudice doit-il être évalué?
4. Les membres du Premier sous-groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix ayant affecté leur dossier, et si oui, à combien ce préjudice doit-il être évalué?
5. Les membres du Deuxième sous-groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix ayant entraîné une réduction d'au moins 50% de leur rémunération pendant une période de quatre semaines ou plus, et si oui, à combien ce préjudice doit-il être évalué?
6. Le Gouvernement fédéral est-il responsable, le cas échéant, du préjudice causé aux membres du Groupe et des deux sous-groupes, respectivement, par les défaillances du système de paye Phénix?

7. Le Gouvernement fédéral a-t-il l'obligation de verser, au complet et à temps, les salaires de ses employés?

8. Le cas échéant, la Cour doit-elle ordonner le paiement des arrérages de salaires et autres paiements dus aux employés du Gouvernement du Canada, avec les intérêts et l'indemnité additionnelle depuis la demeure?

9. Le cas échéant, à quelle date la demeure peut-elle être établie?

IDENTIFIER comme suit les conclusions recherchées par l'action :

ACCUEILLIR la demande en action collective de la Demanderesse pour le compte du Groupe suivant et des sous-groupes suivants :

Toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada à tout moment depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours (le « Groupe ») ;

Toutes les personnes qui, depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours, ont été touchées par une ou plusieurs erreurs liées à leur rémunération alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada (le « Premier sous-groupe ») ;

Toutes les personnes qui, depuis le 24 février 2016 jusqu'à la date de fin de la Période du recours, ont reçu 50% ou moins de leur rémunération, de leurs prestations d'assurance-emploi ou de leur rémunération de congé pendant quatre semaines ou plus alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada (le « Deuxième sous-groupe ») ;

ACCUEILLIR l'action de la Demanderesse pour le compte de tous les membres du Groupe, du Premier sous-groupe et du Deuxième sous-groupe ;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Groupe la somme de 500\$, portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter du dépôt de la demande pour autorisation d'exercer une action collective et pour être représentante ;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Premier sous-groupe la somme de 1000\$, portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter du dépôt de la demande pour autorisation d'exercer une action collective et pour être représentante ;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Deuxième sous-groupe la somme de :

- 500\$ pour les quatre premières semaines où le membre a reçu 50% de sa paye ou moins ;
- pour chaque semaine supplémentaire où le membre a reçu 50% de sa paye ou moins, entre la cinquième et la dixième semaine inclusivement, 175\$ de plus ;
- pour chaque semaine supplémentaire où le membre a reçu 50% de sa paye ou moins, subséquemment à la dixième semaine, 250\$ de plus chacune ;

le tout portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter du dépôt de la demande pour autorisation d'exercer une action collective et pour être représentante ;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Deuxième sous-groupe la somme à être déterminée à l'occasion du processus de recouvrement et représentant les arrérages de salaire ou autre traitement dû à chacun de ces membres, portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter de la demeure ;

ORDONNER le recouvrement collectif des sommes à percevoir en vertu du présent jugement, selon la procédure à être établie par le tribunal ;

ORDONNER, le cas échéant la liquidation des réclamations des membres ou la distribution d'une indemnité à chacun d'eux à même les sommes recouvrées collectivement ;

PERMETTRE aux membres du Deuxième sous-groupe de présenter une réclamation individuelle pour leur préjudice subi en excédent du préjudice évalué en commun pour les membres du Deuxième sous-groupe, le tout, selon les modalités à être fixées par le tribunal ;

LE TOUT avec frais de justice, y compris les frais d'expertises, les frais d'avis et les frais reliés à l'administration des réclamations et à la distribution des indemnités ;

DÉCLARER qu'à moins d'exclusion, les membres du groupe seront liés par tout jugement à intervenir sur l'action collective de la manière prévue par la loi ;

FIXER le délai d'exclusion à soixante (60) jours après la date de l'avis aux membres, délai à l'expiration duquel les membres du groupe qui ne se seront pas prévalus des moyens d'exclusion seront liés par tout jugement à intervenir ;

ORDONNER la publication d'un avis aux membres dans les termes et selon les modalités à être déterminées par le tribunal ;

RÉFÉRER le dossier au juge en chef pour détermination du district dans lequel l'action collective devra être exercée et désignation du juge pour l'entendre ;

LE TOUT, avec dépens, y compris les frais d'avis aux membres ;

Québec, le 10 avril 2017




Me JULIEN FORTIER
Procureur de la Demanderesse

Québec, le 10 avril 2017



Me MAXIME GUÉRIN
Procureur de la Demanderesse

Québec, le 10 avril 2017



Me CHRISTIAN SARAÏLIS
Procureur de la Demanderesse

Québec, le 10 avril 2017



SARAÏLIS AVOCATS INC.
Procureurs de la Demanderesse

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

No.:

COUR SUPÉRIEURE
(Action collective)

EZMIE BOUCHARD

Demanderesse

c.

PROCUREUR GÉNÉRAL DU CANADA
Intimé

**LISTE DES PIÈCES DE LA DEMANDERESSE
REQUÊTE POUR AUTORISATION D'EXERCER
UNE ACTION COLLECTIVE ET POUR ÊTRE REPRÉSENTANTE**

PIÈCE R-1. Mises à jour de Services publics et Approvisionnement Canada.
Cette pièce est divisée comme suit :

(18-07-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 18 juillet 2016 ;

(28-07-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 28 juillet 2016 ;

(11-08-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 11 août 2016 ;

(24-08-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 24 août 2016 ;

(07-09-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 7 septembre 2016 ;

(19-09-2016) Progress report on Phoenix for September 19, 2016 ;

(21-09-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 21 septembre 2016 ;

(05-10-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 5 octobre 2016 ;

(19-10-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 19 octobre 2016 ;

(31-10-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 31 octobre 2016 ;

(16-11-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 16 novembre 2016 ;

(14-12-2016) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 14 décembre 2016 ;

(11-01-2017) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 11 janvier 2017 ;

(25-01-2017) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 25 janvier 2017 ;

(08-02-2017) Mise à jour du gouvernement du Canada sur le système de paye Phénix du 8 février 2017 ;

(08-03-2015) Mise à jour du gouvernement du Canada concernant le système de paye Phénix 8 mars 2017 ;

(05-04-2017) Mise à jour du gouvernement du Canada concernant le système de paye Phénix 5 avril 2017 ;

- PIÈCE R-2.** Copie de l'article de Ian Austen paru le 17 novembre 2016 dans le New York Times ;
- PIÈCE R-3.** Copie de l'article de Kathryn May paru le 18 avril 2016 dans le National Post ;
- PIÈCE R-4.** Courriel daté du 9 août 2016 ;
- PIÈCE R-5.** Copie d'un article publié sur le site de Radio-Canada le 20 juillet 2016 ;
- PIÈCE R-6.** **A.** Requête en *mandamus* du 28 juin 2016 dans le dossier T-1021-16 de la Cour fédérale ;
B. Ordonnance de la Cour fédérale dans le dossier T-1021-16, le 22 décembre 2016 ;
- PIÈCE R-7.** Copie d'un article publié sur le site de Radio-Canada le 8 mars 2017 ;

- PIÈCE R-8.** Copie d'un article publié sur le site de Radio-Canada le 6 avril 2017 ;
- PIÈCE R-9.** Extrait du budget fédéral 2017, à la page 71 ;
- PIÈCE R-10.** Copie d'un article de Joël-Denis Bellavance paru le 6 février 2017 dans La Presse ;

Québec, le 10 avril 2017



Me JULIEN FORTIER
Procureur de la Demanderesse

AVIS D'ASSIGNATION
(articles 145 et suivants C.p.c.)

Dépôt d'une demande en justice

Prenez avis que la partie demanderesse a déposé au greffe de la Cour Supérieure du district judiciaire de Québec la présente demande pour autorisation d'exercer une action collective et pour être représentante.

Réponse à cette demande

Vous devez répondre à cette demande par écrit, personnellement ou par avocat, au palais de justice de Québec situé au 300, boulevard Jean-Lesage, Québec, Québec, G1K 8K6 dans les **15 jours de la signification** de la présente demande ou, si vous n'avez ni domicile, ni résidence, ni établissement au Québec, dans les 30 jours de celle-ci. Cette réponse doit être notifiée à l'avocat du demandeur ou, si ce dernier n'est pas représenté, au demandeur lui-même.

Défaut de répondre

Si vous ne répondez pas dans le délai prévu, de 15 ou de 30 jours, selon le cas, un jugement par défaut pourra être rendu contre vous sans autre avis dès l'expiration de ce délai et vous pourriez, selon les circonstances, être tenu au paiement des frais de justice.

Contenu de la réponse

Dans votre réponse, vous devez indiquer votre intention, soit :

- de convenir du règlement de l'affaire;
- de proposer une médiation pour résoudre le différend;
- de contester cette demande et, dans les cas requis par le Code, d'établir à cette fin, en coopération avec le demandeur, le protocole qui régira le déroulement de l'instance. Ce protocole devra être déposé au greffe de la Cour du district mentionné plus haut dans les 45 jours de la signification du présent avis ou, en matière familiale, ou, si vous n'avez ni domicile, ni résidence, ni établissement au Québec, dans les trois mois de cette signification;
- de proposer la tenue d'une conférence de règlement à l'amiable.

Cette réponse doit mentionner vos coordonnées et, si vous êtes représenté par un avocat, le nom de celui-ci et ses coordonnées.

Changement de district judiciaire

Vous pouvez demander au tribunal le renvoi de cette demande introductive d'instance dans le district où est situé votre domicile ou, à défaut, votre résidence ou, le domicile que vous avez élu ou convenu avec le demandeur.

Si la demande porte sur un contrat de travail, de consommation ou d'assurance ou sur l'exercice d'un droit hypothécaire sur l'immeuble vous servant de résidence principale et que vous êtes le consommateur, le salarié, l'assuré, le bénéficiaire du contrat d'assurance ou le débiteur hypothécaire, vous pouvez demander ce renvoi dans le district où est situé votre domicile ou votre résidence ou cet immeuble ou encore le lieu du sinistre. Vous présentez cette demande au greffier spécial du district territorialement compétent après l'avoir notifiée aux autres parties et au greffe du tribunal qui en était déjà saisi.

Transfert de la demande à la Division des petites créances

Si vous avez la capacité d'agir comme demandeur suivant les règles relatives au recouvrement des petites créances, vous pouvez également communiquer avec le greffier du tribunal pour que cette demande soit traitée selon ces règles. Si vous faites cette demande, les frais de justice du demandeur ne pourront alors excéder le montant des frais prévus pour le recouvrement des petites créances.

Convocation à une conférence de gestion

Dans les 20 jours suivant le dépôt du protocole mentionné plus haut, le tribunal pourra vous convoquer à une conférence de gestion en vue d'assurer le bon déroulement de l'instance. À défaut, ce protocole sera présumé accepté.

Pièces au soutien de la demande

Au soutien de sa demande introductive d'instance, la partie demanderesse invoque les pièces suivantes :

[Veuillez-vous référer à la liste des pièces de la demanderesse jointe à la présente.]

Ces pièces sont disponibles sur demande.

Demande accompagnée d'un avis de présentation

S'il s'agit d'une demande présentée en cours d'instance ou d'une demande visée par les Livres III, V, à l'exception de celles portant sur les matières familiales mentionnées à l'article 409, ou VI du Code, la préparation d'un protocole de l'instance n'est pas requise; toutefois, une telle demande doit être accompagnée d'un avis indiquant la date et l'heure de sa présentation.

CANADA

PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

No.:

COUR SUPÉRIEURE
(Action collective)

EZMIE BOUCHARD

Demanderesse

c.

**PROCUREUR GÉNÉRAL DU
CANADA**

Défendeur

AVIS DE PRÉSENTATION

Destinataire :

PROCUREUR GÉNÉRAL DU CANADA
9^e étage, tour Est du complexe Guy-Favreau
200, boul. René-Lévesque Ouest
Montréal (Québec) H2Z 1X4

PRENEZ AVIS que la présente demande pour autorisation d'exercer une action collective et pour être représentante sera présentée devant l'un des honorables juges de la Cour supérieure, siégeant en division de pratique du district de Québec, en salle 3.14 du Palais de justice de Québec, sis au 300, boulevard Jean-Lesage, Québec, Québec, G1K 8K6, le mercredi 17 mai 2017 à compter de 8 h 45 ou aussitôt que conseil pourra être entendu.

VEUILLEZ AGIR EN CONSÉQUENCE.

Québec, le 10 avril 2017



Me JULIEN FORTIER

Procureur de la Demanderesse

COUR SUPÉRIEURE

(Chambre civile)

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE QUÉBEC

N° : 200-06-000214-174

DATE : 3 avril 2018

This is Exhibit "E" to the
Affidavit of RENÉE DELORME
sworn before this 13 day of
January, 2023


A Commissioner for Oaths in
and for the Province of Alberta

2018 QCCS 1486 (CanLI)

SOUS LA PRÉSIDENTE DE : L'HONORABLE JEAN-FRANÇOIS ÉMOND, j.c.s.

EZMIE BOUCHARD
Demanderesse

c.

PROCUREURE GÉNÉRALE DU CANADA
Défenderesse

JUGEMENT

(Sur demande pour autorisation d'exercer une action collective)

[1] La demanderesse est une ancienne employée du Gouvernement du Canada. Elle dit avoir été victime des ratés du système de gestion de paye Phénix, lequel a été implanté par le gouvernement fédéral au début de l'année 2016.

[2] Elle demande donc l'autorisation d'exercer une action collective au nom de toutes les personnes qui, comme elle, alors qu'elles étaient à l'emploi du Gouvernement du Canada, ont été touchées par une ou plusieurs erreurs du système Phénix.

[3] Les erreurs en question portent sur la rémunération, les relevés fiscaux ou sur les relevés de fin d'emploi.

[4] Dans sa demande, la demanderesse décrit les erreurs dont il est question :

2.88. Or, dès l'implantation du système Phénix en février 2016, d'importantes erreurs dans le paiement des salaires sont devenues la norme parmi les employés du Gouvernement ;

[...]

2.90. À partir de ce moment, un vaste contingent d'employés du Gouvernement ont connu des erreurs dans leur rémunération, dont notamment :

2.90.1. Certains employés n'étaient simplement pas payés pour leur travail, d'autres étaient payés incorrectement ou en retard ;

2.90.2. De nombreux changements de poste ou de conditions de rémunération n'étaient pas entrés dans le système et l'employé continuait de recevoir le salaire de son emploi précédent ;

2.90.3. De nombreux départs en congé, ou une cessation d'emploi n'étaient pas entrés dans le système et l'employé ou ex-employé recevait des sommes en trop ;

2.90.4. De nombreux retours de congé n'étaient pas entrés dans le système et l'employé travaillait sans être payé jusqu'à ce que sa demande soit traitée ;

2.90.5. Plusieurs personnes n'ont pas eu accès au paiement de leurs congés parentaux, à de l'assurance-invalidité, à des prestations de retraite ou à de l'assurance-emploi, ou ont reçu des montants inexacts ;

2.90.6. Une quantité importante d'heures supplémentaires n'ont pas été rémunérées ;

[...]

2.91. Plusieurs membres ayant reçu des sommes excédentaires ont été contraints de les rembourser y compris les retenues à la source, ces dernières devant être compensées lors du traitement de leur déclaration d'impôt pour l'année pertinente, tel qu'il sera démontré lors de l'enquête ;

2.92. Prévoyant qu'ils auraient l'obligation de rembourser les sommes leur ayant été versées en trop, les membres ont dû mettre ces sommes de côté, sans pouvoir les dépenser et en ne sachant pas quand ni comment le Gouvernement les réclamerait ;

- 2.93. Plusieurs membres ont eu à la fois des paiements excédentaires et des arrérages de paye, causant un vrai casse-tête administratif étant donné l'imminence d'un remboursement et étant donné que le processus de recouvrement des sommes payées en trop n'était pas nécessairement coordonné avec le processus de paiement des arrérages ;

[5] Quant au groupe, elle le définit ainsi :

- 1.1. Toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada à tout moment (...) durant la Période du recours (le « Groupe ») ;
- 1.2. Toutes les personnes membres du Groupe qui, (...) durant la Période du recours, ont été touchées par une ou plusieurs erreurs liées à leur rémunération ou à leurs relevés fiscaux, leurs relevés de fin d'emploi ou toute autre type de relevé lié à leur rémunération ou leur emploi, alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada et/ou après la fin de leur lien d'emploi avec le Gouvernement du Canada (le « Premier sous-groupe ») ;
- 1.3. Toutes les personnes membres du Groupe qui, durant la Période du recours, ont reçu 50% ou moins de leur rémunération, de leurs prestations d'assurance-emploi ou de leur rémunération de congé, de leur rémunération de retraite ou de toute forme de traitement en lien avec leur lien d'emploi actuel ou passé avec le Gouvernement du Canada pendant quatre semaines ou plus (...) (le « Deuxième sous-groupe ») ;

[Reproduction textuelle]

[6] Pour ce qui est des conclusions recherchées, elles visent essentiellement à assurer le remboursement des salaires qui demeurent impayés et à obtenir des dommages-intérêts pour les troubles, ennuis et inconvénients causés aux membres du groupe et des sous-groupes en raison des erreurs du système de paye Phénix.

* * *

[7] Aux paragraphes 2.1 à 2.55 de sa demande pour autorisation d'exercer une action collective, la demanderesse allègue les faits qui, selon elle, justifient les conclusions recherchées.

[8] À l'étape où nous en sommes, c'est-à-dire à celle de l'autorisation, il y a lieu de les tenir pour avérés¹.

¹ *Infineon Technologies AG c. Option consommateurs*, 2013 CSC 59, [2013]; *Fortier c. Meubles Léon ltée*, 2014 QCCA 195; *Option consommateurs c. Bell Mobilité*, 2008 QCCA 2201.

[9] Il n'est pas utile de les reprendre intégralement, la Procureure générale du Canada (« PGC ») admettant que les faits allégués paraissent justifier les conclusions recherchées.

[10] Un portait général du contexte suffira.

[11] Au début de l'année 2016, le Gouvernement du Canada implante un nouveau système de gestion de paye pour ses employés. Ce système a été développé par la firme IBM. Il est connu sous le nom de système Phénix.

[12] Peu après son implantation, le système Phénix connaît des ratés.

[13] Des milliers d'employés du Gouvernement du Canada sont affectés par les défauts du système. Les erreurs touchent leur rémunération, leurs relevés fiscaux ou leurs relevés de fin d'emploi.

[14] La demanderesse est l'une des victimes des défaillances du système Phénix.

[15] De janvier à août 2016, la demanderesse travaille au bureau de Passeport Canada, à Québec. Elle occupe successivement un poste d'employé étudiant, puis un poste d'employé occasionnel.

[16] Au cours de cette période, elle est victime de plusieurs erreurs au niveau de sa paye.

[17] Elle s'en plaint auprès de ses supérieurs, mais ceux-ci sont incapables de corriger la situation.

[18] Au moment où elle quitte son emploi, un montant de l'ordre de 4 800 \$ de salaire lui est dû.

[19] À plusieurs reprises, la demanderesse s'adresse directement au centre des services de paye. À toutes ces occasions, elle remarque qu'il existe une confusion au sein du service. Les personnes responsables ne sont pas en mesure de corriger les erreurs et de faire en sorte que son salaire impayé lui soit versé.

[20] En avril 2017, la demanderesse dépose sa demande pour autorisation d'exercer une action collective.

[21] À cette époque, sa situation n'est toujours pas régularisée.

[22] Ce n'est qu'après le dépôt de cette demande que le Gouvernement du Canada lui fait parvenir un paiement pour couvrir son salaire impayé, et encore, il le fait sans lui fournir le détail du calcul effectué.

[23] Dans les faits, ce paiement s'avérera erroné. En effet, la demanderesse reçoit un montant supérieur à celui qui lui est dû de sorte qu'en septembre 2017, son employeur lui réclame un trop payé de près de 1 000 \$.

[24] Cela perpétue l'incertitude et le stress qu'elle vit en raison des erreurs portant sur sa rémunération.

* * *

[25] La Procureure générale du Canada (« PGC ») reconnaît que les critères énoncés aux paragraphes 575 (1), (2), (3) et (4) du *Code de procédure civile* (« C.p.c. »)² sont remplis.

[26] Toutefois, elle estime que le groupe proposé par la demanderesse doit être restreint.

[27] À son avis, l'action collective ne peut viser les fonctionnaires du Gouvernement du Canada qui sont assujettis à la procédure de grief prévue aux articles 206, 208, 209 et 236 de la *Loi sur les relations de travail dans la fonction publique* (« LRTFP »)³. Elle plaide que seuls les employés non assujettis à la procédure de griefs obligatoire au sens des sous-paragraphes 206 (1) c), e) et h) LRTFP peuvent faire partie du groupe. Il s'agit plus précisément des personnes qui : (1) ne sont pas astreintes à travailler plus du tiers du temps normalement exigé des personnes exécutant des tâches semblables; (2) sont employées à titre occasionnel; ou, (3) sont employées dans le cadre d'un programme désigné par l'employeur comme un programme d'embauche des étudiants.

[28] Les articles 206, 208, 209 et 236 LRTFP sont reproduits dans l'annexe A jointe au présent jugement.

[29] S'appuyant sur l'arrêt de la Cour d'appel de l'Ontario *Bron c. Canada (Attorney General)* (« Bron »)⁴ ainsi que sur plusieurs arrêts de la Cour d'appel du Québec l'ayant repris, la PGC fait valoir qu'au sens des articles 208, 209 et 236 LRTFP, « le droit de recours du fonctionnaire par voie de grief » a une large portée et s'applique « à tout différend lié à ses conditions d'emplois [et] remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend »⁵.

[30] La PGC se réfère plus précisément aux paragraphes 32 et 33 de l'arrêt *Bron*⁶:

[32] Finally, the appellant argues that a superior court must maintain an inherent jurisdiction despite whatever language may be used in s. 236. He relies

² *Code de procédure civile*, RLRQ, c. C-25.01.

³ *Loi sur les relations de travail dans la fonction publique*, L.C. 2003, c. 22, (LRTFP).

⁴ *Bron v. Canada (Attorney General)* 2010 ONCA 71 (*Bron*).

⁵ LRTFP, art. 236.

⁶ *Bron*, *supra*, note 4.

on Brotherhood of Maintenance of Way Employees Canadian Pacific System Federation v. Canadian Pacific Ltd., 1996 CanLII 215 (SCC), [1996] 2 S.C.R. 495, [1996] S.C.J. No. 42, at para. 8. As I read that case, it stands for the proposition that a superior court has inherent jurisdiction to provide a remedy where the relevant statutory scheme does not speak to the circumstances at hand. In other words, the court's inherent jurisdiction can fill remedial lacunae in legislation. There is no legislative gap here. Section 236 speaks directly to workplace complaints that are grievable under the legislation. For those complaints, even when there is no access to third-party adjudication, the grievance procedure operates "in lieu of any right of action".

[33] Like the motion judge (at para. 36), I am satisfied that s. 236 of the PSLRA explicitly ousts the jurisdiction of the court over claims that could be the subject of a grievance under s. 208 of that Act. [...]

[Soulignement du Tribunal]

[31] Elle nous renvoie aussi aux paragraphes 15 à 17 de l'arrêt de la Cour d'appel *Cyr c. Radermaker*⁷ où le juge Gendreau, en s'appuyant sur le passage précité de l'arrêt *Bron*, écrit :

[15] Aux fins de notre affaire, ce sont les articles 208 et 236 qui trouvent ici application et ils sont ainsi rédigés :

[...]

[16] Ainsi, le législateur a voulu que tout fonctionnaire qui s'estime lésé, que ce soit par l'application ou l'interprétation des textes conclus par les parties représentatives ou émanant du seul employeur ou que ce soit « par suite de tout fait portant atteinte à ses conditions d'emploi » [soulignement ajouté], fasse appel à la procédure de règlement des griefs. De plus, sous réserve de certaines exceptions, inapplicables en l'espèce, l'employé peut former un grief individuel. En somme, contrairement à ce qui existe généralement en droit du travail, on a étendu la notion de grief à toutes les classes de litige en relation avec l'emploi. En réalité, comme le fait remarquer le juge Doherty dans *Bron c. Canada (Attorney General)*: « almost all employment-related disputes can be grieved under s. 208 of the PSLRA ».

⁷ *Cyr c. Radermaker*, 2010 QCCA 389.

[17] Par ailleurs, l'article 236 de la Loi retire toute compétence à tous les tribunaux de se saisir et de statuer sur un grief et confie cette juridiction exclusive à l'arbitre. À ce sujet, je partage entièrement l'avis du juge Doherty qui écrit, dans Bron c. Canada : [...]

[Soulignement du Tribunal]

[32] La PGC invoque aussi les motifs contenus au paragraphe [5] de l'arrêt *Goulet c. Mondoux*⁸ où la Cour d'appel, en se référant à son arrêt *Cyr c Radermaker*⁹, réitère « le caractère exclusif d'un grief lorsque le différend résulte d'un fait portant atteinte aux conditions d'emploi d'un fonctionnaire fédéral »¹⁰.

[33] Enfin, la PGC réfère le Tribunal à l'arrêt de la Cour d'appel *Barber c. J.T.*¹¹, plus précisément à ses paragraphes [24] à [26] :

[24] L'article 236 de la Loi est entré en vigueur le 1er avril 2005. Même avant, la Cour suprême avait déjà indiqué dans *Vaughan c. Canada* qu'un fonctionnaire ne pouvait pas ignorer les mécanismes prévus à la Loi et opter pour un recours devant une cour de justice dans le cas où le différend portait sur la relation employeur-employé :

[11] (...) L'appelant s'est sans doute senti obligé, afin de contourner la LRTFP, de présenter son action de façon un peu artificielle comme une action en responsabilité délictuelle fondée sur la négligence. Cependant, comme notre Juge en chef actuelle l'a écrit dans *Weber*, par. 49 : « [i]l faut s'attacher non pas à la qualité juridique du tort, mais aux faits qui donnent naissance au litige » En l'espèce, les faits découlent très clairement de la relation employeur-employé.

[...]

[42] L'appelant se devait d'avoir recours aux mécanismes prévus par le législateur dans la LRTFP. Il ne lui était pas loisible d'écarter le régime établi par la LRTFP et de porter devant les tribunaux (...).

[25] L'article 236 de la Loi retire toute compétence aux tribunaux de droit commun pour se saisir et statuer sur un différend à l'égard duquel un fonctionnaire a un droit de grief, comme l'énonçait le juge Gendreau dans l'affaire *Radermaker* précitée :

[17] Par ailleurs, l'article 236 de la Loi retire toute compétence à tous les tribunaux de se saisir et de statuer sur un grief et confie cette juridiction exclusive à l'arbitre. À ce sujet, je partage entièrement l'avis du juge Doherty qui écrit, dans *Bron c. Canada* : [...]

⁸ *Goulet c. Mondoux*, 2010 QCCA 468.

⁹ *Cyr c Radermaker*, *supra*, note 7.

¹⁰ *Id.*, paragr. 5.

¹¹ *Barber c. J.T.*, 2016 QCCA 1194.

[26] La Loi commande de se demander si l'essence du litige entre les parties concerne un différend lié aux conditions d'emploi de l'intimée au sens de l'article 208(1)a)(i) ou 208(1)b) de la Loi.

[Soulignement du Tribunal]

[34] La PGC conclut son argumentaire en faisant valoir qu'en l'espèce, l'essence du litige a trait à un différend portant sur les manquements du système Phénix, lequel est lié à des conditions d'emploi au sens des articles 208 et 236 *LRTFP*¹².

[35] S'appuyant sur l'arrêt *Bisaillon c. Université Concordia* (« *Bisaillon* »)¹³ de la Cour suprême, elle explique que l'action collective n'a pas pour effet de conférer à la Cour supérieure une compétence sur un ou des litiges qui relèvent de la compétence *rationae materiae* d'une autre autorité. Elle rappelle que l'action collective ne constitue qu'un véhicule procédural qui ne modifie ni le droit substantiel, ni les règles relatives à la compétence *rationae materiae* des tribunaux.

* * *

[36] La demanderesse ne remet pas en question ces énoncés de principe.

[37] Elle fait plutôt valoir qu'en l'espèce, en raison de la nature exceptionnelle de la situation découlant du mauvais fonctionnement du système de gestion de la paye Phénix, le recours à la procédure de grief par les fonctionnaires qui y sont assujettis serait inefficace. À son avis, cette procédure ne leur permettrait pas de solutionner leurs réclamations.

[38] La demanderesse craint que la procédure de griefs donne lieu à une forme de chaos procédural, de sorte que les fonctionnaires assujettis ne pourraient obtenir justice.

[39] Elle estime que cette lacune ou limite de la procédure de grief pourrait être comblée par la Cour supérieure en vertu de sa compétence résiduelle.

[40] De la même manière que l'avait fait l'appelant Bron¹⁴, la demanderesse fonde sa position sur l'arrêt de la Cour suprême *F.P.E.V. c. Canadian Pacifique Ltée*¹⁵.

¹² *Weber c. Ontario Hydro*, [1995] 2 R.C.S. 925.

¹³ *Bisaillon c. Université Concordia* 2006 CSC 19, paragr. 17-19 (*Bisaillon*).

¹⁴ *Bron*, *supra*, note 6.

¹⁵ *Fraternité des préposés à l'entretien des voies — Fédération du réseau Canadien Pacifique c. Canadien Pacifique Ltée*, [1996] 2 R.C.S. 495.

[41] Dans son plan d'argumentation, elle écrit :

De manière préliminaire, il faut se demander si la procédure de grief permet réellement au salarié demander à son employeur de se condamner à des dommages-intérêts en statuant sur sa propre faute et celle de SPAC. Cette utilisation du grief serait à tout le moins inhabituelle. Or, suivant la jurisprudence constante de la Cour suprême :

8. Si détaillé que puisse être un régime établi par la loi pour le règlement des conflits, il reste toujours une possibilité que des événements entraînent un problème que le régime n'avait pas prévu. Il est alors important qu'il y ait un tribunal capable de résoudre ce problème, si l'on veut trouver une solution judiciaire plutôt qu'extrajudiciaire. C'est précisément pour cette raison que la common law a élaboré la notion de cours investies d'une compétence inhérente. Si l'on veut éviter que la primauté du droit ne soit réduite à un ensemble incohérent, appliqué au gré de la fantaisie, il faut qu'il y ait une entité à laquelle les parties à un conflit puissent s'en remettre lorsque les lois et les régimes établis par celles-ci ne prévoient aucun recours.

[Renvoi omis]

[42] Elle se réfère également sur l'opinion des juges minoritaires dans l'arrêt *Vaughan c. Canada (Procureur général)*¹⁶ :

Dans *Vaughan*, les membres de la Cour s'entendent pour dire que la LRTFP de l'époque établissait un régime complet de règlement des différends en matière de relations de travail. La minorité estime que l'absence d'un droit à une audience devant un tiers indépendant justifie que la Cour supérieure exerce sa compétence résiduelle. Ce facteur est applicable dans le présent dossier. Quant à elle, la majorité endosse les décisions relatives aux délateurs et indique que l'absence de droit d'être entendu par un tiers indépendant est un facteur pour lequel la Cour peut exercer sa compétence, mais sans être déterminant. Elle rattache l'exercice de la compétence résiduelle à l'absence d'un remède approprié.

En l'espèce, la situation extrême et unique du dossier Phénix rend la procédure de grief incapable de fournir un remède approprié au groupe visé. D'abord, le Gouvernement est présentement incapable de procéder au versement des sommes dues ou même de les calculer correctement, alors comment pourrait-il rendre et exécuter autant de décisions sur des griefs ? Qui plus est, le grief est une autre démarche administrative laborieuse de l'employé pour corriger la faute de son employeur ; elle lui engendre du travail et des coûts qu'il n'aurait pas à investir comme membre d'une action collective.

¹⁶ *Vaughan c. Canada (Procureur général)*, 2005 CSC 11.

Du point de vue de l'équité procédurale, les membres n'ont pas accès aux décisions rendues d'un grief à l'autre, ce qui fait que des cas identiques risquent d'avoir des dénouements aussi variés qu'inattendus, résultant dans un traitement inéquitable. Finalement, l'absence ou l'inexactitude des informations fournies aux membres, ainsi que l'intégrité quasi-nulle des processus administratifs, sont des fautes du gouvernement qui font obstacle au dépôt de griefs : en témoigne la faible quantité de griefs déposés.

[Renvois omis]

* * *

[43] De l'avis du Tribunal, les critères énoncés à l'article 575 *C.p.c.* sont tous satisfaits, sujet à la question de savoir s'il faut moduler la définition du groupe proposé pour tenir compte de la portée de la *LRTFP*.

[44] D'abord, l'action collective proposée soulève des questions de droit ou de fait similaires. Bien que les réclamations de chacun des membres risquent de varier, plusieurs aspects du différend se prêtent à une décision collective¹⁷.

[45] Par ailleurs, nul ne saurait sérieusement contester que les faits allégués paraissent justifier les conclusions recherchées.

[46] Enfin, la capacité de représentation de la demanderesse est établie. Victime des ratés du système de gestion de paye Phénix, elle est bien au fait des conséquences qui en ont découlé et a démontré qu'elle était prête à consacrer du temps à la démarche judiciaire entreprise.

[47] Reste la question relative à la composition du groupe proposé.

[48] À cet égard, le Tribunal retient les arguments de la PGC.

[49] La *LRTFP* accorde aux fonctionnaires assujettis à la procédure de grief un recours pour se plaindre du préjudice subi et obtenir, le cas échéant, une juste indemnité ou obtenir toute autre mesure de redressement. Ce régime est très large en ce qu'il s'applique aux différends résultant d'un fait portant atteinte aux conditions d'emploi d'un fonctionnaire fédéral¹⁸.

[50] De plus, ce recours est exclusif en ce qu'il remplace les droits d'action en justice des fonctionnaires relativement aux faits — actions ou omissions — à l'origine des différends les opposant à leur employeur¹⁹.

¹⁷ *Vivendi Canada Inc. c. Dell'Aniello*, 2014 CSC 1.

¹⁸ *Id.*, paragr. 5.

¹⁹ *LRTFP*, *supra*, note 3, art. 236.

[51] En l'espèce, les fonctionnaires qui y sont assujettis pourront faire valoir leurs droits.

[52] La demanderesse n'a pas démontré que la procédure de griefs de la *LRTFP* était lacunaire en termes de droit substantif.

[53] Nous ne sommes également pas en présence d'une situation où les employés assujettis à la procédure de griefs seraient privés d'un droit à une audience devant un tiers indépendant, même si l'on sait que des difficultés d'ordre procédural surgiront.

[54] Comme le mentionne le juge Lebel dans l'arrêt *Bisaillon*²⁰, la crainte que la procédure de grief donne lieu à certaines difficultés d'ordre procédural ne saurait nier la compétence arbitrale :

64 En bref, malgré la crainte que certaines difficultés procédurales, qui ne sont d'ailleurs pas insurmontables, résultent de la décision en faveur de la procédure arbitrale, la solution du recours collectif ne saurait être acceptée. En l'espèce, le fait d'autoriser un tel recours nierait le principe de l'exclusivité de la compétence de l'arbitre de griefs et celui du monopole de la représentation syndicale des salariés. La Cour supérieure a à bon droit accueilli la requête en exception déclinatoire et rejeté la requête en autorisation de recours collectif présentée par l'intimé Bisaillon.

[55] À cela, il convient d'ajouter que les difficultés appréhendées ne seront pas différentes de celles auxquelles la Cour supérieure aurait à faire face si elle était compétente pour décider des réclamations de toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada et qui ont été touchées par une ou plusieurs erreurs du système de gestion de la paye Phénix.

[56] Ces difficultés jailliront même dans le cas du groupe restreint aux employés qui ne sont pas assujettis à la procédure de griefs en vertu de la *LRTFP*.

[57] Ceci dit, le Tribunal n'entend néanmoins pas retenir la définition du groupe telle que proposée par la PGC.

[58] Afin de s'assurer à tous les employés du Gouvernement du Canada touchés par des erreurs du système Phénix durant la période couverte soient en mesure de faire valoir leurs réclamations, soit en vertu de la procédure de griefs prévue aux articles 206 et suivants *LRTFP* ou dans le cadre de l'action collective, le Tribunal s'en remettra à une formule souple qui, tout en respectant le régime prévu aux articles 206 et suivants *LRTFP*, évitera qu'il y ait des laissés pour compte.

[59] Ainsi, la définition du groupe décrit par la demanderesse sera reprise, mais en y ajoutant simplement une mention pour préciser que les personnes assujetties à la

²⁰ *Bisaillon*, *supra*, note 13.

procédure de griefs en vertu des articles 206 et suivants *LRTFP* sont exclues du groupe de l'action collective.

POUR CES MOTIFS, LE TRIBUNAL :

[60] **ACCUEILLE** la présente demande;

[61] **AUTORISE** l'exercice de l'action collective ci-après :

Une action en dommages-intérêts invoquant la faute contractuelle du Gouvernement du Canada envers ses employés lors de l'implantation du système de paye Phénix et dans la gestion de la crise causée par les défaillances de ce système;

[62] **ATTRIBUE** à madame Ezmie Bouchard le statut de représentante aux fins d'exercer ladite action collective pour le compte des personnes physiques décrites ci-après

- a. Toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada à tout moment durant la Période du recours, : à l'exclusion de celles qui sont assujetties à la procédure de grief prévue en vertu de la Partie 2 (articles 206, 208 et 209) de la Loi sur les relations de travail dans la fonction publique (le « Groupe »);
- b. Toutes les personnes membres du Groupe défini au paragraphe a. qui, durant la Période du recours, ont été touchées par une ou plusieurs erreurs liées à leur rémunération ou à leurs relevés fiscaux, leurs relevés de fin d'emploi ou tout autre type de relevé lié à leur rémunération ou leur emploi, alors qu'elles avaient un lien d'emploi avec le Gouvernement du Canada et/ou après la fin de leur lien d'emploi avec le Gouvernement du Canada (le « Premier sous-groupe »);
- c. Toutes les personnes membres du Groupe défini au paragraphe a. qui, durant la Période du recours, ont reçu 50% ou moins de leur rémunération, de leurs prestations d'assurance-emploi ou de leur rémunération de congé, de leur rémunération de retraite ou de toute forme de traitement en lien avec leur lien d'emploi actuel ou passé avec le Gouvernement du Canada pendant quatre semaines ou plus (le « Deuxième sous-groupe »);

[63] **IDENTIFIE** comme suit les principales questions de droit et de fait à être traitées collectivement :

1. Le Gouvernement du Canada a-t-il manqué à son obligation de gérer correctement le traitement de ses employés?

2. Le Gouvernement du Canada a-t-il géré de manière négligente la crise générée par les défaillances du système de paye Phénix?
3. Les membres du Groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix, et si oui, à combien ce préjudice doit-il être évalué?
4. Les membres du Premier sous-groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix ayant affecté leur dossier, et si oui, à combien ce préjudice doit-il être évalué?
5. Les membres du Deuxième sous-groupe ont-ils subi un préjudice moral à cause des défaillances du système de paye Phénix ayant entraîné une réduction d'au moins 50% de leur rémunération pendant une période de quatre semaines ou plus, et si oui, à combien ce préjudice doit-il être évalué?
6. Le Gouvernement fédéral est-il responsable, le cas échéant, du préjudice causé aux membres du Groupe et des deux sous-groupes, respectivement, par les défaillances du système de paye Phénix?
7. Le Gouvernement fédéral a-t-il l'obligation de verser, au complet et à temps, les salaires de ses employés?
8. Le cas échéant, la Cour doit-elle ordonner le paiement des arrrages de salaires et autres paiements dus aux employés du Gouvernement du Canada, avec les intérêts et l'indemnité additionnelle depuis la demeure?
9. Le cas échéant, à quelle date la demeure peut-elle être établie?

[64] **IDENTIFIE** comme suit les conclusions recherchées par l'action :

ACCUEILLIR la demande en action collective de la Demanderesse pour le compte du Groupe suivant et des sous-groupes suivants :

Toutes les personnes ayant eu un lien d'emploi avec le Gouvernement du Canada à tout moment (...) durant la Période du recours (le « **Groupe** »);

Toutes les personnes membres du Groupe qui, (...) durant la Période du recours, ont été touchées par une ou plusieurs erreurs liées à leur rémunération ou à leurs relevés fiscaux, leurs relevés de fin d'emploi ou tout autre type de relevé lié à leur rémunération ou leur emploi, alors qu'elles avaient un lien

d'emploi avec le Gouvernement du Canada et/ou après la fin de leur lien d'emploi avec le Gouvernement du Canada (le « Premier sous-groupe »);

Toutes les personnes membres du Groupe qui, durant la Période du recours, ont reçu 50% ou moins de leur rémunération, de leurs prestations d'assurance-emploi ou de leur rémunération de congé, de leur rémunération de retraite ou de toute forme de traitement en lien avec leur lien d'emploi actuel ou passé avec le Gouvernement du Canada pendant quatre semaines ou plus (...) (le « Deuxième sous-groupe »);

ACCUEILLIR l'action de la Demanderesse pour le compte de tous les membres du Groupe, du Premier sous-groupe et du Deuxième sous-groupe;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Groupe la somme de 500 \$, portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter du dépôt de la demande pour autorisation d'exercer une action collective et pour être représentante;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Premier sous-groupe la somme de 1 000 \$, portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter du dépôt de la demande pour autorisation d'exercer une action collective et pour être représentante;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Deuxième sous-groupe la somme de :

- 500 \$ pour les quatre premières semaines où le membre a reçu 50 % de sa paye ou moins;
- pour chaque semaine supplémentaire où le membre a reçu 50 % de sa paye ou moins, entre la cinquième et la dixième semaine inclusivement, 175 \$ de plus;
- pour chaque semaine supplémentaire où le membre a reçu 50 % de sa paye ou moins, subséquemment à la dixième semaine, 250 \$ de plus chacune;
- le tout portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter du dépôt de la demande pour autorisation d'exercer une action collective et pour être représentante;

CONDAMNER le Défendeur à payer à la Demanderesse et à chaque membre du Deuxième sous-groupe et, de façon plus générale, à tous

les membres du Premier sous-groupe qui n'ont pas reçu toutes les sommes auxquelles ils avaient droit à titre de rémunération d'emploi ou d'avantages sociaux, la somme à être déterminée à l'occasion du processus de recouvrement et représentant les arrérages de salaire ou autre traitement dû à chacun de ces membres, portant les intérêts au taux légal et l'indemnité additionnelle prévue par la loi à compter de la demeure;

ORDONNER le recouvrement collectif des sommes à percevoir en vertu du présent jugement, selon la procédure à être établie par le tribunal;

ORDONNER, le cas échéant la liquidation des réclamations des membres ou la distribution d'une indemnité à chacun d'eux à même les sommes recouvrées collectivement;

PERMETTRE aux membres du Deuxième sous-groupe de présenter une réclamation individuelle pour leur préjudice subi en excédent du préjudice évalué en commun pour les membres du Deuxième sous-groupe, le tout, selon les modalités à être fixées par le tribunal;

LE TOUT avec frais de justice, y compris les frais d'expertises, les frais d'avis et les frais reliés à l'administration des réclamations et à la distribution des indemnités;

[65] **DÉCLARE** qu'à moins d'exclusion, les membres du groupe seront liés par tout jugement à intervenir sur l'action collective de la manière prévue par la loi;

[66] **FIXE** le délai d'exclusion à soixante (60) jours après la date de l'avis aux membres, délai à l'expiration duquel les membres du groupe qui ne se seront pas prévalus des moyens d'exclusion seront liés par tout jugement à intervenir;

[67] **ORDONNE** la publication d'un avis aux membres dans les termes et selon les modalités à être déterminées par le Tribunal;

[68] **RÉFÈRE** le dossier au juge en chef pour détermination du district dans lequel l'action collective devra être exercée et désignation du juge pour l'entendre;

[69] **AVEC LES FRAIS DE JUSTICE.**

JEAN-FRANÇOIS ÉMOND, j.c.s.

**Me Julien Fortier
Me Maxime Guérin
Me Christian Sarailis**

200-06-000214-174

PAGE : 16

SARAÏLIS AVOCATS
Pour la demande

Me Claude Joyal
Me Ian Demers
Me Nadine Perron
MINISTÈRE DE LA JUSTICE CANADA
Pour la défense

Date d'audience : 19 mars 2018

COUR D'APPELCANADA
PROVINCE DE QUÉBEC
GREFFE DE QUÉBECThis is Exhibit "F" to the Affidavit of
RENÉE DELORME sworn before this
13 day of January, 2023N°: 200-09-009767-184
(200-06-000214-174)A Commissioner for Oaths in and for
the Province of Alberta**PROCÈS-VERBAL D'AUDIENCE**

DATE : 21 novembre 2019

CORAM : LES HONORABLES MARIE-FRANCE BICH, J.C.A.
DOMINIQUE BÉLANGER, J.C.A.
MANON SAVARD, J.C.A.

PARTIE APPELANTE	AVOCATS
EZMIE BOUCHARD	M ^e JULIEN FORTIER M ^e CHRISTIAN SARAÏLIS M ^e MAXIME GUÉRIN M ^e ROXANNE BOUTIN-DÉRASP (Saraïlis avocats)
PARTIE INTIMÉE	AVOCATS
PROCUREUR GÉNÉRAL DU CANADA	M ^e NADINE PERRON M ^e IAN DEMERS M ^e CLAUDE JOYAL (ABSENT) M ^e DAH YOON MIN (ABSENTE) (Ministère de la Justice Canada)

En appel d'un jugement rendu le 3 avril 2018 par l'honorable Jean-François Émond de la Cour supérieure, district de Québec.

NATURE DE L'APPEL : Action collective (procédure) (autorisation) – Travail (compétence d'attribution)

Greffière-audicière : Lauriane Lavoie

Salle : 4.33

AUDITION

9 h 31 Appel du dossier et identification des parties;

9 h 32 La Cour s'adresse aux parties;

9 h 33 Observations de M^e Fortier;

Échanges entre la Cour et M^e Fortier;

M^e Fortier poursuit ses observations;

10 h 30 Suspension;

11 h 00 Reprise;

11 h 01 La Cour estime qu'il n'est pas nécessaire d'entendre les représentations de l'intimé;

Arrêt;

11 h 02 Discussion entre la Cour et M^e Demers, ce dernier affirme s'en remettre à la décision de la Cour quant aux frais de justice;

11 h 03 Fin de l'audience.

(s)

Greffière-audicière

PAR LA COUR :

ARRÊT

[1] Pour les motifs du juge de première instance, auxquels la Cour souscrit, il n'y pas lieu de faire droit à l'appel. Une fois reconnue la compétence exclusive des décideurs désignés en l'espèce, on ne peut pas la contourner, même pour des motifs d'efficacité, pour prétendre recourir à la compétence résiduelle de la Cour supérieure, à laquelle s'opposent par ailleurs ici les art. 236 de *Loi sur les relations de travail dans le secteur public fédéral*¹ et 33 *C.p.c.* Considérant notamment les arrêts *Bisaillon c. Université Concordia*², *Vaughan c. Canada*³, *Veer c. Boardwalk Real Estate Development*⁴, *Barber c. J.T.*⁵, *Cyr c. Radermaker*⁶, *Bron v. Attorney General of Canada*⁷, *Pednault c. Compagnie Wal-Mart du Canada*⁸, *Carrier c. Rochon*⁹ et *Hamer c. R.*¹⁰, on ne peut conclure autrement.

[2] Il convient par ailleurs de préciser que le moyen déclinatoire présenté au juge de première instance devait être tranché au stade de l'autorisation et non sur le fond de l'affaire. La compétence *ratione materiae* doit en effet être décidée à la première occasion, considérant l'ordre public et la saine administration de la justice¹¹.

POUR CES MOTIFS, LA COUR :

[3] **REJETTE** l'appel, sans frais de justice, vu les circonstances.

MARIE-FRANCE BICH, J.C.A.

DOMINIQUE BÉLANGER, J.C.A.

MANON SAVARD, J.C.A.

¹ L.C. 2003, ch. 22, art. 2.

² [2006] 1 R.C.S. 666 (notamment aux paragr. 58 et s., qui soulèvent une problématique analogue à celle de l'espèce).

³ [2005] 1 R.C.S. 146 (notamment aux paragr. 25 et 26 des motifs majoritaires du j. Binnie).

⁴ 2019 QCCA 740, notamment aux paragr. 21 et 36.

⁵ 2016 QCCA 1194, paragr. 20 et s.

⁶ 2010 QCCA 389, paragr. 17 et s.

⁷ 2010 ONCA 71.

⁸ 2006 QCCA 666.

⁹ J.E. 2000-1807 (demande d'autorisation d'appel à la Cour suprême rejetée, 23 août 20101, n° 28234).

¹⁰ *Hamer c. R.*, J.E. 98-1033 (C.A.).

¹¹ Voir par ex. : *B.J. c. La Capitale assureur de l'administration publique inc.*, 2019 QCCA 986, paragr. 6; *Québec (Procureur général) c. Charest*, J.E. 2005-175, paragr. 7 (C.A.); *Société Asbestos limitée c. Lacroix*, J.E. 2004-1808, paragr. 20-21 (C.A., demande d'autorisation d'appel à la Cour suprême rejetée, 22 juin 2006, n° 30591).



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CANADA

IBM execs defend company over botched rollout of the federal government's Phoenix payroll system


Speaking publicly for the first time prior to testifying at a senate committee Wednesday night, IBM executives said the company had concerns from the get-go about Ottawa's readiness to implement a new payroll plan.

By **Tonda MacCharles** Ottawa Bureau

 Wed., March 28, 2018  5 min. read

 Article was updated Mar. 29, 2018

This is Exhibit "G" to the
Affidavit of RENÉE DELORME
sworn before this 13 day of
January, 2023


A Commissioner for Oaths in
and for the Province of Alberta

READ THE CONVERSATION

Renée Delorme
Commissioner & Solicitor

OTTAWA—Computer systems giant IBM says the company is not to blame for the disastrous rollout of the Phoenix pay system because it was not responsible for key elements of the scheme that has left tens of thousands of public servants shortchanged across Canada.

Speaking publicly for the first time prior to Senate testimony Wednesday night, IBM executives say the company flagged concerns nearly three years ago to top federal bureaucrats and urged Ottawa to delay the launch of Phoenix.

In interviews with the Toronto Star and Global News, IBM said the company's warnings were communicated verbally and in writing to senior officials within the public services department from July and August 2015, and continued until January 2016, a period that spanned the federal election that saw the Conservative government replaced by the Liberals.

Read more:

[‘Technical glitch’ shuts down Phoenix pay account system](#)

[Civil servants across Canada hold rallies against Phoenix pay system after Liberals promise replacement](#)

[Trudeau government commits to ‘move away from Phoenix’ pay system, look for replacement](#)

Neither government hit the pause button. Since then, the Liberals and the Conservatives have pointed the finger of blame across the aisle. But to hear IBM tell it, there is plenty of blame to go around.

IBM said it told senior federal project managers the Conservative decision to start rolling out a new pay system in October 2015, which was slated to be fully in place in December 2015, was “not realistic.” The company says it advised the federal government should delay the 2015 launch for at least six to eight months, until July or August 2016.

But IBM's advice was rejected, senior executives said.

Federal officials told IBM the project start could be delayed only until February 2016, and the second phase that would see all departments using the new software had to “go live” by April 2016 because the government had already sent out notifications to the hundreds of clerks who processed paycheques in the federal government that their jobs were being eliminated by April. IBM dealt with senior officials at the assistant deputy minister level, and did not directly deal with ministers, the company said.

“IBM’s responsibility was the technology component. The software is working as it was designed,” said IBM senior executive Regan Watts. “The responsibility for change management, for training, for business processes, those are outside of our scope. Those are the responsibility of the government of Canada.”

Now, two years later and after allocating about \$1 billion on past and planned spending to fix Phoenix, the Liberal government said it will spend another \$16 million looking at options to replace it. But IBM says the federal government does not need to replace the technology.

“Phoenix can be fixed, the software does not need to be replaced and it’s not the issue,” said Watts. IBM’s message to the Senate is that there is “no silver bullet.”

Rather, Ottawa needs to address the problems that originally plagued the system and remain: training for federal employees, and adjusting “business processes” that guide the federal government’s pay practices.

“If Phoenix is a car and the technology is the engine, the engine still runs, the engine still works, however you can’t drive a car if all the other elements of the vehicle aren’t working and in place,” said Watts.

IBM said the biggest cause of pay headaches for federal employees is incorrect and late data entry by workers responsible for keying in employees’ information into the new computer system.

“We share the urgency of the government of Canada in getting this resolved as quickly as we can,” said Watts.

IBM says it is spending more than \$10 million of its own money to aid Ottawa in adjusting for technological issues that continue to arise, and provides two project executives and brought in a third senior adviser to Public Works Minister Carla Qualtrough, who is charged with trying to fix Phoenix. The adviser is a U.K.-based executive who runs Britain’s national health-insurer pay system for more than a million people.

By late summer 2015, IBM said the company’s executives were concerned about levels of training, about whether federal employees were ready for the new ways in which their paycheques would be processed, and about the extraordinarily high number of software changes Ottawa was demanding.

Ottawa was unwilling to adapt its pay rules or “business processes” to the technology, IBM said. For example, a federal worker is eligible for bilingual bonus pay only after five days on the job, not on the first day he or she is hired. Instead of changing that practice, federal managers insisted the software be rewritten.

In fact, IBM said the government demanded more than 1,500 changes to the software program. That number is “huge,” IBM said, and required not just a simple or occasional patch but meant breaking into the program and rewriting code to implement the hundreds of change orders.

The Phoenix project was the largest of its kind in Canada. The federal payroll runs under 80,000 distinct rules that describe pay rates. It reflects payment contracts with 100 bargaining units. Still, even in a project this big, IBM says it would expect no more than a couple of hundred change orders to the technology.

IBM warned the government that not all the requested software changes could be made on time for the 2016 rollout, and asked the government to prioritize the changes it wanted.

By the time the system went “live,” many functions, such as how to account for and process retroactive pay, were not in place, the Senate committee has heard. Since then, backlogs have grown and compounded what IBM said are human errors. IBM said responsibility for training — originally part of its contract — was removed in 2014 when the federal project managers said the government would take over that aspect of the transformation in-house.

IBM said it successfully rolled out the PeopleSoft software for Alberta, and did not encounter the same kinds of problems.

But federal auditor general Michael Ferguson flagged last fall that IBM had encountered problems when rolling out a new payroll processing plan in Queensland, Australia.

IBM defended itself Wednesday, saying Ferguson did not speak to the company before issuing his report. An inquiry in Australia said IBM wasn’t to blame, and IBM said the Queensland government bought a different software program, rushed all its changes because it thought its old system was on the brink of collapse, and underestimated the complexity of its project.

In contrast, IBM said the Canadian government can still rescue Phoenix.



2017 Fall Reports of the Auditor General of Canada to the Parliament of Canada

Independent Auditor's Report

Report 1—Phoenix Pay Problems

**This is Exhibit "H" to the
Affidavit of RENÉE
DELORME sworn before this
13 day of January, 2023**

**A Commissioner for Oaths in
and for the Province of
Alberta**

Renée Delorme
Commissioner for Oaths

Read more about: Ibm, Ottawa

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Report 1 – Phoenix Pay Problems

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- Background
- Focus of the audit

Findings, Recommendations, and Responses

- State of pay operations
 - The number of pay problems continues to increase
 - Public Services and Procurement Canada did not have a full understanding of the extent and causes of pay problems
 - Departments and agencies had significant difficulties in providing timely and accurate pay information and in supporting employees in resolving pay problems
- Way forward
 - There was no comprehensive governance structure in place to resolve pay problems in a sustainable way
 - A sustainable solution will take years and cost much more than the \$540 million the government expected to spend to resolve pay problems

Conclusion

About the Audit

List of Recommendations

Exhibits:

- 1.1—The process to change pay for an employee in departments and agencies serviced by the Miramichi Pay Centre
- 1.2—The number of public servants with outstanding pay requests in 46 departments and agencies quadrupled since Phoenix was launched
- 1.3—The number of outstanding pay requests for 46 departments and agencies grew more than five times what it was when Phoenix was launched
- 1.4—The Miramichi Pay Centre processed more pay requests than it took in only twice after Phoenix was launched in February 2016
- 1.5—Percentage of employees with errors in their paycheques increased across all departments and agencies
- 1.6—Case study: Clear governance helped Queensland Health resolve its employee pay problems
- 1.7—Pay requests with high financial impact made up more than half the outstanding pay requests

Introduction

Background

Transforming pay services

1.1 In 2009, the Government of Canada began to transform the way it processed pay for its 290,000 employees. Public Services and Procurement Canada was responsible for this Transformation of Pay Administration Initiative. The initiative had two projects: one to centralize pay services for 46 departments and agencies that employed about 70 percent of all federal employees, and the other to replace the 40-year-old pay system used by 101 departments and agencies.

1.2 The pay transformation initiative, which took seven years to complete, cost \$310 million. The government expected the initiative to save it about \$70 million a year, starting in the 2016–17 fiscal year.

1.3 Before pay services were centralized, each department and agency processed pay for its own employees and had its own pay advisors—specialists who processed pay, advised employees, and corrected errors. There were about 2,000 pay advisors across 101 departments and agencies.

1.4 One of the roles of pay advisors is to make sure that changes stemming from pay requests are processed in the pay system. Pay requests can be anything from a request to change an employee's address or bank account information or a request to enter parental leave or overtime, to a request to fix a pay error that resulted in overpaying or underpaying an employee.

1.5 In May 2012, Public Services and Procurement Canada began to centralize pay advisors for 46 departments and agencies in the new Public Service Pay Centre in Miramichi, New Brunswick. Approximately 1,200 pay advisor positions in those 46 departments and agencies were eliminated by early 2016 and replaced with 460 pay advisors and 90 support staff at the Miramichi Pay Centre. As a result, the 46 departments and agencies no longer had responsibility for entering data directly into the pay system and did not have direct access to the new pay system—this work would be done by the pay advisors in Miramichi. The other 55 departments and agencies kept their approximately 800 pay advisors and continued to enter pay information for their own employees in the new system.

1.6 The government's 40-year-old pay system had many manual processes, which were completed by pay advisors. The system chosen to replace it was a PeopleSoft commercial pay system, which was customized to meet the government's needs and which was to automate many of those manual processes. This system was called Phoenix by Public Services and Procurement Canada. The Department hired IBM to help it design, implement, integrate, customize, and deploy Phoenix. Phoenix was launched in two waves: The first wave included 34 departments and agencies in February 2016, and the second wave included an additional 67 departments and agencies in April 2016. The expectation was that once Phoenix was implemented, the 460 pay advisors in the Miramichi Pay Centre would be able to do the work of the previous 1,200 pay advisors in the 46 departments and agencies that became clients of the Pay Centre.

1.7 The implementation of Phoenix was complex. There were more than 80,000 pay rules that needed to be programmed into Phoenix. This is because there are more than 105 collective agreements with federal public service unions, as well as other employment contracts. In addition, many departments and agencies have their own human resource systems to manage employees' permanent files that include basic information such as address, job classification, rate of pay, and types of benefits. Phoenix needs some of this information to accurately process pay, so the 34 human resource systems across the Government of Canada needed an interface to share information with Phoenix. As a result, to handle these pay rules and interfaces with human resource systems, Public Services and Procurement Canada added more than 200 custom-built programs to Phoenix.

**Roles and responsibilities
for paying public servants**

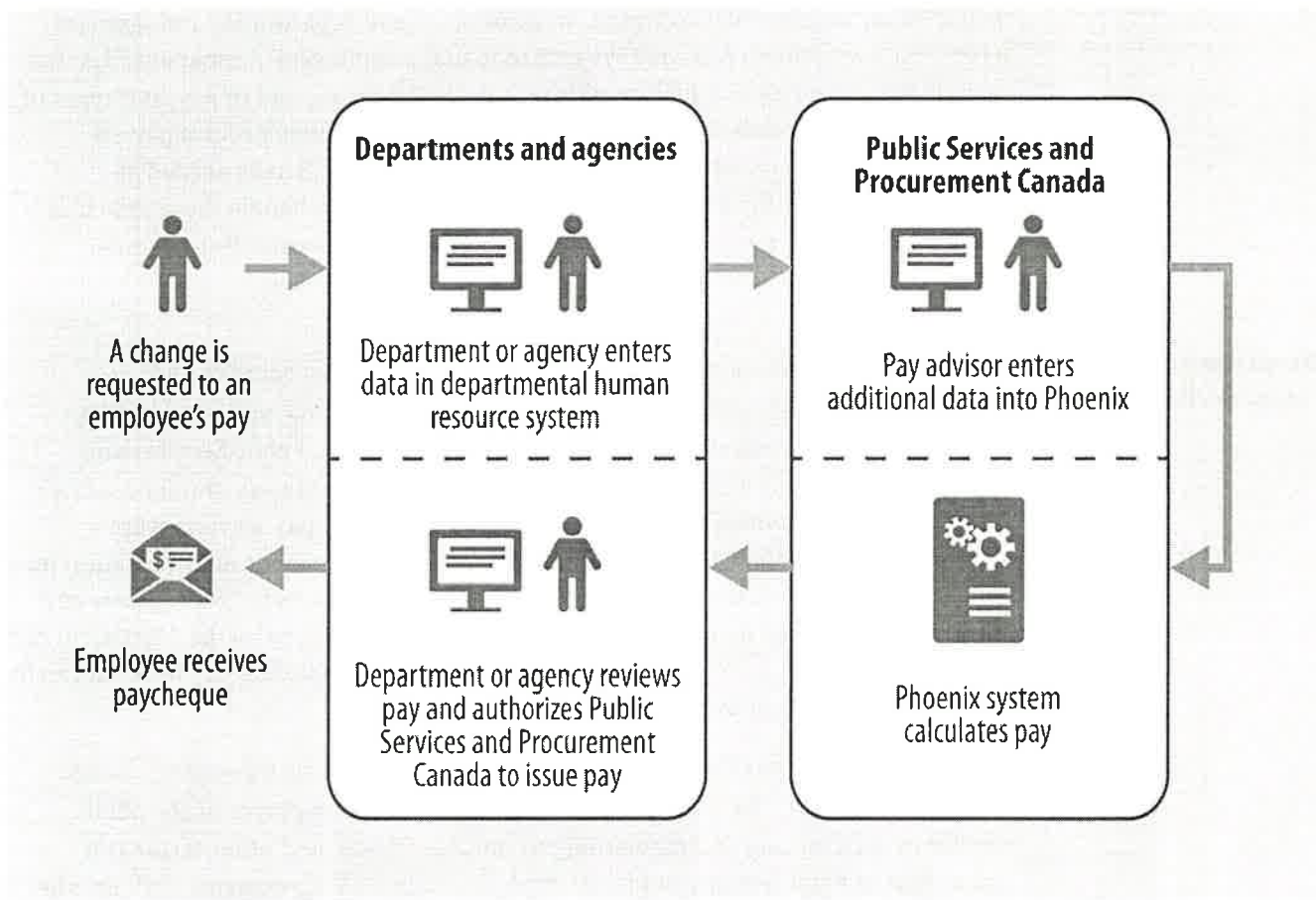
1.8 **Public Services and Procurement Canada.** Public Services and Procurement Canada is responsible for developing, operating, and maintaining Phoenix and communicating instructions to Phoenix users. Public Services and Procurement Canada is also responsible for administering the pay of public service employees. Its responsibility for the 46 departments whose pay services were centralized at the Miramichi Pay Centre includes the direct input of information into Phoenix to initiate, change, or terminate pay for employees, based on requests and information received from the departments. This input is done by the Miramichi pay advisors. The other 55 departments are responsible for modifying pay information in Phoenix for their employees.

1.9 **Treasury Board of Canada Secretariat.** The Treasury Board of Canada Secretariat supports the Treasury Board in its role as the employer of the public service in determining and regulating pay, hours of work, and other terms and conditions of employment, and in entering into collective agreements with unions. The Secretariat provides departments with direction and guidance about how to implement Treasury Board pay policies. The Secretariat also promotes government-wide sharing of information and best practices on pay and provides documented business processes for human resources.

1.10 **Departments and agencies.** Departments and agencies are responsible for ensuring that their human resource systems and supporting processes are compatible and integrated with Phoenix. They must ensure that complete and accurate information needed to pay their employees is sent on time to Phoenix, either through the Miramichi Pay Centre for the 46 departments and agencies using the centre, or directly for the other 55 departments and agencies. Departments and agencies must also review and authorize pay to be issued to employees.

1.11 All departments and agencies, including Public Services and Procurement Canada and the Treasury Board of Canada Secretariat, have a shared accountability for paying employees in a timely and accurate manner. They must all comply with the terms and conditions of employment of federal employees, including standards on paying employees accurately within a specific time frame. Exhibit 1.1 illustrates the roles and responsibilities for processing a typical pay request of an employee in a department or agency serviced by the Pay Centre.

Exhibit 1.1 – The process to change pay for an employee in departments and agencies serviced by the Miramichi Pay Centre



▼ **Exhibit 1.1 – text version**

This diagram shows the process to change pay, resulting from a pay request, for an employee of a department or agency serviced by the Miramichi Pay Centre.

- A change is requested to an employee's pay.
- The department or agency enters data in its human resource system.
- A pay advisor from Public Services and Procurement Canada enters additional data into Phoenix.
- The Phoenix system calculates pay.
- The department or agency reviews the pay amount and authorizes Public Services and Procurement Canada to issue pay.
- The employee receives a paycheque.

Focus of the audit

1.12 This audit examined whether Public Services and Procurement Canada, working with selected departments and agencies, resolved pay problems in a sustainable way to ensure that federal government employees would receive their correct pay, on time.

1.13 The 12 departments and agencies included in the audit were

- the Canada School of Public Service,
- the Canadian Security Intelligence Service,
- Correctional Service Canada,
- Employment and Social Development Canada,
- National Defence,
- Natural Resources Canada,
- the Privy Council Office,
- Public Services and Procurement Canada,
- the Royal Canadian Mounted Police,
- Shared Services Canada,
- Statistics Canada, and
- the Treasury Board of Canada Secretariat.

1.14 This audit is important because the federal government's pay problems have financially affected thousands of its employees. These problems need to be resolved in order to ensure that federal employees are paid accurately and on time. The government's current annual payroll is about \$22 billion.

1.15 We did not examine the events and decisions that led to the implementation of the Transformation of Pay Administration Initiative, including the centralization of pay advisors and the launch of Phoenix. The implementation of Phoenix is the focus of a future audit.

1.16 More details about the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this report.

Findings, Recommendations, and Responses

State of pay operations

i Overall message

1.17 Overall, we found that a year and a half after the Phoenix pay system was launched, the number of public servants in departments and agencies using the Miramichi Pay Centre who had an outstanding pay request quadrupled to more than 150,000. Departments and agencies have struggled with pay problems since the launch of Phoenix. However, it took Public Services and Procurement Canada four months to recognize that there were serious pay problems, and it took the Department about a year after that to have a better understanding of the problems. During this time, the Department focused on responding to the growing number of pay requests. At the end of our audit, the Department had started to develop a longer-term plan toward a sustainable solution.

1.18 The problem grew to the point that as of 30 June 2017, unresolved errors in pay totalled over half a billion dollars. This amount consisted of money that was owed to employees who had been underpaid plus money owed back to the government by other employees who had been overpaid.

1.19 In addition, departments and agencies struggled to do the tasks they were responsible for in paying their employees under Phoenix. Public Services and Procurement Canada did not provide sufficient information and reports to help departments and agencies understand and resolve their employees' pay problems.

1.20 This is important because the federal government has an obligation to pay its employees on time and accurately. Not doing so has had serious financial impacts on the federal government and its employees.

The number of pay problems continues to increase

What we found

1.21 We found that the number of outstanding pay requests in departments and agencies using the Miramichi Pay Centre was significantly higher than the number reported by Public Services and Procurement Canada. The Department excludes certain types of pay requests in its calculation of the total number of outstanding requests. We found that between the time Phoenix was launched and the end of our audit period in June 2017, the number of outstanding pay requests had continued to grow to over 494,500.

1.22 Since Phoenix was launched, there were only two months in which the Miramichi Pay Centre processed more pay requests than it took in, and the number of outstanding pay requests continued to grow. We found that employees had to wait an average of more than three months to have a pay request processed. At the end of our audit period, nearly 49,000 employees had been waiting for more than a year to have pay requests processed. Two thirds of these employees had a pay request that Public Services and Procurement Canada deemed to have a high financial impact, which it defined as over \$100.

1.23 As of 30 June 2017, there was over \$520 million in pay outstanding due to errors for public servants serviced by Phoenix who were paid either too much or too little. We found that the number of payroll payments that contained an error

increased over the 2016–17 fiscal year. We calculated that about 51 percent of employees had errors in their paycheques issued on 19 April 2017, compared with 30 percent in the pay issued on 6 April 2016. These error rates were significantly higher than what Public Services and Procurement Canada targeted.

1.24 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Outstanding pay requests
- Processing times of pay requests
- Pay errors

Why this finding matters

1.25 This finding matters because the federal government is obligated to pay its employees on time and accurately. Not doing so has had serious financial impacts on the federal government and its employees.

Recommendation

1.26 Our recommendation in this area of examination appears at paragraph 1.59.

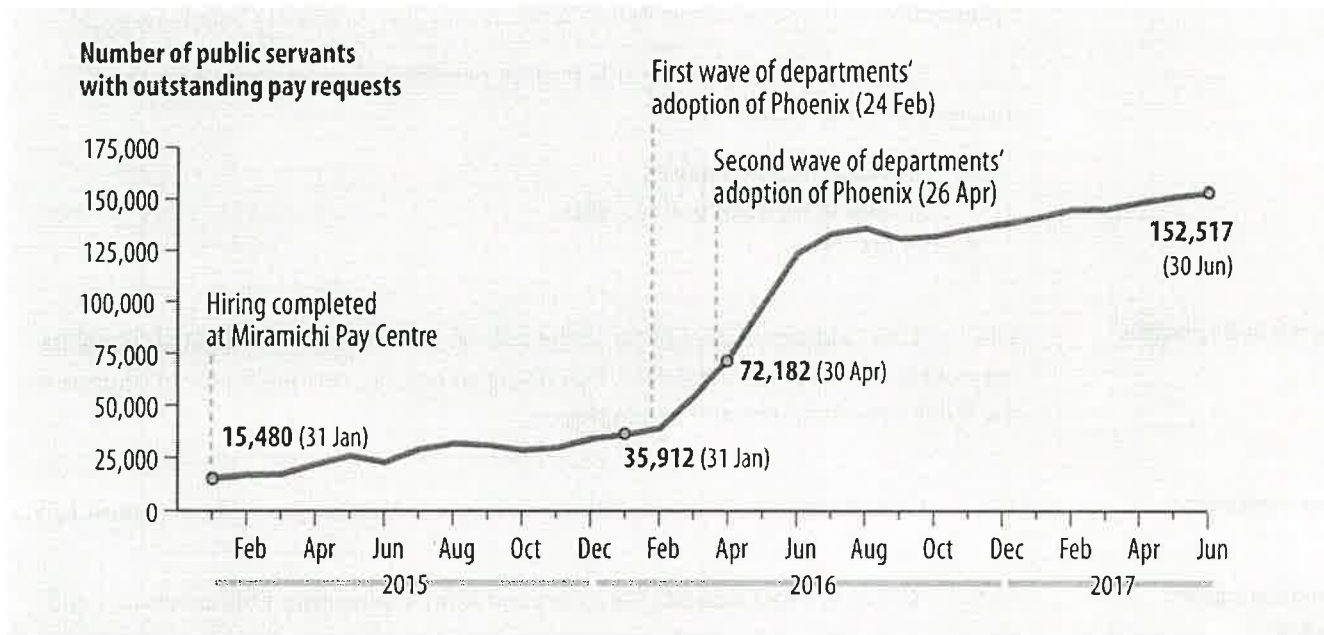
Analysis to support this finding

1.27 **What we examined.** We examined information that Public Services and Procurement Canada, as well as other audited departments and agencies, had on outstanding and processed employee pay requests. We also examined information about how long it took to resolve pay problems. Using the same sample of employees that was examined for the Office of the Auditor General of Canada’s annual audit of the consolidated financial statements of the Government of Canada for the fiscal year ending 31 March 2017, we determined the error rate of pay processed during each bi-weekly pay period.

1.28 **Outstanding pay requests.** After the Miramichi Pay Centre was created, Public Services and Procurement Canada began tracking the number of pay requests for employees in the departments and agencies using the Pay Centre. This number gradually grew as more departments and agencies transferred their pay files and related requests to Miramichi. As of February 2016, just before the launch of Phoenix, there were approximately 35,900 employees with 95,600 outstanding pay requests.

1.29 As Phoenix was going through its first and second wave of departments and agencies adopting the new pay system, the number of employees with an outstanding pay request doubled, from 35,900 to 72,200. By June 2017, this number had grown to over 150,000 employees—more than four times the number when Phoenix was launched (Exhibit 1.2). That means that most of the employees in those 46 departments and agencies were waiting for pay requests to be processed. In addition, the number of outstanding pay requests grew by five times, from 95,600 when Phoenix launched to 494,500 in June 2017 (Exhibit 1.3).

Exhibit 1.2—The number of public servants with outstanding pay requests in 46 departments and agencies quadrupled since Phoenix was launched



Source: Based on the Office of the Auditor General of Canada's analysis of data in Public Services and Procurement Canada's Case Management Tool

▼ **Exhibit 1.2—text version**

This line graph shows that the number of public servants with outstanding pay requests in the 46 departments and agencies serviced by the Miramichi Pay Centre quadrupled from the end of January 2016, just before Phoenix was launched, to the end of June 2017. The graph provides information for specific dates between January 2015 and June 2017:

- 31 January 2015—15,480 public servants had outstanding pay requests. Hiring at the Miramichi Centre was completed.
- 31 January 2016—35,912 public servants had outstanding pay requests.
- 24 February 2016—Phoenix was adopted in a first wave by departments and agencies.
- 26 April 2016—Phoenix was adopted in a second wave by departments and agencies.
- 30 April 2016—72,182 public servants had outstanding pay requests.
- 30 June 2017—152,517 public servants had outstanding pay requests.

Source: Based on the Office of the Auditor General of Canada's analysis of data in Public Services and Procurement Canada's Case Management Tool

solutions.

1.105 **Costs to fix pay problems.** We found that there was no centralized process to track what it would cost the government to fix the pay problems. The only department that was required to formally track and report costs was Public Services and Procurement Canada. So we surveyed the remaining departments and agencies on what they spent in the 2016–17 fiscal year and what they planned to spend in the next two fiscal years to resolve Phoenix pay problems.

1.106 Departments and agencies that responded to our survey reported that they spent at least \$60 million in the 2016–17 fiscal year and planned to spend about \$140 million more between the 2017–18 and 2018–19 fiscal years, mostly to hire more staff. Departments and agencies estimated that they needed a total of at least 820 additional staff, either reallocated from other duties or newly hired, to resolve pay problems. This is in addition to the staff that Public Services and Procurement Canada hired or planned to hire to process pay requests.

1.107 With the additional staff that Public Services and Procurement Canada and departments and agencies have hired, planned to hire, or reallocated from other duty, close to 1,400 pay staff will have been added to the 550 pay staff at the Miramichi Pay Centre to help resolve pay problems, at least temporarily. This more than offsets the 1,200 pay advisor positions that were eliminated under the Transformation of Pay Administration Initiative.

1.108 In fall 2016 and spring 2017, the Treasury Board of Canada Secretariat told departments and agencies serviced by the Miramichi Pay Centre that to help them pay for hiring pay advisors, their budgets would not be reduced as planned over three fiscal years. This reduction was supposed to save the government \$70 million a year once the Transformation of Pay Administration Initiative was implemented.

1.109 As the administrator of the pay system, Public Services and Procurement Canada spent \$85 million as of 31 March 2017 and also planned to spend an additional \$255 million over the next two years to fix pay problems.

1.110 As of 31 March 2017, Public Services and Procurement Canada and departments and agencies had spent at least \$145 million on fixing pay problems, and planned to spend at least an additional \$395 million over the next two fiscal years, totalling \$540 million. This means Public Services and Procurement Canada and departments and agencies will need to keep the \$210 million in budget reductions that they were supposed to achieve over the 2016–17 to 2018–19 fiscal years and will need to find an additional \$330 million to resolve pay problems.

1.111 We are concerned that those cost estimates did not include the cost to get the pay system to work the way it was supposed to work, so we believe that the cost to have a sustainable system that comes close to its original goals of automating pay and achieving efficiencies would be much higher.

1.112 **Recommendation.** The Treasury Board of Canada Secretariat, with the support of Public Services and Procurement Canada, and in partnership with departments and agencies, should track and report on the cost of

- resolving pay problems, and
- implementing a sustainable solution for all departments and agencies.

The Secretariat's response. Agreed. The Treasury Board of Canada Secretariat, with the support of Public Services and Procurement Canada, and in partnership with departments and agencies, will establish a cost estimate for the Government of Canada for the Phoenix pay system by the end of May 2018. The cost estimate will consist of costs incurred to date (September 2017), and the design and implementation of a framework to track costs for resolving pay problems and implementing a sustainable solution.

Conclusion

1.113 We concluded that Public Services and Procurement Canada did not identify and resolve pay problems in a sustainable way to ensure that public service employees consistently receive their correct pay, on time.

1.114 Departments and agencies contributed to the problems; however, Public Services and Procurement Canada did not provide them with all the information and support to allow them to resolve pay problems to ensure that their employees consistently receive their correct pay, on time.

About the Audit

This independent assurance report was prepared by the Office of the Auditor General of Canada on the pay operations of the Government of Canada as administered by Public Services and Procurement Canada following the Transformation of Pay Administration Initiative. Our responsibility was to provide objective information, advice, and assurance to assist Parliament in its scrutiny of the government's management of resources and programs, and to conclude on whether the pay operations of the Government of Canada complied in all significant respects with the applicable criteria.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard for Assurance Engagements (CSAE) 3001—Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook—Assurance.

The Office applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the Rules of Professional Conduct of Chartered Professional Accountants of Ontario and the Code of Values, Ethics and Professional Conduct of the Office of the Auditor General of Canada. Both the Rules of Professional Conduct and the Code are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from management:

- confirmation of management's responsibility for the subject under audit;
- acknowledgement of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the audit report is factually accurate.

Audit objective

The objective of this audit was to determine whether selected departments and agencies resolved pay problems in a sustainable way (that is, effectively and efficiently) to ensure that public service employees consistently received their correct pay, on time.

Scope and approach

We audited the following 12 departments and agencies:

- the Canada School of Public Service,
- the Canadian Security Intelligence Service,

- Correctional Service Canada,
- Employment and Social Development Canada,
- National Defence,
- Natural Resources Canada,
- the Privy Council Office,
- Public Services and Procurement Canada,
- the Royal Canadian Mounted Police,
- Shared Services Canada,
- Statistics Canada, and
- the Treasury Board of Canada Secretariat.

We examined the legislation, policies, and procedures in place to manage and to support the management of pay operations within all the audited departments and agencies. We also met and interviewed officials in all the audited entities, including at the Public Service Pay Centre in Miramichi.

We analyzed data extracted from the information systems of Public Services and Procurement Canada's Case Management Tool to identify and compare information related to the processing of pay operations. Although we noted issues with the integrity of data, we found the data sufficiently reliable for the purpose of our analysis.

We surveyed pay staff in Miramichi as well as in the satellite centres set up by Public Services and Procurement Canada to increase the Department's pay processing capacity. The purpose of the survey was to understand the impact on pay advisors of pay problems after Phoenix was first implemented. We sent 740 questionnaires, and received responses from 480 employees, for a total response rate of approximately 65 percent.

In order to support the Auditor General of Canada's annual audit opinion on the consolidated financial statements of the Government of Canada for the year ended 31 March 2017, a sample of employee pay transactions was examined to determine whether or not pay expenses were presented fairly in the financial statements. We analyzed the same sample to determine the error rate of payments made during each bi-weekly pay period.

We surveyed all departments and agencies whose pay services are processed by Phoenix to gain a better understanding of the financial impact of pay problems after Phoenix was deployed. We sent 87 questionnaires, and received 77 responses, for a total response rate of approximately 89 percent.

We reviewed similar events around the world to get a better understanding of causes and responses. In particular, considering the similarities in the development and implementation of Canada's pay transformation initiative and the Queensland Health payroll system, we met with Queensland government officials as well as private consulting firms in Brisbane, Australia, to get a better understanding of the nature and impact of problems resulting from the deployment of the Queensland Health payroll system and how these problems were resolved.

We did not examine the events and decisions that led to the implementation of the Transformation of Pay Administration Initiative, including the centralization of pay advisors and the launch of Phoenix. The implementation of Phoenix is the focus of a future audit.

Criteria

To determine whether selected departments and agencies resolved pay problems in a sustainable way (that is, effectively and efficiently) to ensure that public service employees consistently received their correct pay, on time, we used the following criteria:

Criteria	Sources
Problems related to paying public service employees are identified, and the nature and impact of these problems are understood.	<ul style="list-style-type: none"> • Pay Disbursement Administrative Services Order, 2011 • Directive on Financial Management of Pay Administration, Treasury Board • Policy on Results, Treasury Board • Directive on Results, Treasury Board • Supporting Effective Evaluations: A Guide to Developing Performance Measurement Strategies, Treasury Board of Canada Secretariat • COBIT 5: Enabling Processes, ISACA
The resolution of problems related to paying public service employees is being effectively and efficiently managed.	<ul style="list-style-type: none"> • Pay Disbursement Administrative Services Order, 2011 • Policy on the Management of Projects, Treasury Board • Policy on Learning, Training, and Development, Treasury Board • Directive on the Administration of Required Training, Treasury Board • Management Accountability Framework, Treasury Board • Guidelines on Costing, Treasury Board of Canada Secretariat • A Guide to Costing of Service Delivery for Service Standards, Treasury Board of Canada Secretariat • COBIT 5: Enabling Processes, ISACA • ITIL Service Strategy, second edition, 2011
Comprehensive and coherent governance and oversight detailing accountabilities and responsibilities for resolving problems related to paying public service employees are defined, agreed to, and implemented.	<ul style="list-style-type: none"> • Financial Administration Act • Public Service Employment Act • Department of Public Works and Government Services Act • Shared Services Canada Act • Pay Disbursement Administrative Services Order, 2011 • Policy on Internal Control, Treasury Board • Directive on Financial Management of Pay Administration, Treasury Board • Policy on Terms and Conditions of Employment and the Directive on Terms and Conditions of Employment, Treasury Board • Policy Framework for People Management, Treasury Board • Policy Framework for the Management of Compensation, Treasury Board • COBIT 5: Enabling Processes, ISACA

Period covered by the audit

The audit covered the period between 24 February 2016 and 30 June 2017. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of the audit.

Date of the report

We obtained sufficient and appropriate audit evidence on which to base our conclusion on 25 September 2017, in Ottawa, Ontario.

Audit team

Principal: Jean Goulet
Lead Director: Bernard Battistin
Director: Jan-Alexander Denis

Glen Barber
Danny Bruni
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Acknowledgement

We would like to acknowledge the contribution of Nancy Cheng, Assistant Auditor General, to the production of this report.

List of Recommendations

The following table lists the recommendations and responses found in this report. The paragraph number preceding the recommendation indicates the location of the recommendation in the report, and the numbers in parentheses indicate the location of the related discussion.

State of pay operations

Recommendation	Response
<p>1.59 Public Services and Procurement Canada, in partnership with the Treasury Board of Canada Secretariat and departments and agencies, should conduct an in-depth analysis of the causes of pay problems to determine what solutions are needed to resolve them. (1.21–1.58)</p>	<p>The Department's response. Agreed. The causes of pay problems are complex, exist at each stage in the human resources-to-pay (HR-to-pay) process, and involve many stakeholders. Further, these complexities were not well understood at the time of implementing the Phoenix IT solution. Building on the analysis and lessons learned conducted to date, Public Services and Procurement Canada, in partnership with the Treasury Board of Canada Secretariat and departments and agencies, is developing an HR-to-Pay Integrated Plan reflective of this in-depth analysis of the causes of pay problems and the integrated and effective solutions needed to resolve them. The HR-to-Pay Integrated Plan is comprehensive and will be multi-phased. It is evergreen and will incorporate additional analysis as it becomes available. Oversight on the progress and outcomes of the implementation of the Integrated Plan will be provided by the government-wide Governance Framework. A preliminary HR-to-Pay Integrated Plan for Phase I will be finalized by December 2017.</p>

Way forward

Recommendation	Response
<p>1.60 Public Services and Procurement Canada, with the support of the Treasury Board of Canada Secretariat, and in partnership with departments and agencies, should develop a sustainable pay solution, which includes</p> <ul style="list-style-type: none"> • a thorough analysis of possible options for a sustainable solution that includes detailed cost information; and • a complete and comprehensive plan for implementing the chosen option, including alignment to human resource systems and processes, timelines, accountability, and costs. (1.42–1.58, 1.78–1.97) 	<p>The Department's response. Agreed. The integration of human resources (HR) with pay has resulted in a need to consider solutions taking into account the continuum of HR interventions that lead to pay actions. As part of the HR-to-Pay Integrated Plan, Public Services and Procurement Canada, with the support of the Treasury Board of Canada Secretariat and in partnership with departments and agencies, will review long-term options to develop a sustainable pay solution that fully considers the complexity of the HR-to-pay environment. The HR-to-Pay Integrated Plan is comprehensive and will be multi-phased. It identifies an integrated and effective solution, and ensures an alignment of governance, human resources, systems, processes and controls, and change management. It is evergreen and will incorporate additional analysis as it becomes available. Oversight on the progress and outcomes of the implementation of the Integrated Plan will be provided by the government-wide Governance Framework. A preliminary HR-to-Pay Integrated Plan for Phase I will be finalized by December 2017.</p>
<p>1.73 The Treasury Board of Canada Secretariat should</p> <ul style="list-style-type: none"> • establish with Public Services and Procurement Canada timelines for departments and agencies to submit accurate pay information that will enable them to meet the terms and conditions of employment; and • support Public Services and Procurement Canada and departments and agencies in the development of performance measures to track and report on the accuracy and timeliness of pay. (1.61–1.72) 	<p>The Secretariat's response. Agreed. As part of the HR-to-Pay Integrated Plan, the Treasury Board of Canada Secretariat, in collaboration with Public Services and Procurement Canada, will establish standardized timelines for human resources transactions leading to a pay action by 30 June 2018. The Treasury Board of Canada Secretariat, in collaboration with Public Services and Procurement Canada, will concurrently work with departments and agencies to establish and implement standardized HR-to-pay business processes going forward.</p> <p>The Treasury Board of Canada Secretariat, in collaboration with Public Services and Procurement Canada, will establish performance measures to be implemented starting in the 2018–19 fiscal year, which will assist in the tracking and reporting of pay actions. The Treasury Board of Canada Secretariat will collaborate with Public Services and Procurement Canada and departments and agencies to further refine the tracking and reporting of key human resources metrics, including the timeliness of pay.</p>
<p>1.74 Public Services and Procurement Canada should</p> <ul style="list-style-type: none"> • work with departments and agencies to identify and provide relevant, accurate, and timely information and reports for them to properly assess pay problems where they have a responsibility to do so; and • ensure sufficient, reliable, and timely access to the pay system for departments and agencies to process pay requests and to perform checks and authorizations they are responsible for. (1.61–1.72) 	<p>The Department's response. Agreed. The complexity of roles in the HR-to-pay process has created a need for mechanisms to effectively share information with and provide access to stakeholders. As part of the HR-to-Pay Integrated Plan and established governance, Public Services and Procurement Canada is working with departments and agencies to identify and provide relevant, accurate, and timely information and reports, and ensure sufficient, reliable, and timely access to the pay system for departments to allow them to effectively discharge their responsibilities to their employees related to pay problems and Financial Administration Act obligations. The access provided must respect the privacy of employees under the Privacy Act. The HR-to-Pay Integrated Plan is comprehensive and will be multi-phased. It is evergreen and will incorporate additional analysis as it becomes available. Oversight on the progress and outcomes of the implementation of the Integrated Plan will be provided by the government-wide Governance Framework. A preliminary HR-to-Pay Integrated Plan for Phase I will be finalized by December 2017.</p>

Recommendation	Response
<p>1.98 Public Services and Procurement Canada, with the support of departments and agencies, should resolve outstanding pay requests as soon as possible, by</p> <ul style="list-style-type: none"> • considering all the outstanding pay requests; and • establishing priorities and setting targets to process all outstanding pay requests, and monitoring and reporting regularly on progress. <p>(1.78–1.97)</p>	<p>The Department's response. Agreed. Reducing the size of the queue and improving timely and accurate processing of pay requests flowing through the HR-to-pay process remains a critical priority. As part of the HR-to-Pay Integrated Plan, Public Services and Procurement Canada, with the support of departments and agencies, is resolving outstanding pay requests. Public Services and Procurement Canada continues to monitor the inventory of outstanding pay requests and its progress against established priorities and targets. The HR-to-Pay Integrated Plan is comprehensive and will be multi-phased. It is evergreen and will incorporate additional analysis as it becomes available. Oversight on the progress and outcomes of the implementation of the Integrated Plan will be provided by the government-wide Governance Framework. A preliminary HR-to-Pay Integrated Plan for Phase I will be finalized by December 2017.</p>
<p>1.112 The Treasury Board of Canada Secretariat, with the support of Public Services and Procurement Canada, and in partnership with departments and agencies, should track and report on the cost of</p> <ul style="list-style-type: none"> • resolving pay problems, and • implementing a sustainable solution for all departments and agencies. <p>(1.99–1.111)</p>	<p>The Secretariat's response. Agreed. The Treasury Board of Canada Secretariat, with the support of Public Services and Procurement Canada, and in partnership with departments and agencies, will establish a cost estimate for the Government of Canada for the Phoenix pay system by the end of May 2018. The cost estimate will consist of costs incurred to date (September 2017), and the design and implementation of a framework to track costs for resolving pay problems and implementing a sustainable solution.</p>



2018 Spring Reports of the Auditor General of Canada to the Parliament of Canada

Independent Auditor's Report

Report 1—Building and Implementing the Phoenix Pay System

This is Exhibit "I" to the Affidavit of
RENÉE DELORME sworn before
this 13 day of January, 2023


A Commissioner for Oaths in and
for the Province of Alberta

Gene DeGroot
DeGroot & Goffinet

Report 1—Building and Implementing the Phoenix Pay System

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Introduction

Background

Transforming pay services

1.1 In 2009, the Government of Canada started an initiative to replace the 40-year-old system it used to pay 290,000 employees in 101 departments and agencies. This Transformation of Pay Administration Initiative would also centralize pay services for nearly half of the departments and agencies, which had previously processed pay for their own employees. The initiative's goal was to decrease the costs of and improve the efficiency of processing the government's payroll, which is about \$22 billion a year.

1.2 Public Services and Procurement Canada was responsible for this initiative. The Department undertook two projects to support the initiative. One was to centralize pay operations for 46 departments and agencies in a new Public Service Pay Centre in Miramichi, New Brunswick. The second was to switch to a new pay software for all departments and agencies. The initiative took seven years to complete and had a budget of \$310 million, including \$155 million to build and implement the new pay software.

1.3 The government expected the initiative to save it about \$70 million a year, starting in the 2016–17 fiscal year. These savings were largely to be achieved through

- eliminating about 1,200 positions in departments and agencies for pay advisors—specialists who process pay, advise employees, and correct errors—which were replaced by 550 positions, including 460 pay advisors, at the Miramichi Pay Centre;
- automating many pay processes that were manual under the old system, using new software; and
- eliminating duplicate data entry and processing by integrating pay operations with the Government of Canada's approved human resource management system.

1.4 Public Services and Procurement Canada centralized the pay advisors for 46 departments and agencies between May 2012 and early 2016. The remaining 55 departments and agencies kept their approximately 800 pay advisors to process pay for their own employees.

1.5 In June 2011, after a public competition, Public Services and Procurement Canada awarded a contract to IBM to help it design, customize, integrate, and implement new software to replace the government's old pay system. The Department chose a PeopleSoft commercial pay software, which was to be customized to meet the government's needs. The Department called this system Phoenix.

1.6 Development of Phoenix began in December 2012 and was implemented in two waves. The first wave included 34 departments and agencies on 24 February 2016, and the second wave included the remaining 67 departments and agencies on 21 April 2016.

1.7 In our fall 2017 audit of Phoenix pay problems, we found that the system had problems immediately after it was put in place and that they continued to grow. Departments and agencies have struggled to pay their employees accurately and on time. In that audit, we found that as of 30 June 2017, there was over \$520 million in pay outstanding due to errors for public servants serviced by Phoenix who were paid too much or too little. We calculated that about 51% of employees had errors in their paycheques issued on 19 April 2017, compared with 30% in the pay issued on 6 April 2016. We found that the number of outstanding pay requests—such as a request to make a change to an employee’s pay because of a promotion or to fix an error—had continued to grow to over 494,500 by June 2017.

Roles and responsibilities for Phoenix

1.8 **Public Services and Procurement Canada.** Public Services and Procurement Canada administers the pay of public service employees. It led the development of the Phoenix pay system and is responsible for operating and maintaining the system and providing instructions to Phoenix users. It is also responsible for operating the Miramichi Pay Centre. At the Pay Centre, pay advisors use Phoenix to initiate, change, or terminate employees’ pay by directly inputting information based on requests received from the 46 departments and agencies that rely on the Pay Centre. The other 55 departments and agencies do not use the Pay Centre and are responsible for inputting pay information in Phoenix for their employees.

1.9 Three executives at Public Services and Procurement Canada (Phoenix executives) were responsible for delivering the Phoenix pay system. The Deputy Minister of the Department was responsible for ensuring that a governance and oversight mechanism to manage the project was in place, documented, and maintained, and that the project was managed according to its complexity and risk. During the seven years it took to develop Phoenix, up to and including its first wave, three different people served as Deputy Minister.

1.10 **Treasury Board of Canada Secretariat.** The Treasury Board of Canada Secretariat supports the Treasury Board as the public service employer. The Treasury Board determines and regulates pay, hours of work, and other terms and conditions of employment. The Secretariat provides departments with direction and guidance on how to implement Treasury Board pay policies. The Secretariat also promotes government-wide sharing of information and best practices on pay and provides documented business processes for human resources.

1.11 **Departments and agencies.** Departments and agencies are responsible for ensuring that their human resource systems and processes are compatible and integrated with Phoenix. They must ensure that the information needed to pay employees is entered on time and accurately into Phoenix. Departments and agencies must also review and authorize pay to be issued to employees.

1.12 All departments and agencies, including Public Services and Procurement Canada and the Treasury Board of Canada Secretariat, have a shared accountability to pay employees. They must comply with federal employees' terms and conditions of employment, which include paying employees accurately within a specific time.

1.13 According to Public Services and Procurement Canada, a pay processing system is just one part of a complex process that includes many stakeholders. The Department states that a pay system needs to support a variety of human resource systems and processes that handle numerous pay-related tasks, such as

- hiring employees,
- managing vacations and other leaves,
- managing benefits such as dental care, and
- paying employees who are retiring or terminated.

Considering the broad intricacies and scope of these processes and systems, the Transformation of Pay Administration Initiative has been a large and complex undertaking with substantial risks. Developing and implementing the Phoenix pay system have been an essential and critical part of the initiative.

**Key milestones in
the Phoenix project**

1.14 Exhibit 1.1 shows the key milestones of the Phoenix project.

Exhibit 1.1—Timeline of key Phoenix milestones

Spring

Public Services and Procurement Canada prepares initial proposal and business case to replace the pay system.

2009

June–October

Public Services and Procurement Canada issues public request for proposals to fix the pay system.

2010

June

Contract is awarded to IBM to help design and build a new pay system, called Phoenix.

2011

December

Funding for the Phoenix project is approved, and the implementation phase of the project begins.

2012

June

Public Services and Procurement Canada cancels a pilot to test Phoenix with one department.

2015

27 January

Report on S.i. Systems' review of Phoenix readiness is completed.

29 January

A meeting of 30 deputy ministers and associate deputy ministers at the Public Service Management Advisory Committee is briefed on Phoenix readiness for implementation.

11 February

Report on Gartner's review of departments' and agencies' readiness is completed.

15 February

Public Services and Procurement Canada distributes its contingency plan to all departments and agencies and asks them to draft their own contingency plans for their own pay operations.

18 February

The Deputy Minister of Public Services and Procurement is briefed on the decision to implement Phoenix.

24 February

First wave of Phoenix is

2016

▼ Exhibit 1.1—text version

This timeline shows key Phoenix milestones, from 2009 to 2016.

In spring 2009, Public Services and Procurement Canada prepares initial proposal and business case to replace the pay system.

From June 2010 to October 2010, Public Services and Procurement Canada issues public request for proposals to fix the pay system.

In June 2011, a contract is awarded to IBM to help design and build a new pay system, called Phoenix.

In December 2012, funding for the Phoenix project is approved, and the implementation phase of the project begins.

In June 2015, Public Services and Procurement Canada cancels a pilot to test Phoenix with one department.

In 2016, there are the following seven milestones:

- On 27 January, a report on S.i. Systems' review of Phoenix readiness is completed.
- On 29 January, a meeting of 30 deputy ministers and associate deputy ministers at the Public Service Management Advisory Committee is briefed on Phoenix readiness for implementation.
- On 11 February, a report on Gartner's review of departments' and agencies' readiness is completed.
- On 15 February, Public Services and Procurement Canada distributes its contingency plan to all departments and agencies and asks them to draft their own contingency plans for their own pay operations.
- On 18 February, the Deputy Minister of Public Services and Procurement is briefed on the decision to implement Phoenix.
- On 24 February, the first wave of Phoenix is implemented for 34 departments.
- On 21 April, the second wave of Phoenix is implemented for the remaining 67 departments.

implemented for 34 departments.

21 April

Second wave of Phoenix is implemented for remaining 67 departments.

Focus of the audit

1.15 This audit focused on whether Public Services and Procurement Canada effectively and efficiently managed and oversaw the implementation of the new Phoenix pay system. The audit focused on the Department as the lead organization for building and implementing the system and for operating centralized pay operations for 46 departments and agencies in the Public Service Pay Centre in Miramichi, New Brunswick. The system is a critical part of the Transformation of Pay Administration Initiative.

1.16 We wanted to know whether the decision to implement the system was reasonable and considered selected aspects of standard management practices for system development. We examined whether the system was fully tested, would deliver the functions needed to pay federal employees, was secure, and would protect employees' private information. We also examined whether Public Services and Procurement Canada adequately supported selected departments and agencies in their move to Phoenix.

1.17 The nine departments and agencies included in the audit were

- the Canadian Security Intelligence Service,
- Correctional Service Canada,
- Employment and Social Development Canada,
- National Defence,
- Natural Resources Canada,
- Public Services and Procurement Canada,
- the Royal Canadian Mounted Police,
- Statistics Canada, and
- the Treasury Board of Canada Secretariat.

1.18 This audit is important because the Phoenix pay system is less efficient and less cost-effective than the old system, and thousands of employees have not been accurately paid or paid on time. In our fall 2017 audit of Phoenix pay problems, we found that the problems were having serious financial impacts on the federal government and its employees. In that audit, we estimated that it will take many millions of dollars and years to fix the Phoenix pay problems. It is important that the government learn from the mistakes made in the Phoenix project in order to properly manage future large information technology projects.

1.19 We did not examine events leading to the centralization of pay advisors or the events after Phoenix was implemented.

1.20 More details about the audit objective, scope, approach, and criteria are in **About the Audit** at the end of this report.

Findings, Recommendations, and Responses

Managing the development of Phoenix

i Overall message

1.21 Overall, we found that Public Services and Procurement Canada failed to properly manage the Phoenix project. Because of the Department's poor management, Phoenix was implemented

- without critical pay processing functions;
- without having been fully tested to see whether it would operate as expected;
- with significant security weaknesses, which meant that the system did not protect public servants' private information;
- without an adequate contingency plan in case the system had serious and systemic problems after it was implemented; and
- without any plans to upgrade the underlying software application after it was no longer supported.

1.22 Furthermore, we found that Public Services and Procurement Canada did not fully consult and involve other departments and agencies during the development of Phoenix to determine what they needed Phoenix to do or to adequately help them move to the new system. The Department did not completely and properly test Phoenix before its implementation, which is contrary to recognized practices for developing a system. Phoenix executives cancelled a pilot project with one department that would have assessed whether Phoenix was ready to be used government-wide.

1.23 These findings matter because the Phoenix pay system failed to meet the needs of users and improve the efficiency and effectiveness of the government's pay processes. The project mismanagement resulted in

- the system's failing to correctly pay tens of thousands of federal employees on time,
- government departments and agencies spending a significant amount of time and money trying to resolve Phoenix pay problems, and
- a system that so far has been less efficient and more costly than the 40-year-old system it replaced.

1.24 The building and implementation of Phoenix was an incomprehensible failure of project management and oversight.

Public Services and Procurement Canada failed to properly manage the Phoenix project

What we found

1.25 We found that Public Services and Procurement Canada failed to properly manage the Phoenix pay system project. The Department did not fully test or pilot the system before implementation. When faced with possible higher costs, the Department removed or deferred important system functions. All of this created many risks—which the Department knew about—that the system would not be able to process pay accurately or keep employee information secure. The Department chose to not go back to the Treasury Board either to ask it for more money so that the

project could be delivered as planned or to inform it about the Department's decision to remove or defer some functions and the impact that could have on the expected benefits and savings.

1.26 Furthermore, the Department had no plans to upgrade the PeopleSoft application on which Phoenix was built, despite the application's need for regular upgrades.

1.27 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Functions needed to process pay
- Testing Phoenix
- Security, privacy protection, and accessibility requirements
- Software upgrade
- Contingency plan

Why this finding matters

1.28 This finding matters because the project was expected to deliver a secure system that meets the needs of the Government of Canada for processing pay for its employees.

Recommendation

1.29 Our recommendation in this area of examination appears at paragraph 1.48.

Analysis to support this finding

1.30 **What we examined.** We examined whether Public Services and Procurement Canada adequately managed the building of the Phoenix pay system. We examined whether the Department

- ensured that Phoenix had all the functions needed to process pay;
- ensured that Phoenix met government security, privacy protection, and accessibility requirements;
- planned for future upgrades of Phoenix; and
- had a contingency plan in case Phoenix had major problems after implementation.

1.31 **Functions needed to process pay.** We found that before implementing Phoenix, Phoenix executives did not ensure that it could properly process pay. When the system was put in place, it could not perform some critical pay functions, such as processing requests for retroactive pay. The Department knew about many of these critical weaknesses before implementing the Phoenix system. In our opinion, these weaknesses were serious enough that the system should not have been implemented. Other weaknesses were discovered by Public Services and Procurement Canada or other departments and agencies only after they started using Phoenix. Testing and piloting should have taken place to confirm the weaknesses, to determine whether there were more, and to fix or mitigate them.

1.32 Large information technology projects require balancing cost, schedule, and scope. We found that Phoenix executives scaled back the project's functions to save money or time. In the spring of 2012, after the planning phase of Phoenix, IBM told Public Services and Procurement Canada that Phoenix would cost \$274 million to build and implement. The Treasury Board had approved a Phoenix building and implementation budget of \$155 million in 2009. We found that Public Services and Procurement Canada did not consider asking the Treasury Board for more money to build and implement Phoenix. Instead, Phoenix executives decided to work with IBM to find ways to reduce the scope of work to fit the approved budget. As a result, Phoenix executives decided to

- remove some pay processing functions,
- not test some pay processing functions,
- shorten the project schedule by compressing the time between the two waves of Phoenix from seven months to two months, and
- reduce the number of IBM and Public Services and Procurement Canada employees assigned to the development and implementation of Phoenix.

1.33 We found that overall, Phoenix executives decided to defer or remove more than 100 important pay processing functions, including the ability to

- process requests for retroactive pay, such as acting pay, which is provided to an employee acting in a temporary role for a superior;
- notify employees by email of actions required on their part to process pay requests; and
- automatically calculate certain types of pay, such as increases in pay for acting appointments.

1.34 Phoenix executives planned for these important functions to be added to Phoenix only after all 101 departments and agencies had been transferred to it.

1.35 Phoenix executives did not re-examine the system's expected benefits after they decided to significantly scale back what Phoenix would do. They should have known that such a significant change in the project scope could put the system's functionality and projected savings at risk and undermine the government's ability to pay its employees the right amount at the right time.

1.36 **Testing Phoenix.** We found that Public Services and Procurement Canada could not show that the Phoenix functions that had been approved as part of the February and April 2016 implementations were in place by those dates and were fully tested before implementation. The Department had identified 984 functions that it needed to include in the February and April 2016 implementations so that pay advisors could process pay. We reviewed 111 of them. We found that 30 of these 111 functions were not part of Phoenix when departments and agencies started to use it—the functions had been either removed or deferred. The

decisions to remove or defer some of these functions, such as the processing of retroactive pay, led to increases in outstanding pay requests and pay errors.

1.37 For the remaining 81 functions we reviewed, we found that 20% did not pass testing by Public Services and Procurement Canada before implementation. The Department did not retest the functions that failed the original testing.

1.38 We also found that Public Services and Procurement Canada did not test Phoenix as a whole system before implementation and did not know whether it would operate as intended. For example, the Department did not complete the final testing of Phoenix by pay advisors.

1.39 To assess whether Phoenix was ready government-wide, Public Services and Procurement Canada had planned to conduct a pilot implementation with one department. A pilot would have allowed the Department to determine if the system would work in a real setting without affecting pay that was still being processed by the old pay system.

1.40 However, we found that in June 2015, Phoenix executives cancelled the pilot because of major defects that affected critical functions and outstanding problems with system stability, and they did not have enough time to reschedule the pilot without delaying Phoenix implementation. They decided that rather than delaying Phoenix, there would be no pilot. Public Services and Procurement Canada did not assess the impacts of cancelling the pilot. This pilot was the Department's chance to test a final, live version of Phoenix before implementation. The pilot could have allowed the Department to detect problems that would have shown that the system was not ready.

1.41 **Security, privacy protection, and accessibility requirements.** The Phoenix pay system was expected to comply with Government of Canada policies for security, privacy protection, and accessibility. We found that Phoenix executives implemented Phoenix even though it did not comply with these policies.

1.42 We found that the Department implemented Phoenix despite knowing about high security risks, which it did not expect to address until December 2016—months after the planned implementation. These risks included the risk of someone gaining unauthorized access to information.

1.43 We also found that Phoenix did not meet government policy requirements to protect personal information. The Treasury Board Policy on Privacy Protection aims to prevent, for example, managers from accessing personal files of employees outside of their responsibility. Public Services and Procurement Canada conducted a preliminary privacy impact assessment of the planned system in March 2012. The assessment was to identify potential privacy risks with Phoenix and recommend ways to mitigate the risks. This preliminary assessment identified four high privacy risks and six moderate risks. The Department did not complete a final

privacy impact assessment before implementing Phoenix. The Privacy Commissioner of Canada has reported numerous privacy breaches of federal employees' information in Phoenix after it was put in place.

1.44 We also found that Phoenix was not fully accessible to federal employees with disabilities or other impediments. We found that Phoenix executives decided in July 2013 to remove any obligations for IBM to customize the software that would have provided such accessibility. After Phoenix was put in place, federal employees with disabilities or other impediments reported difficulties reading Phoenix information. In May 2017, Public Services and Procurement Canada told us that after it had stabilized Phoenix pay problems, it would improve accessibility. However, the Department did not provide any timelines.

1.45 **Software upgrade.** A standard management practice in information technology projects is to plan for future software upgrades. We found that when building Phoenix, Public Services and Procurement Canada did not plan for future upgrades to PeopleSoft, the software application on which Phoenix was built. The Oracle Corporation, the owner of PeopleSoft, was expected to stop supporting the version used by Phoenix in 2018. Although the Department informed us that it had secured a one-year extension to its maintenance contract with the Oracle Corporation, not planning to upgrade is a significant omission that puts the system's long-term viability at risk. Upgrading a system's underlying software application is complex and must be well planned, especially when many customizations need to be upgraded, as with Phoenix. If the Department does not keep the underlying software up to date, it will have to maintain it on its own.

1.46 **Contingency plan.** Public Services and Procurement Canada finalized a limited contingency plan for Phoenix less than two weeks before its implementation in February 2016. We found that the plan mostly outlined what to do if Phoenix failed to operate; the plan did not anticipate scenarios with system or process problems, such as the ones that occurred after implementation. We found that all but one of the plan's scenarios called for Phoenix to continue operating while the problems were being resolved. The plan did not explain how problems would be resolved, what specific tasks would be needed to carry out the contingency plan, and who would be responsible for these tasks. We also found that the Department did not test its contingency plan to see whether it would work.

1.47 We also found that Public Services and Procurement Canada did not help departments and agencies prepare their individual contingency plans in case Phoenix did not work as planned. Less than a week before the February 2016 implementation of Phoenix, Public Services and Procurement Canada sent its contingency plan to departments and agencies and asked them to develop their own contingency plans using a template. Public Services and Procurement Canada did not give them any guidance or enough time to develop their contingency plans.

1.48 **Recommendation.** For government-wide information technology projects under its responsibility, Public Services and Procurement Canada should ensure the following:

- Its project managers understand and communicate to concerned stakeholders the impacts of any changes to functionality, including any impacts of the cumulative effect of all changes.
- The project complies with relevant legislative and policy requirements.
- The project includes plans for keeping the software current.
- The project includes a complete contingency plan.

The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that, for all government-wide information technology (IT) projects under its responsibility, it will seek appropriate authorities to define and assign roles and responsibilities of concerned stakeholders. This will permit the Department to measure and report on collective efforts with regard to project management and to ensure that implicated partners and stakeholders participate in, and support the assessment of, the cumulative impacts of key decisions and risk mitigations, including changes to functionality.

The Department's National Project Management System requires compliance with legal and policy requirements related to project management. The Department will ensure that project managers understand and respect these requirements. It will also ensure that project managers understand well the requirements for preparing a stakeholder engagement plan, a formal software upgrade plan, and a comprehensive contingency plan that covers government-wide systems, processes, and impacts for all government-wide IT projects under its responsibility.

The Department will integrate the lessons learned from Phoenix into project management practices and training and will support government-wide efforts to strengthen the capacity of the project management community.

Public Services and Procurement Canada did not fully engage departments and agencies in building Phoenix and in preparing them to use it

What we found

1.49 We found that Public Services and Procurement Canada did not fully engage departments and agencies during the development of Phoenix. The Department did not seek their extensive experience and knowledge in processing complex pay requests, which would have helped the Department to develop Phoenix to meet their needs. We also found that Public Services and Procurement Canada did not help other departments and agencies fully understand what they would need to do to use Phoenix. The Department also did not provide relevant and timely training to support the transition to Phoenix.

1.50 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Engaging departments and agencies in building Phoenix
 - Supporting departments and agencies in preparing to move to Phoenix
-

Why this finding matters

1.51 This finding matters because Phoenix required changes to the way departments and agencies processed pay. It also required that departments and agencies have the tools and training needed to use Phoenix.

Recommendation

1.52 Our recommendation in this area of examination appears at paragraph 1.61.

Analysis to support this finding

1.53 **What we examined.** We examined whether Public Services and Procurement Canada adequately engaged client departments and agencies in building Phoenix and helped them move to the new system. The seven client departments and agencies we included in our audit were

- the Canadian Security Intelligence Service,
- Correctional Service Canada,
- Employment and Social Development Canada,
- National Defence,
- Natural Resources Canada,
- the Royal Canadian Mounted Police, and
- Statistics Canada.

1.54 **Engaging departments and agencies in building Phoenix.** We found that Public Services and Procurement Canada did not effectively engage the seven client departments and agencies we included in our audit to identify what they needed Phoenix to do to process pay. Public Services and Procurement Canada did not share a complete list of functions with departments and agencies and did not give them a chance to review or approve the functions to confirm that the system met their needs.

1.55 Public Services and Procurement Canada asked only six departments and agencies, including four of the client departments and agencies in our audit, to participate in the final pay advisor testing of Phoenix. We found the following:

- Public Services and Procurement Canada gave these six departments and agencies vague instructions and guidance on how their pay advisors should perform final testing of Phoenix.
- In some cases, departments and agencies disagreed with Public Services and Procurement Canada on testing results.

The four departments and agencies told us that the recording of testing results was subjective and inconsistent, and the criteria for passing or failing a test were not clear.

1.56 We also found that Public Services and Procurement Canada did not share information on outstanding Phoenix security and privacy risks with most departments and agencies, because it considered the

information either too sensitive or incomplete. Departments and agencies therefore could not understand and comment on the extent of security and privacy risks that remained when Phoenix was put in place, including risks that could affect their human resource data or risks they could help to mitigate.

1.57 The seven client departments and agencies in our audit told us that in general, they received communications from Public Services and Procurement Canada that were not complete or timely throughout most of the Phoenix development. They said that they did not receive enough information to meaningfully help build Phoenix or move to the new system.

1.58 **Supporting departments and agencies in preparing to move to Phoenix.** Phoenix required significant changes to the way pay would be processed in all departments and agencies using the system. We found that Public Services and Procurement Canada did not adequately prepare departments and agencies for these changes. For example, Public Services and Procurement Canada gave descriptions of modified pay processes to be implemented by departments and agencies using the system. We found that these descriptions

- were ambiguous and did not sufficiently and explicitly detail what was required from employees and managers,
- did not provide guidance on how the modified pay processes should integrate into the pay operations of specific departments or agencies, and
- were provided too late to be implemented.

1.59 Public Services and Procurement Canada analyzed departments' and agencies' training needs for the Phoenix pay system. It also developed a training plan and curriculum and procedures manuals for the new pay system. However, officials from the departments and agencies in our audit told us that employees received inadequate training on Phoenix. We found that the content and procedures were generic, incomplete, and used classroom or web-based presentations instead of a demonstration version of the Phoenix software. Pay advisors from two of the departments and agencies included in this audit were surveyed as part of our fall 2017 audit of Phoenix pay problems. Most pay advisors we surveyed in these two departments and agencies reported that they were dissatisfied with the training they received.

1.60 As stated in paragraph 1.32, Public Services and Procurement Canada reduced the scope of the work so that the work could be done within the approved Phoenix project budget. As a result, fewer IBM and Public Services and Procurement Canada employees were assigned to help departments and agencies move to Phoenix.

1.61 **Recommendation.** For government-wide projects under its responsibility, Public Services and Procurement Canada should

- ensure that requirements to move to a new system are defined and implemented with the active participation of all concerned departments and agencies, and
- ensure that all concerned departments and agencies are consulted and actively participate in the project's design and testing.

The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that for all government-wide information technology projects under its responsibility, it seeks authority to do the following:

- Clearly define, in consultation with concerned departments and agencies, the roles and responsibilities of Public Services and Procurement Canada as the lead organization and of concerned departments and agencies, as well as of the Treasury Board of Canada Secretariat. Such authorities will ensure active participation and collaboration of concerned departments and agencies and the Secretariat in defining business requirements and designing and testing any new system. Such authorities will also ensure implementation of requirements related to change management, departmental readiness, data quality, and revised business and technical processes and controls.
- Develop a performance measurement framework that measures the effective discharge of the assigned roles and responsibilities of the lead organization, concerned departments and agencies, and the Treasury Board of Canada Secretariat.
- Independently validate the performance of the lead organization, concerned departments and agencies, and the Treasury Board of Canada Secretariat, and report the results of performance to a government-wide deputy head oversight committee.
- In accordance with established authorities, in conjunction with the Treasury Board of Canada Secretariat, take appropriate action where performance is lacking.

Deciding to implement Phoenix

i Overall message

1.62 Overall, we found that there was no oversight of the Phoenix project, which allowed Phoenix executives to implement the system even though they knew it had significant problems. There were no oversight bodies independent of the project management structure to provide independent advice to the Deputy Minister of Public Services and Procurement on the project status. This meant that the Deputy Minister did not receive independent information showing that Phoenix was not ready to be implemented or that the Miramichi Pay Centre and departments and agencies were not ready for Phoenix. Phoenix executives were more focused on meeting the project budget and timeline than on what the system needed to do.

Phoenix executives did not understand the importance of warnings that the Miramichi Pay Centre, users, and the new system were not ready

What we found

1.63 We found that before implementing Phoenix, Phoenix executives did not heed clear warnings that the Miramichi Pay Centre, departments and agencies, and the pay system itself were not ready. It was obvious even before Phoenix was in place that pay advisors in Miramichi were not handling the volume of files that the Department expected. Furthermore, several departments and agencies, along with third-party assessments, identified significant problems with the system. Phoenix executives did not understand the importance of these warnings and went ahead with implementing Phoenix.

1.64 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Review of Miramichi Pay Centre readiness
- Review of departments' and agencies' readiness
- Review of Phoenix pay system readiness

Why this finding matters

1.65 This finding matters because there were several missed opportunities to consider the Phoenix pay system's readiness and everyone's readiness for Phoenix. If readiness had been considered, Public Services and Procurement Canada might have been able to take corrective actions as required.

Recommendation

1.66 Our recommendation in this area of examination appears at paragraph 1.83.

Analysis to support this finding

1.67 **What we examined.** We examined whether Phoenix executives assessed the readiness of the Miramichi Pay Centre, departments and agencies, and the pay system itself before implementing Phoenix in February 2016. We examined whether Phoenix executives used sound and independent advice and responded appropriately.

1.68 **Review of Miramichi Pay Centre readiness.** We found that Public Services and Procurement Canada vastly overestimated the Miramichi Pay Centre's capacity and readiness to handle employee pay files before and after Phoenix was implemented.

1.69 When it sought approval from the Treasury Board for the Phoenix project and its budget, Public Services and Procurement Canada said that it could increase the efficiency of pay advisors through centralization in the Miramichi Pay Centre and through Phoenix. Before Phoenix, each pay advisor in departments and agencies handled on average 184 employee pay files. Public Services and Procurement Canada expected this number would rise to 200 employee pay files after centralization and then at least double to 400 employee pay files after Phoenix was in place. The Department expected that Phoenix would increase pay advisor productivity through synergies; the use of a compensation web application by employees to enter some of their own pay requests, such as overtime;

and the automation of pay processing. This expected increase in the productivity of Miramichi pay advisors and the resulting decrease in the total number of pay advisors was the main source of the \$70 million a year the government expected to save starting in the 2016–17 fiscal year.

1.70 As part of the centralization project and before Phoenix was implemented, Public Services and Procurement Canada transferred to the Miramichi Pay Centre the pay files of 92,000 out of the 184,000 employees from the 46 departments whose pay operations were being centralized. The Department expected the Pay Centre to handle 92,000 pay files based on the 460 pay advisors handling an average of 200 files each.

1.71 We found that after the hiring of pay advisors was completed in Miramichi in January 2015, the Pay Centre could handle fewer employee pay files—not more—than before centralization. In July 2015, Public Services and Procurement Canada knew that pay advisors in Miramichi could each handle only about 150 employee pay files—well below the 184 pay files before centralization and the 200 pay files expected after centralization. This meant that Miramichi pay advisors could handle a total of about 69,000 pay files, not the 92,000 files the Department had transferred to the Pay Centre. In our view, this lower total was largely because of a lack of training and experience. Many pay advisors at the Pay Centre were new to the job because many pay advisors in departments and agencies did not move to Miramichi. In our fall 2017 audit of Phoenix pay problems, we found that before Phoenix, outstanding pay requests were already increasing because of centralization, and pay advisors in Miramichi were already complaining of excessive workload and stress.

1.72 Despite knowing that the Miramichi Pay Centre could handle 23,000 fewer files than expected before the implementation of Phoenix, Phoenix executives did not re-examine expected benefits for Phoenix. Phoenix executives also did not adjust the number of employee pay files that pay advisors were expected to handle or did not hire more pay advisors. Phoenix executives did not ensure that pay advisors could handle the files already assigned to them before doubling their workload by transferring the remaining 92,000 employee files to the Pay Centre. Even though pay advisors were less productive than what was expected of them, Phoenix executives still expected that their productivity would more than double when they started to use Phoenix. Before implementing the system, Phoenix executives should have first determined whether the pay advisors could handle 200 files each with the old system and then reconsidered the assumption that productivity would double under Phoenix.

1.73 **Review of departments' and agencies' readiness.** We found that Phoenix executives did not ensure that departments and agencies were ready to use Phoenix.

1.74 To assess readiness, Public Services and Procurement Canada required the departments and agencies to complete a checklist. The Department then compiled and analyzed the checklist information into dashboard readiness reports, which it regularly provided to all departments and agencies. According to the Department's February 2016 dashboards, it had assessed that departments and agencies were ready for Phoenix.

1.75 However, Public Services and Procurement Canada could not explain to us how some of the dashboards' readiness measures were calculated or what data supported them. Therefore, we reviewed the checklists submitted by the departments and agencies. We found that these checklists reported significant potential problems with Phoenix. For example, checklists completed in January 2016 reported significant problems with data coming from departments' and agencies' human resource systems not matching the data in Phoenix. Departments and agencies' checklists noted that due to errors in the data transferred from the old pay system into Phoenix, hundreds of employees were at risk of not being paid or of receiving incorrect pay. We found no evidence that Public Services and Procurement Canada helped departments and agencies correct the problems they noted in their checklists.

1.76 In December 2015, departments' and agencies' concerns about Phoenix caused the Treasury Board of Canada Secretariat to hire Gartner, an information technology consulting company, to assess departments' and agencies' readiness for Phoenix. The Gartner report, delivered on 11 February 2016, identified one risk it considered critical: Phoenix might not be able to pay employees accurately and on time because the system had not been fully tested and because system defects might not be corrected before implementation. The report also identified several risks to the implementation that it considered major, such as new procedures required to process pay with Phoenix that risked not being ready by the time Phoenix was implemented and that risked not being fully understood by departments and agencies.

1.77 Gartner recommended to the Treasury Board of Canada Secretariat that Phoenix be gradually implemented in a limited number of departments starting with those that had less complicated pay needs. It also recommended that Phoenix and the old pay system be operated in parallel in case anything went wrong with Phoenix. As a recognized practice when replacing an old software system with a new one, both systems would operate in parallel during a certain time to compare their results to ensure that the results of the new system were accurate. The Treasury Board of Canada Secretariat transmitted the Gartner report to Public Services and Procurement Canada prior to the 26 February 2016 implementation of Phoenix.

1.78 The Treasury Board of Canada Secretariat provided Phoenix executives with an invitation to participate in the Gartner assessment and to comment on Gartner's preliminary findings and recommendations. However, we found that they did not participate until late January 2016,

just before Phoenix was put in place. We found that they did not consider the report's findings and recommendations before Phoenix was implemented.

1.79 **Review of Phoenix pay system readiness.** The Treasury Board of Canada Secretariat's guidance recommends that information technology projects undergo independent reviews of readiness to proceed at key decision points, including at implementation. These reviews are meant to provide senior executives with

- strengthened accountability over these projects,
- additional information to determine whether and how to proceed,
- an opportunity to assess the quality of work to date,
- an opportunity to alter the project's course and take corrective actions if necessary, and
- guidance when deciding whether to go ahead with implementation.

For the Phoenix project, Public Services and Procurement Canada hired S.i. Systems to do an external review of Phoenix readiness.

1.80 The Treasury Board of Canada Secretariat's guidance recommends that all development activities be completed before an independent review is conducted on a project's readiness to be implemented. We found that this was not the case with Phoenix. For example, at the time of the review, testing had not been completed, user training was still under way, and some manual solutions were still being developed to make up for a lack of some functionality.

1.81 We also found that the review did not comply with the Treasury Board of Canada Secretariat's guidance on independence, because Phoenix executives had authority over the reviewers. Phoenix executives were involved in developing the reviewers' interview questionnaire as well as the list of interviewees, and approved them. This list did not include representatives from departments and agencies, which were therefore not consulted on their readiness for Phoenix. According to the approved list of interviewees, only Phoenix project staff were interviewed.

1.82 We also found that the review's positive conclusion—that Phoenix was ready to implement in two waves as scheduled—was inconsistent with the review's own findings. For example, the review stated significant concerns with

- the lack of detailed and tested contingency plans,
- the ability to do future software upgrades, and
- outstanding security risks.

1.83 **Recommendation.** For all government-wide information technology projects, the Treasury Board of Canada Secretariat should

- carry out mandatory independent reviews of the project's key decisions to proceed or not, and
- inform the project's responsible Deputy Minister and senior executives of the reviews' conclusions.

The Secretariat's response. Agreed. The Treasury Board of Canada Secretariat will ensure that independent reviews of projects' key decision points are completed for all government-wide information technology projects. The Secretariat will also inform projects' accountable deputy ministers and senior executives of the reviews' conclusions.

There was no oversight of the decision to implement Phoenix

What we found

1.84 We found that the Phoenix project had a detailed project management structure in place but did not include oversight independent of that structure. The Phoenix committees set up by Public Services and Procurement Canada did not provide independent advice to the Deputy Minister on project status. Instead, the Department created the project structure so that project information going to the Deputy Minister could only come from Phoenix executives. When Phoenix executives briefed the Deputy Minister just before Phoenix was implemented, they did not provide important information about problems with the system. It was questionable whether Phoenix executives fully understood the extent of the problems with Phoenix, and as a result, they did not provide a complete picture of the project's risks. The lack of oversight allowed Phoenix executives to implement the system despite clear warnings that the Miramichi Pay Centre and departments and agencies were not ready and that the pay system had significant problems.

1.85 Our analysis supporting this finding presents what we examined and discusses the following topics:

- Oversight of the Phoenix project
- Independent advice to the Deputy Minister
- Decision to implement Phoenix

Why this finding matters

1.86 These findings matter because if there had been effective oversight, the Deputy Minister of Public Services and Procurement would have received complete and accurate information on Phoenix readiness. This could have resulted in a different decision to implement the system.

Recommendations

1.87 Our recommendations in these areas of examination appear at paragraphs 1.103 and 1.104.

Analysis to support this finding

1.88 **What we examined.** We examined whether

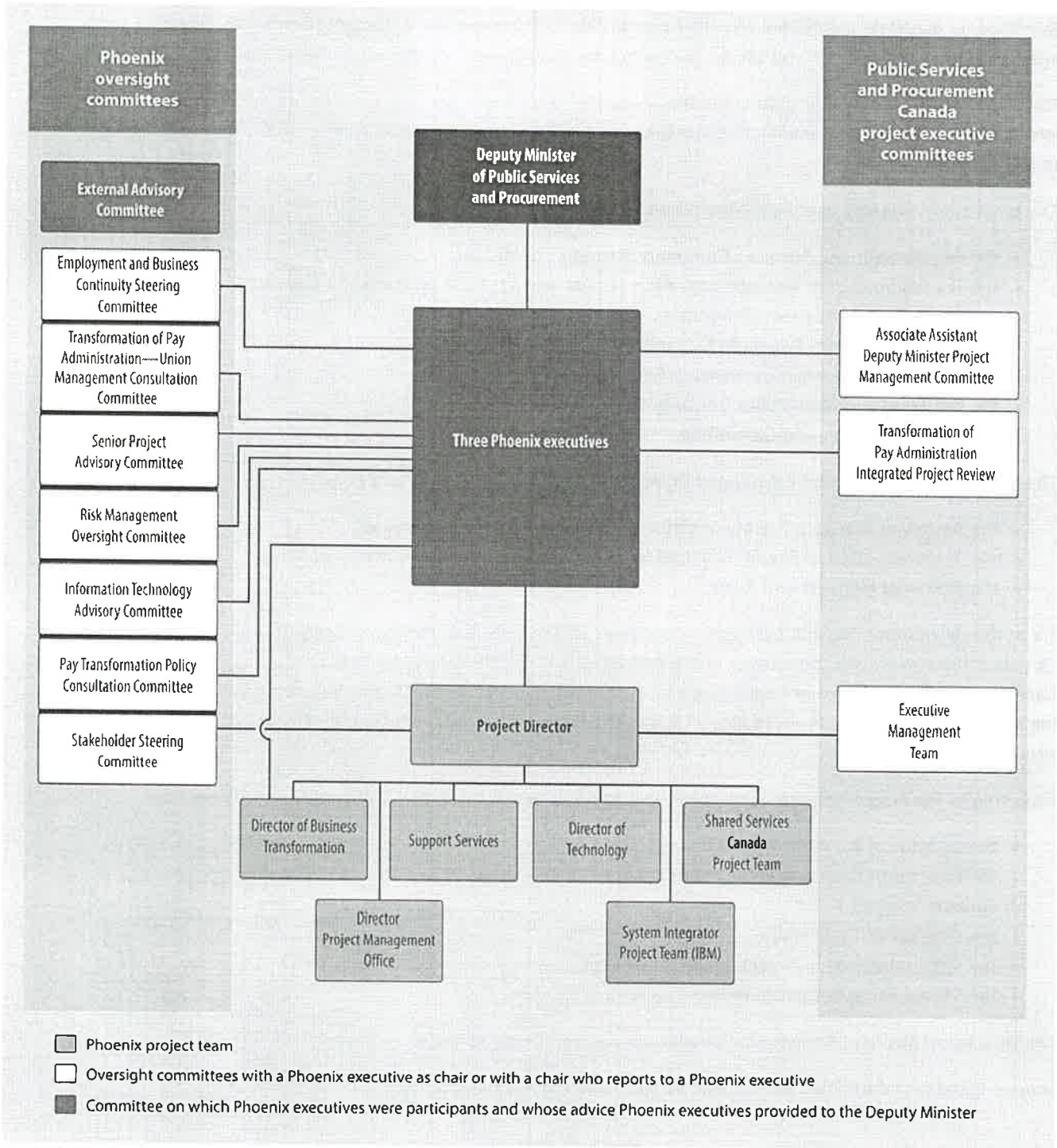
- oversight bodies were in place and effective in guiding the decision to build and implement Phoenix,
- the Deputy Minister received independent advice on the project status, and
- the decision to implement Phoenix was reasonable and was based on complete and accurate information about the project's readiness.

1.89 **Oversight of the Phoenix project.** The Treasury Board Policy on the Management of Projects states that the deputy head of a department is responsible for ensuring that effective project governance and oversight mechanisms are in place and for monitoring and reporting on the management of all projects in the department under the deputy head.

1.90 Public Services and Procurement Canada considered the Phoenix project management committees and structure it put in place to be governance and oversight. In our view, this was in fact just a project management structure. We found that there was no oversight of the Phoenix project independent of the project management structure. The project management was organized in such a way that project information that went to the Deputy Minister of Public Services and Procurement came only from Phoenix executives.

1.91 Public Services and Procurement Canada put in place many committees to guide the decisions about system design and implementation. However, most of these committees were either chaired by Phoenix executives or had committee chairs directly reporting to them. This meant that information coming from the committees would be provided to the Deputy Minister and to other stakeholders only by Phoenix executives (Exhibit 1.2). The Deputy Minister did not receive Phoenix project status information from independent sources, including the Treasury Board of Canada Secretariat, external reviews, and other departments and agencies.

Exhibit 1.2—Only Phoenix executives provided the Deputy Minister of Public Services and Procurement with project status information



Source: Based on information from Public Services and Procurement Canada

▼ Exhibit 1.2—text version

This chart shows that only the three Phoenix executives provided the Deputy Minister of Public Services and Procurement with project status information.

This chart also shows that the three Phoenix executives were connected to many committees. The chart lists eight Phoenix oversight committees and three Public Services and Procurement Canada project executive committees.

One Phoenix oversight committee was the External Advisory Committee, a committee on which Phoenix executives were participants and whose advice Phoenix executives provided to the Deputy Minister.

The other seven Phoenix oversight committees and the three Public Services and Procurement Canada project executive committees were oversight committees with a Phoenix executive as chair or with a chair who reported to a Phoenix executive.

The other seven Phoenix oversight committees were

- the Employment and Business Continuity Steering Committee,
- the Transformation of Pay Administration—Union Management Consultation Committee,
- the Senior Project Advisory Committee,
- the Risk Management Oversight Committee,
- the Information Technology Advisory Committee,
- the Pay Transformation Policy Consultation Committee, and
- the Stakeholder Steering Committee.

The three Public Services and Procurement Canada project executive committees were

- the Associate Assistant Deputy Minister Project Management Committee,
- the Transformation of Pay Administration Integrated Project Review, and
- the Executive Management Team.

Six of the seven other Phoenix oversight committees and two of the three Public Services and Procurement Canada project executive committees connected directly to the three Phoenix executives. The two exceptions were the Stakeholder Steering Committee and the Executive Management Team—they both connected directly to the Project Director of the Phoenix project team. The Project Director connected directly to the three Phoenix executives.

Reporting to the Project Director were the following members of the Phoenix project team:

- the Director of Business Transformation,
- the Director of the Project Management Office,
- Support Services,
- the Director of Technology,
- the System Integrator Project Team at IBM, and
- the Shared Services Canada Project Team.

The Director of Business Transformation also connected directly to the three Phoenix executives.

Source: Based on information from Public Services and Procurement Canada

1.92 Deputy ministers of all departments and agencies are responsible for paying employees in a timely and accurate manner. We therefore expected that deputy ministers would be part of the oversight of the Phoenix project, which would give them an opportunity to provide input into the decision to implement. However, we found that deputy ministers from departments and agencies had no role in the Phoenix governance structure. They did not sit on any of the oversight bodies.

1.93 **Independent advice to the Deputy Minister.** Another essential element of a department's oversight is independent advice from experts and stakeholders outside a project's management. Every department has an internal audit function as a crucial part of its internal control system to provide such independent advice. The 2012 Treasury Board Policy on Internal Audit, which was in effect when Phoenix was implemented in February and April 2016, states that deputy ministers should receive independent assurance and advice from their internal audit groups to inform decision making. Internal auditing assesses and helps improve risk management, control, and governance processes. This helps ensure that a department achieves its objectives efficiently, using informed, ethical, and accountable decision making. A department's internal audit function proposes audits based on each activity's risk to the department.

1.94 For information technology projects such as Phoenix, an internal audit is an independent assessment of whether the project is achieving its objectives. Furthermore, internal auditing in the early stages of an information technology project increases the chances that it will succeed. An internal audit of Phoenix would have been crucial, considering the risks posed by the number of transactions it had to process, its cost, its promise to rapidly save money, its government-wide nature, and its need to process about \$22 billion in annual payroll. Public Services and Procurement Canada's internal audit function should therefore have audited the Phoenix project and reported its findings directly to the Deputy Minister.

1.95 We found that the Department's internal audit function considered the risks but did not audit the Phoenix project even though departmental files showed that four internal audits of Phoenix were intended. In our view, internal audits of the Phoenix project would have given the Deputy Minister an independent source of assurance as part of a review of the project's management that could have resulted in a different implementation decision.

1.96 A final opportunity to give the Deputy Minister of Public Services and Procurement independent, accurate, and complete information on the readiness of Phoenix was the review by S.i. Systems. However, as stated in paragraph 1.81, we found that the review was not independent of the project team.

1.97 **Decision to implement Phoenix.** Before going ahead with implementing Phoenix, Phoenix executives knew about serious problems with it, including high security risks and privacy risks. They also knew that the new pay system could not perform critical functions, such as processing requests for retroactive pay or automatically calculating certain types of pay. They also had a summary of test results highlighting major defects found through testing that were still not resolved. They also knew that some testing was not completed or successful.

1.98 On 29 January 2016, Public Services and Procurement Canada representatives, including Phoenix executives, told deputy ministers and associate deputy ministers that the Department was going to implement Phoenix in two waves, in February and April 2016. The briefing took place in a meeting of more than 30 deputy ministers and associate deputy ministers at the Public Service Management Advisory Committee, an advisory forum that discusses government-wide management issues. This Committee did not have a governance or oversight responsibility for the Phoenix project and did not have any decision-making authority. Because deputy ministers from departments and agencies had no role in the Phoenix governance structure, Public Services and Procurement Canada decided to use the Committee meeting to communicate its implementation plans to the deputy ministers.

1.99 Just before this briefing of the Committee, 14 departments and agencies, including some of the largest in the federal government, told Public Services and Procurement Canada that they had significant concerns with Phoenix, including

- inadequate training material and training,
- the Miramichi Pay Centre's inability to process pay requests accurately and on time,
- unclear roles and responsibilities for Phoenix, and
- the incomplete and unsuccessful testing of Phoenix.

1.100 However, during the Committee briefing on 29 January 2016, Public Services and Procurement Canada representatives assured deputy ministers and associate deputy ministers that these problems had been resolved or that the Department had procedures in place to resolve them. For example, the representatives said that there were more than 100 outstanding defects in Phoenix, but that there were manual solutions in place to mitigate them. Public Services and Procurement Canada also told deputy ministers and associate deputy ministers that not implementing Phoenix in February and April 2016 presented several significant risks, including

- a lack of money and pay advisors to keep the old pay system running while waiting for Phoenix to be put in place,
- the need for additional funding to be requested from the Treasury Board, and
- a possible long delay before there was another chance to implement Phoenix.

As an information-sharing and advisory forum, the Committee could not formally challenge the information it received from Public Services and Procurement Canada or the decision to implement Phoenix.

1.101 Phoenix executives then briefed the Deputy Minister of Public Services and Procurement on 18 February 2016 on the implementation of the Phoenix system and told him that everything was ready to go. We found that documentation provided at the briefing did not mention any of the significant problems that Phoenix executives knew about.

Furthermore, Phoenix executives did not tell the Deputy Minister about these significant problems, including the critical and major risks identified in the Gartner report prepared for the Treasury Board of Canada Secretariat (see paragraphs 1.76 to 1.78). The Deputy Minister did not receive independent advice on the Phoenix pay system's readiness and relied solely on Phoenix executives.

1.102 Formal documents approving the Phoenix project confirm that Phoenix executives were responsible for deciding to implement Phoenix. However, we found that the decision to proceed with the implementation of Phoenix was not documented, which was contrary to the requirements of the project and to recognized practices. In the absence of an explicit decision, we found that Phoenix executives in effect decided to implement Phoenix. In our opinion, they had received more than enough information and warning that Phoenix was not ready to be implemented, and therefore, they should not have proceeded as planned. Phoenix executives prioritized meeting schedule and cost over other critical elements, such as functionality and security, resulting in an incomprehensible failure of project management and oversight. In our fall 2017 audit of Phoenix pay problems, we found that not only did Phoenix not meet user needs to pay employees accurately and on time, it has resulted in significant costs to the federal government and to thousands of its employees.

1.103 **Recommendation.** For all government-wide information technology projects under its responsibility, Public Services and Procurement Canada should ensure that an effective oversight mechanism is in place, is documented, and is maintained. The mechanism should first be approved by the Treasury Board of Canada Secretariat and should include the heads of concerned departments and agencies.

The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that for all government-wide information technology (IT) projects under its responsibility, it will put in place, document, and maintain an effective oversight mechanism approved by the Treasury Board of Canada Secretariat. The mechanism's membership will include the Secretariat and representation from a selected group of deputy heads of concerned departments and agencies. Terms of reference approved by the Secretariat and the Department, in consultation with the Privy Council Office, will clarify the roles and responsibilities of the oversight committee participants in regard to the government-wide IT projects and to colleague deputy heads of departments and agencies not specifically represented on the committee.

1.104 **Recommendation.** For all government-wide information technology projects under its responsibility, Public Services and Procurement Canada should ensure that its internal audit function provides the Deputy Minister with assurances regarding the projects' governance, oversight, and management.

The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that the internal audit function provides the Deputy Minister with the appropriate assurances regarding project governance, oversight, and management of government-wide IT projects under the Department's responsibility. The Department will accomplish this by working with other internal audit functions of concerned departments and agencies to develop an audit strategy that will provide a holistic view of project governance, oversight, and management risks.

The Department will support government-wide initiatives to strengthen the capacity of the internal audit community, to provide assurance regarding major transformation initiatives.

Conclusion

1.105 We concluded that the Phoenix project was an incomprehensible failure of project management and oversight. Phoenix executives prioritized certain aspects, such as schedule and budget, over other critical ones, such as functionality and security. Phoenix executives did not understand the importance of warnings that the Miramichi Pay Centre, departments and agencies, and the new system were not ready. They did not provide complete and accurate information to deputy ministers and associate deputy ministers of departments and agencies, including the Deputy Minister of Public Services and Procurement, when briefing them on Phoenix readiness for implementation. In our opinion, the decision by Phoenix executives to implement Phoenix was unreasonable according to the information available at the time. As a result, Phoenix has not met user needs, has cost the federal government hundreds of millions of dollars, and has financially affected tens of thousands of its employees.

About the Audit

This independent assurance report was prepared by the Office of the Auditor General of Canada on the building and implementation of the Phoenix project. Our responsibility was to provide objective information, advice, and assurance to assist Parliament in its scrutiny of the government's management of resources and programs, and to conclude on whether the management of the Phoenix project complied in all significant respects with the applicable criteria.

All work in this audit was performed to a reasonable level of assurance in accordance with the Canadian Standard for Assurance Engagements (CSAE) 3001—Direct Engagements set out by the Chartered Professional Accountants of Canada (CPA Canada) in the CPA Canada Handbook—Assurance.

The Office applies Canadian Standard on Quality Control 1 and, accordingly, maintains a comprehensive system of quality control, including documented policies and procedures regarding compliance with ethical requirements, professional standards, and applicable legal and regulatory requirements.

In conducting the audit work, we have complied with the independence and other ethical requirements of the relevant rules of professional conduct applicable to the practice of public accounting in Canada, which are founded on fundamental principles of integrity, objectivity, professional competence and due care, confidentiality, and professional behaviour.

In accordance with our regular audit process, we obtained the following from entities' management:

- confirmation of management's responsibility for the subject under audit;
- acknowledgement of the suitability of the criteria used in the audit;
- confirmation that all known information that has been requested, or that could affect the findings or audit conclusion, has been provided; and
- confirmation that the audit report is factually accurate.

Audit objective

The objective of this audit was to determine whether Public Services and Procurement Canada effectively and efficiently managed the delivery of the Phoenix project.

Scope and approach

We audited the following nine departments and agencies:

- the Canadian Security Intelligence Service,
- Correctional Service Canada,
- Employment and Social Development Canada,
- National Defence,
- Natural Resources Canada,
- Public Services and Procurement Canada,
- the Royal Canadian Mounted Police,
- Statistics Canada, and
- the Treasury Board of Canada Secretariat.

We examined the legislation, policies, and procedures in place to manage and to support the management of the Phoenix project within all the audited departments and agencies. We also met and interviewed officials in all the audited entities, including at the Public Service Pay Centre in Miramichi, New Brunswick.

We analyzed data extracted from the information systems of Public Services and Procurement Canada's case management tool to identify and compare information related to the processing of pay. Although we noted issues with the integrity of data, we found the data sufficiently reliable for the purpose of our analysis.

We analyzed the emails of 10 senior executives from Public Services and Procurement Canada, including the three Phoenix executives, to identify information related to the management and oversight of the Phoenix project. The emails we looked at were sent during the period of the audit, which spans from 1 April 2008 to the second wave of the Phoenix pay system on 21 April 2016.

We used the results of a survey that we conducted during our fall 2017 audit of Phoenix pay problems. It was a survey of pay staff in Miramichi as well as in the satellite centres, which were set up by Public Services and Procurement Canada to increase the Department's pay processing capacity. The survey's purpose was to understand the impact on pay advisors of pay problems after Phoenix was first implemented. We sent 740 questionnaires and received responses from 480 employees, for a total response rate of approximately 65%.

We used our review of similar events around the world, which we performed during our audit of Phoenix pay problems, to get a better understanding of causes and responses.

We did not examine events leading to the centralization of pay advisors, other than expected efficiencies to be achieved from the centralization, or the events after Phoenix was implemented, other than referring to findings from our report on Phoenix pay problems.

Criteria

To determine whether Public Services and Procurement Canada effectively and efficiently managed the delivery of the Phoenix project, we used the following criteria:

Criteria	Sources
<p>Key Phoenix decisions by Public Services and Procurement Canada are based on project management principles that consider impacts on the realization of expected project outcomes and on pay operations of line departments and agencies.</p>	<ul style="list-style-type: none"> • Pay Disbursement Administrative Services Order, 2011 • Policy on the Management of Projects, Treasury Board • Policy on the Management of Major Crown Projects (rescinded 1 April 2012), Treasury Board • Policy on Government Security, Treasury Board • Policy on Privacy Protection, Treasury Board • Policy on Learning, Training, and Development, Treasury Board • Policy on Management of Information Technology, Treasury Board • National Project Management System methodology, Public Services and Procurement Canada • A Guide to the Project Management Body of Knowledge, Project Management Institute • Operational Security Standard: Management of Information Technology Security, Treasury Board • IT Security Risk Management: A Lifecycle Approach, Guideline ITSG-33, Communications Security Establishment Canada
<p>Public Services and Procurement Canada develops and communicates changes to the Government of Canada pay processes and systems resulting from the Phoenix project to line departments and agencies, and provides requisite support, tools, and training.</p>	<ul style="list-style-type: none"> • Pay Disbursement Administrative Services Order, 2011 • Policy on the Management of Projects, Treasury Board • Policy on the Management of Major Crown Projects (rescinded 1 April 2012), Treasury Board • Policy on Learning, Training, and Development, Treasury Board • A Guide to the Project Management Body of Knowledge, Project Management Institute

Period covered by the audit

The audit covered the period between 1 April 2008 and 21 April 2016. This is the period to which the audit conclusion applies. However, to gain a more complete understanding of the subject matter of the audit, we also examined certain matters that preceded the starting date of this period and followed the ending date of this period.

Date of the report

We obtained sufficient and appropriate audit evidence on which to base our conclusion on 9 March 2018, in Ottawa, Canada.

Audit team

Principal: Jean Goulet

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Acknowledgement

We would like to acknowledge the contribution of Nancy Cheng, Assistant Auditor General, to the production of this report.

List of Recommendations

The following table lists the recommendations and responses found in this report. The paragraph number preceding the recommendation indicates the location of the recommendation in the report, and the numbers in parentheses indicate the location of the related discussion.

Managing the development of Phoenix

Recommendation	Response
<p>1.48 For government-wide information technology projects under its responsibility, Public Services and Procurement Canada should ensure the following:</p> <ul style="list-style-type: none">• Its project managers understand and communicate to concerned stakeholders the impacts of any changes to functionality, including any impacts of the cumulative effect of all changes.• The project complies with relevant legislative and policy requirements.• The project includes plans for keeping the software current.• The project includes a complete contingency plan. (1.30 to 1.47)	<p>The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that, for all government-wide information technology (IT) projects under its responsibility, it will seek appropriate authorities to define and assign roles and responsibilities of concerned stakeholders. This will permit the Department to measure and report on collective efforts with regard to project management and to ensure that implicated partners and stakeholders participate in, and support the assessment of, the cumulative impacts of key decisions and risk mitigations, including changes to functionality.</p> <p>The Department's National Project Management System requires compliance with legal and policy requirements related to project management. The Department will ensure that project managers understand and respect these requirements. It will also ensure that project managers understand well the requirements for preparing a stakeholder engagement plan, a formal software upgrade plan, and a comprehensive contingency plan that covers government-wide systems, processes, and impacts for all government-wide IT projects under its responsibility.</p> <p>The Department will integrate the lessons learned from Phoenix into project management practices and training and will support government-wide efforts to strengthen the capacity of the project management community.</p>

Recommendation	Response
<p>1.61 For government-wide projects under its responsibility, Public Services and Procurement Canada should</p> <ul style="list-style-type: none"> • ensure that requirements to move to a new system are defined and implemented with the active participation of all concerned departments and agencies, and • ensure that all concerned departments and agencies are consulted and actively participate in the project's design and testing. (1.53 to 1.60) 	<p>The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that for all government-wide information technology projects under its responsibility, it seeks authority to do the following:</p> <ul style="list-style-type: none"> • Clearly define, in consultation with concerned departments and agencies, the roles and responsibilities of Public Services and Procurement Canada as the lead organization and of concerned departments and agencies, as well as of the Treasury Board of Canada Secretariat. Such authorities will ensure active participation and collaboration of concerned departments and agencies and the Secretariat in defining business requirements and designing and testing any new system. Such authorities will also ensure implementation of requirements related to change management, departmental readiness, data quality, and revised business and technical processes and controls. • Develop a performance measurement framework that measures the effective discharge of the assigned roles and responsibilities of the lead organization, concerned departments and agencies, and the Treasury Board of Canada Secretariat. • Independently validate the performance of the lead organization, concerned departments and agencies, and the Treasury Board of Canada Secretariat, and report the results of performance to a government-wide deputy head oversight committee. • In accordance with established authorities, in conjunction with the Treasury Board of Canada Secretariat, take appropriate action where performance is lacking.

Deciding to implement Phoenix

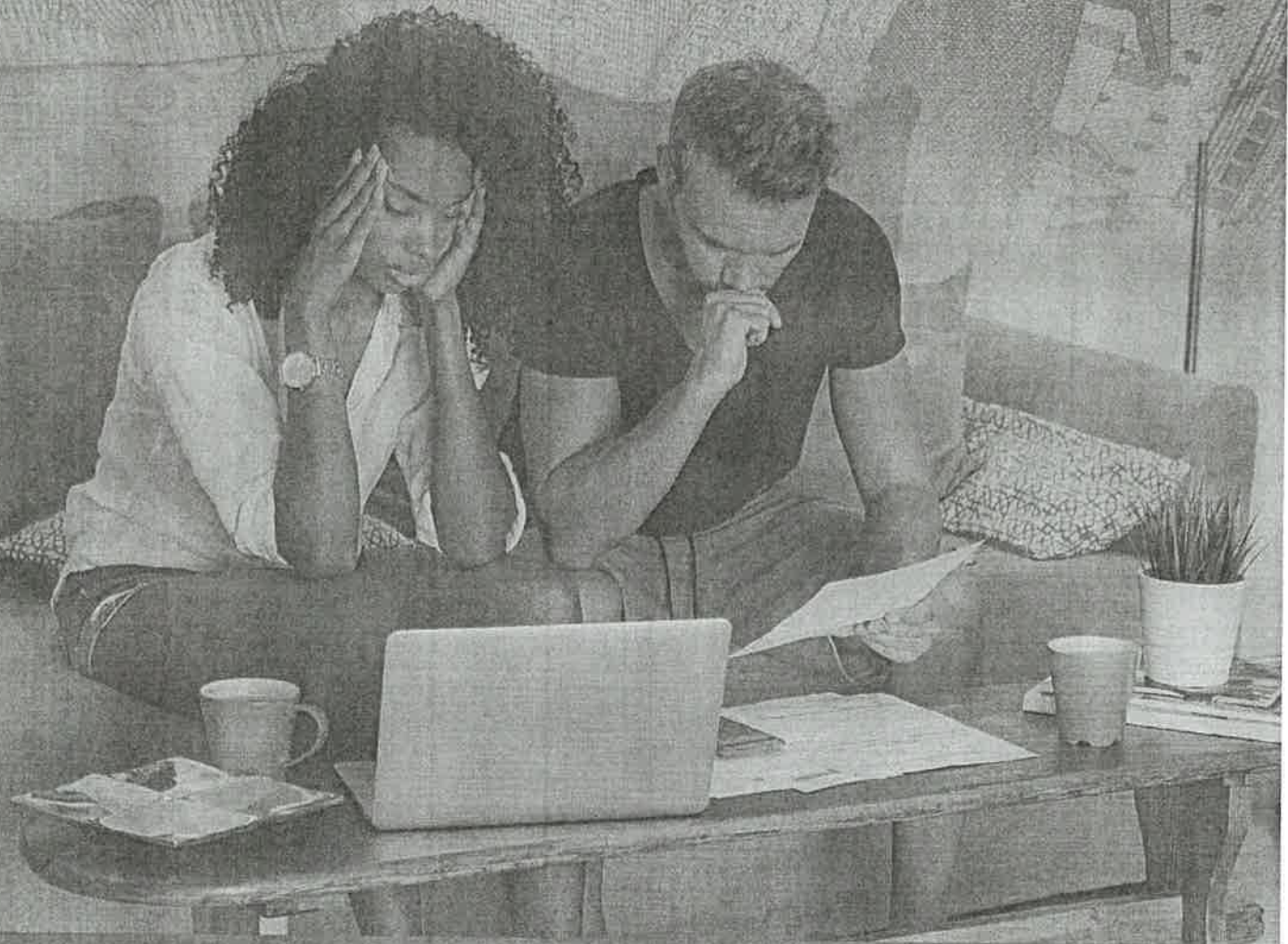
Recommendation	Response
<p>1.83 For all government-wide information technology projects, the Treasury Board of Canada Secretariat should</p> <ul style="list-style-type: none"> • carry out mandatory independent reviews of the project's key decisions to proceed or not, and • inform the project's responsible Deputy Minister and senior executives of the reviews' conclusions. (1.67 to 1.82) 	<p>The Secretariat's response. Agreed. The Treasury Board of Canada Secretariat will ensure that independent reviews of projects' key decision points are completed for all government-wide information technology projects. The Secretariat will also inform projects' accountable deputy ministers and senior executives of the reviews' conclusions.</p>
<p>1.103 For all government-wide information technology projects under its responsibility, Public Services and Procurement Canada should ensure that an effective oversight mechanism is in place, is documented, and is maintained. The mechanism should first be approved by the Treasury Board of Canada Secretariat and should include the heads of concerned departments and agencies. (1.88 to 1.102)</p>	<p>The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that for all government-wide information technology (IT) projects under its responsibility, it will put in place, document, and maintain an effective oversight mechanism approved by the Treasury Board of Canada Secretariat. The mechanism's membership will include the Secretariat and representation from a selected group of deputy heads of concerned departments and agencies. Terms of reference approved by the Secretariat and the Department, in consultation with the Privy Council Office, will clarify the roles and responsibilities of the oversight committee participants in regard to the government-wide IT projects and to colleague deputy heads of departments and agencies not specifically represented on the committee.</p>

Recommendation	Response
<p>1.104 For all government-wide information technology projects under its responsibility, Public Services and Procurement Canada should ensure that its internal audit function provides the Deputy Minister with assurances regarding the projects' governance, oversight, and management. (1.88 to 1.102)</p>	<p>The Department's response. Agreed. Moving forward, Public Services and Procurement Canada will ensure that the internal audit function provides the Deputy Minister with the appropriate assurances regarding project governance, oversight, and management of government-wide IT projects under the Department's responsibility. The Department will accomplish this by working with other internal audit functions of concerned departments and agencies to develop an audit strategy that will provide a holistic view of project governance, oversight, and management risks.</p> <p>The Department will support government-wide initiatives to strengthen the capacity of the internal audit community, to provide assurance regarding major transformation initiatives.</p>

THE PHOENIX

PAY PROBLEM

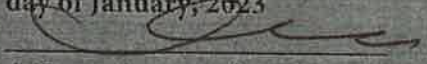
WORKING TOWARD A SOLUTION



Report of the Standing Senate Committee
on National Finance

The Honourable Percy Mockler, Chair
The Honourable Mobina S.B. Jaffer, Deputy Chair
The Honourable André Pratte, Deputy Chair

This is Exhibit "J" to the Affidavit of
RENÉE DELORME sworn before this **13**
day of January, 2023


A Commissioner for Oaths in and for the
Province of Alberta

JULY 2018

For more information please contact us:

by email: NFFN@sen.parl.gc.ca

by mail: The Standing Senate Committee on National Finance
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The Committee Membership

The Honourable Senators:



*Percy Mockler,
Chair



*Mobina S.B. Jaffer,
Deputy Chair



*André Pratte,
Deputy Chair



Raynell Andreychuk



Doug Black



Anne C. Cools



Joseph Day



Marty Deacon



Nicole Eaton



Elizabeth Marshall



Lucie Moncion



Richard Neufeld

*Member of the Subcommittee on Agenda and Procedure

Ex-officio members of the committee:

The Honourable Senators Peter Harder, P.C. (or Diane Bellemare or Grant Mitchell), Larry W. Smith (or Yonah Martin), Joseph A. Day (or Terry M. Mercer), Yuen Pau Woo (or Raymonde Saint-Germain)

Other senators who have participated from time to time in this study:

The Honourable Senators Pierre J. Dalphond and Éric Forest

Parliamentary Information and Research Service, Library of Parliament:

Sylvain Fleury and Alex Smith, Analysts

Senate Committees Directorate:

Gaëtane Lemay, Committee Clerk

Louise Martel, Administrative Assistant

Senate Communications Directorate:

Marcy Galipeau, Head, Strategic Communications

Josiane St-Amour, Graphic Designer

Order of Reference

Extract from the *Journals of the Senate*, Wednesday, January 27, 2016:

The Honourable Senator Campbell moved, seconded by the Honourable Senator Ringuette:

That the Standing Senate Committee on National Finance, in accordance with rule 12-7(5), be authorized to examine such issues as may arise from time to time relating to federal estimates generally, including the public accounts, reports of the Auditor General and government finance; and

That the committee report to the Senate no later than December 31, 2017.

The question being put on the motion, it was adopted.

Charles Robert

Clerk of the Senate

Extract from the *Journals of the Senate*, Tuesday, December 5, 2017:

The Honourable Senator Mockler moved, seconded by the Honourable Senator Raine:

That, notwithstanding the order of the Senate adopted on Wednesday, January 27, 2016, the date for the final report of the Standing Senate Committee on National Finance in relation to its study on such issues as may arise from time to time relating to federal estimates generally, including the public accounts, reports of the Auditor General and government finance, be extended from December 31, 2017 to December 31, 2019.

The question being put on the motion, it was adopted.

Nicole Proulx

Clerk of the Senate

Executive Summary

As a result of the federal government's Transformation of Pay Administration Initiative, which led to the Phoenix pay system, more than half of the federal government's 290,000 public servants have experienced pay problems, causing significant anxiety, stress and hardship. Instead of realizing \$70 million in annual savings by centralizing pay operations, the government will incur approximately \$2.2 billion in unplanned expenditures. By any measure, the Phoenix pay system has been a failure.

To examine the causes of this failure, the Standing Senate Committee on National Finance held eight meetings with 28 witnesses, including the Auditor General of Canada, union representatives, departments and agencies, officials from IBM, the Minister of Public Services and Procurement and the Clerk of the Privy Council. We also made a visit to the Public Service Pay Centre office in Miramichi, New Brunswick.

In 2009, Public Services and Procurement Canada began the process of replacing the Government of Canada's outdated 40-year-old pay system with an automated, off-the-shelf commercial system. The department hired IBM to customize the system, which it called Phoenix. At the same time, the department sought to centralize pay operations at the Public Service Pay Centre. Together, these projects were known as the Transformation of Pay Administration Initiative, which had a budget of \$310 million, including \$155 million to build and implement the new payroll software. The initiative was expected to save \$70 million by eliminating 650 positions, automating pay processes, and eliminating duplicate data entry.

However, as soon as Phoenix was launched in early 2016, problems arose, which continued to compound for two years after the launch, such that at the end of May 2018, the Public Service Pay Centre had a backlog of almost 600,000 pay requests. To respond to the problems, Public Services and Procurement Canada has had to hire almost 1,000 new employees and pay additional fees to IBM to make substantial changes to the software.

The causes of the failure are multiple, including, failing to manage the pay system in an integrated fashion with human resources processes, not conducting a pilot project, removing essential processing functions to stay on budget, laying off experienced compensation advisors, and implementing a pay system that wasn't ready.

We heard that some progress is being made at the Public Service Pay Centre in part by using "pods," or teams of compensation advisors to provide services to specific departments. However, we also heard that the compensation advisors do not have adequate training, and that the Phoenix pay system continues to produce numerous errors and requires regular manual intervention.

Solving the problems with the Phoenix pay system will not be easy. In our report, we make five recommendations on how the government can move toward solutions:

1. In the short term, we believe the government should support its employees by identifying priorities for processing outstanding pay requests and establishing targets for the time to process these requests.
2. The government should also assess whether it has sufficient compensation advisors and human resources staff, and whether they have adequate training.

3. To ensure continued accountability and transparency, the government should report annually on the costs associated with the Phoenix pay system.
4. In the medium term, the government should examine whether departments with complex pay requirements, such as shift work, might be better served by alternative solutions, rather than a centralized pay system.
5. In the longer term, the government should explain to Parliament the options it is considering to replace Phoenix, the costs of these options, and how it intends to avoid repeating the mistakes of the Phoenix pay system.

Lastly, and most importantly, we are dismayed that this project proceeded with minimal independent oversight, including from central agencies, and that no one has accepted responsibility for the failure of Phoenix or has been held to account. We believe that there is an underlying cultural problem that needs to be addressed. The government needs to move away from a culture that plays down bad news and avoids responsibility, to one that encourages employee engagement, feedback and collaboration.

Recommendations

Recommendation 1

That Public Services and Procurement Canada identify priorities for processing outstanding pay requests and that it establish targets for the time to process these requests.

Recommendation 2

That the government reassess the adequacy of training provided to compensation advisors, human resources staff, and public servants, as well as its staffing levels for compensation advisors and human resources staff.

Recommendation 3

That the Treasury Board of Canada Secretariat annually provide Parliament in its departmental results report the government's total costs associated with the Phoenix pay system.

Recommendation 4

That Public Services and Procurement Canada explore the possibility of alternative pay solutions for departments and agencies whose complex pay rules make the use of Phoenix difficult.

Recommendation 5

That, before embarking on a future pay transformation initiative, Public Services and Procurement Canada submit a report to Parliament outlining the options to replace Phoenix, including the costs of each option, examining the expected impact on employees, as well as setting out the monitoring and project management measures that would be put in place to avoid repeating the mistakes of the Phoenix pay system.

Introduction

The federal government has more than 290,000 employees requiring compensation in 101 departments and agencies, leading to \$22 billion in annual payroll expenditures. With 105 collective agreements and work contracts incorporating 80,000 pay rules, any attempt to reform the government's pay system was going to be complicated. However, no one expected the Transformation of Pay Administration Initiative, which involved developing the Phoenix pay system and centralizing pay administration, to go so poorly.

More than two years after the implementation of the Phoenix pay system, Canada's federal public servants continue to experience pay-related problems that all too often have major repercussions. Moreover, the situation has gotten worse since the launch of Phoenix in February 2016 and, despite spending nearly \$1 billion (Figure 1), the federal government has yet to find a definitive solution. According to Public Services and Procurement Canada (PSPC), as of 30 May 2018, there were 596,000 outstanding pay action requests.

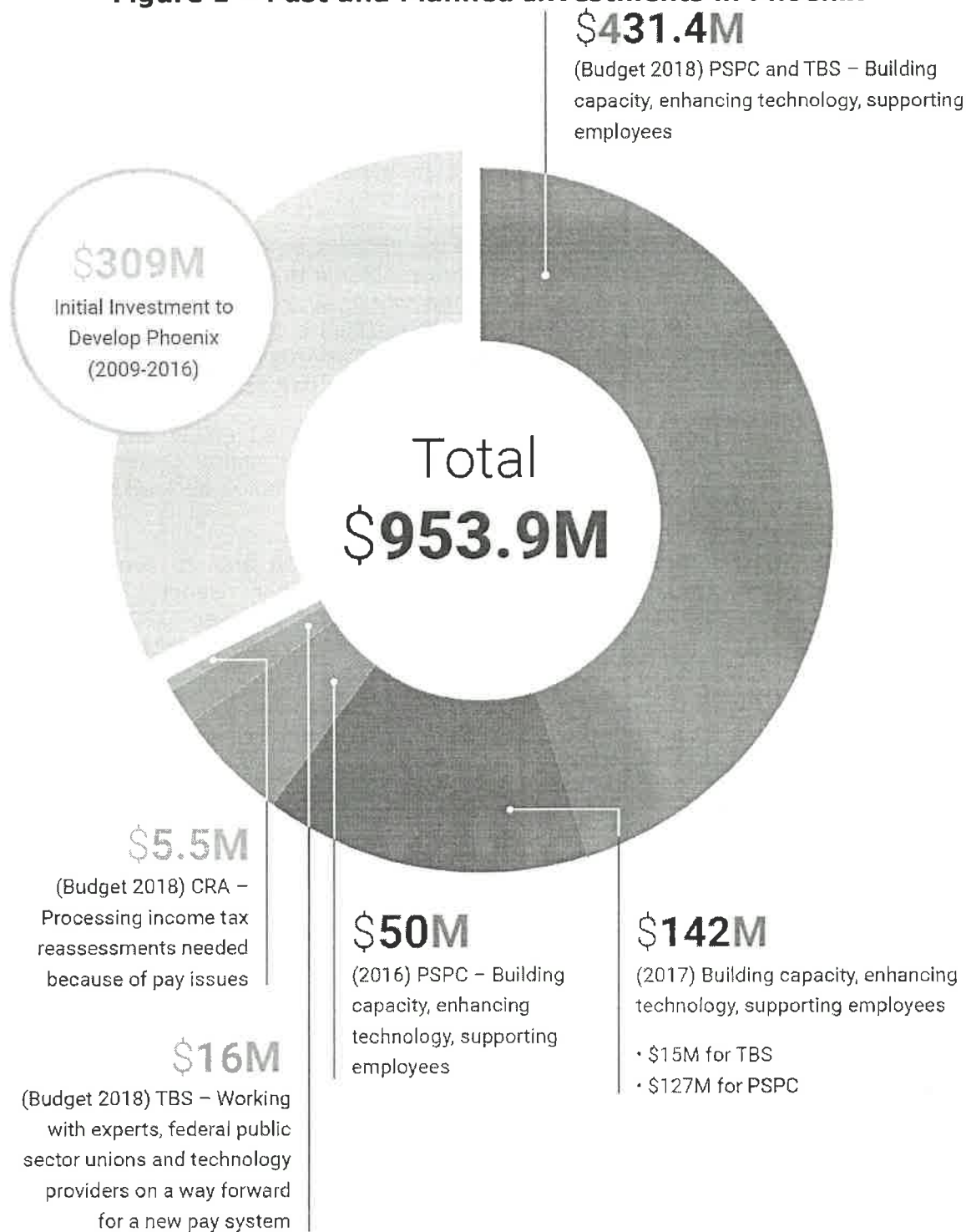
Touched by the many stories of employees who have been adversely affected by the Phoenix pay system and following the first of two reports by the Auditor General of Canada on the matter, the Standing Senate Committee on National Finance decided to study the issue further.

Over the course of eight meetings between 31 January 2018 and 20 June 2018, our committee met with 28 witnesses, including the Auditor General of Canada, representatives of three labour organizations representing over 200,000 federal government employees, officials from the Treasury Board of Canada Secretariat and PSPC, and representatives from Goss Gilroy Inc. and IBM Inc. On 7 May 2018 our committee sent a delegation of four senators to the Public Service Pay Centre office in Miramichi, New Brunswick on a fact-finding mission. The primary purpose of the visit was to meet with Pay Centre employees to hear their views.

Our committee thanks the many people who took the time and made the effort to appear before it. And special thanks to the employees at the Miramichi Pay Centre who generously shared their experiences. Their testimony is invaluable. Our committee now has a better understanding of the problems surrounding the implementation of Phoenix and its impact.

In this report, our committee looks at the development of the Phoenix pay system, summarizes the various views and concerns it heard and makes recommendations to help the government fix the Phoenix pay problems.

Figure 1 – Past and Planned Investments in Phoenix



Source: Figure prepared using data from Public Services and Procurement Canada, Investments in Phoenix.

Why replace the public service pay system?

Compensation is a core element of human resources management. Employees expect to be paid the right amount at the right time by their employer. The compensation of approximately 290,000 federal employees is complex. The federal public service is governed by more than 105 collective agreements with more than 80,000 pay rules.¹ The Government of Canada's pay system, under the responsibility of PSPC, distributes approximately \$22 billion in pay each year, making it the largest payroll administrator in Canada.²

In 2007, many public servants complained about long delays in processing their pay, which was then handled by the 40-year-old Regional Pay System. That same year, Public Works and Government Services Canada stated in its Departmental Performance Report that:

"Today's pay and pension systems use outdated technology and rely on the expertise of staff due to retire in the next few years. The business processes are complex and heavily dependent on manual intervention."³

***Public Works and Government Services Canada,
Departmental Performance Report, 2006–2007***

Furthermore, in May 2008, the House of Commons Standing Committee on Government Operations and Estimates recommended that "the government actively support Public Works and Government Services Canada's Compensation Modernization Initiative by providing the Department with the required resources and by setting a timetable with measurable objectives."⁴

In these circumstances, and faced with the clearly aging technological infrastructure of its pay system, the government decided to develop an action plan to upgrade its pay system and improve its efficiency.

¹ Office of the Auditor General of Canada, *Phoenix Pay Problems*, Report 1, 2017 Fall Reports of the Auditor General of Canada.

² Office of the Auditor General of Canada, *Building and Implementing the Phoenix Pay System*, Report 1, 2018 Spring Reports of the Auditor General of Canada.

³ Public Works and Government Services Canada, *Departmental Performance Report, 2006–2007*.

⁴ Report of the Standing Committee on Government Operations and Estimates, *The Right Pay for Valuable Employees*, May 2008.

The steps that led to building Phoenix

In **2009**, the Government of Canada started the pay transformation process for its 290,000 employees in 101 departments and agencies. Since the beginning, PSPC has been responsible for this initiative, which had two goals:

- replacing the pay system used by all departments and agencies with a more automated system; and
- centralizing pay operations for 46 departments and agencies employing nearly 70% of federal employees.

The initiative had a budget of \$310 million, including \$155 million to build and implement the new payroll software.

PSPC chose a PeopleSoft commercial pay software, which was to be customized to meet the government's specific needs. PSPC called this system "Phoenix." In **June 2011**, after a public competition, PSPC awarded a contract to IBM to help it design, customize, integrate and implement the new software to replace the government's old pay system. Sandy Moir, a partner at Goss Gilroy, which conducted an evaluation of the pay transformation initiative, explained why IBM was the only bidder.

"The Government of Canada ... had already decided they wanted to go with PeopleSoft. It wasn't IBM that suggested it. They were looking for a system integrator that could implement PeopleSoft in the Government of Canada in the following ways. I believe the bidding community considered the requirements, considered the ask and simply felt that they didn't want to undertake the project."⁵

Sandy Moir, Partner, Goss Gilroy Inc.

In **May 2012**, PSPC began to centralize pay advisors for 46 departments and agencies in the new Public Service Pay Centre in Miramichi, New Brunswick. At that time, 146 temporary employees in the Miramichi Mall began delivering pay services using the Regional Pay System.

⁵ Evidence, 27 March 2018.

By **early 2016**, 1,200 pay advisor positions in 46 departments and agencies were eliminated and replaced with 460 pay advisors and 90 support staff at the Miramichi Pay Centre.

Approximately 800 pay advisors in the other 55 departments and agencies kept their jobs and continued to enter pay information for their own employees in the new Phoenix pay system.

The government expected the initiative to save about \$70 million a year, starting in the 2016–2017 fiscal year, by:

- eliminating about 650 positions, mainly pay advisors;
- automating many manual pay processes; and
- eliminating duplicate data entry and processing.⁶

Problems with Phoenix

In February 2016, 34 departments and agencies were transferred to Phoenix. Despite many problems and warnings from employees and unions, 67 departments were added in April 2016. In his testimony before our committee, Michael Ferguson, the Auditor General of Canada, said that the Phoenix problems became apparent as soon as the pay system was launched in February 2016, and the situation has only gotten worse.⁷

As Figure 2 shows, shortly before the implementation of Phoenix on 31 January 2016, 95,589 pay actions were pending at the Pay Centre, which is more than double the number of the previous year. According to the Auditor General of Canada, as departments and agencies transferred their pay files and related requests to the Pay Centre, the number of pending transactions increased exponentially.

Jean Goulet, Principal at the Office of the Auditor General of Canada, believes that the problem lies with the lack of experience, expertise and training of the 460 pay advisors at the Miramichi Pay Centre. According to him, very few of the 1,200 pay advisors who were given notice agreed to work in Miramichi. The government therefore had to hire many employees with little experience.

During our committee's visit to the Pay Centre, employees explained that the pay files that were transferred to the Centre were often incomplete, which caused many problems for Pay Centre staff and additional delays in processing the pay transactions of affected employees.

According to the Auditor General of Canada's report, as of 30 June 2017, the number of public servants with an outstanding pay request had quadrupled to 152,517 and pay action requests had increased fivefold to 494,534 (see figure 2).⁸ Yet the Public Service Pay Centre Dashboard for the same period shows that 326,000 outstanding transactions were reported. The Auditor General noted that the number of pending pay action requests was approximately 29% higher than the number reported by PSPC.

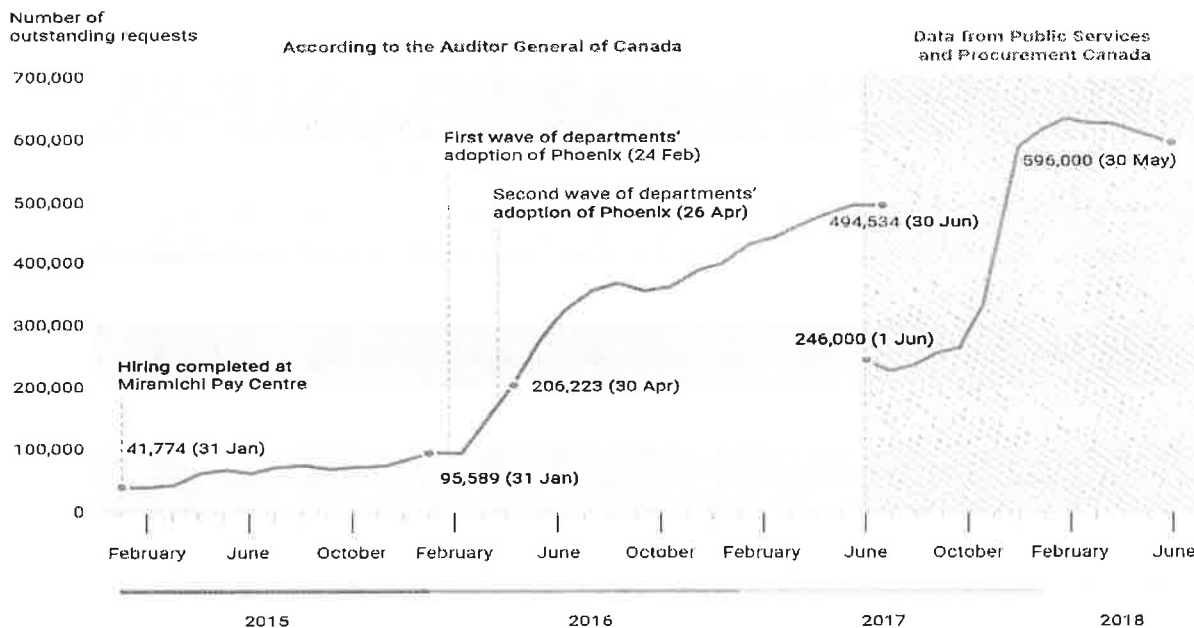
⁶ Office of the Auditor General of Canada. *Report 1 — Phoenix Pay Problems*.

⁷ Evidence, 31 January 2018.

⁸ Office of the Auditor General of Canada. *Report 1 — Phoenix Pay Problems*.

This statement is not surprising. During the Pay Centre visit, employees told our committee that thousands of transactions were not reported on the Public Service Pay Centre dashboard. Some Pay Centre employees went as far to say that more than 90% of the pay generated by Phoenix contained at least one error.

Figure 2 – Number of outstanding pay action requests at the Public Service Pay Centre from January 2015 to May 2018



Source: Graph prepared using data from the Office of the Auditor General of Canada, *Report 1 — Phoenix Pay Problems* and Public Services and Procurement Canada, *Public Service Pay Centre Dashboard*, May 2018.

According to the Office of the Auditor General of Canada, in June 2017 there were over \$520 million in outstanding pay for public servants due to errors. This amount included:

- \$228 million owed by the government to 51,000 public servants who were underpaid; and
- \$295 million owed to the government by 59,000 public servants who were overpaid.⁹

The audit also found that even though PSPC said it would prioritize pay requests with high financial impact (\$100 or more), at the end of the audit, more than half of the outstanding pay requests were high-value and the proportion was increasing.

Our committee found that the situation continued to get worse for a long time after the completion of the audit on 30 June 2017. As of 24 January 2018, 633,000 pay action

⁹ Ibid.

requests were pending, representing a 28% increase. Encouragingly, PSPC has since been able to gradually reduce this number to 596,000 as of 30 May 2018.

We noted that the Pay Centre processed 11,000 more pay transactions than it received during two pay periods in May and 37,000 over the last four months in total.¹⁰ At that pace, it would take a little more than five years and four months to process all currently pending transactions.

The experience of departments

To better understand how departments responded to problems with the Phoenix pay system, we heard from one department that was served by the Public Service Pay Centre, Correctional Service Canada, and another department that retained its in-house compensation advisors, Statistics Canada.

A. Correctional Service Canada

According to Nick Fabiano, Acting Assistant Commissioner, Correctional Service Canada Human Resources Management, the implementation of Phoenix has had a significant negative impact on his organization. The challenges encountered since the implementation of the Phoenix pay system are multiple and in order to reduce the financial burden on employees, a hundred emergency salary advances and priority payments are paid by Correctional Service Canada at each pay period. More than 12,000 of the department's 18,000 employees have an open file in the Pay Centre, many of which are related to pay problems. At the time of his testimony, Mr. Fabiano stated that the situation was not improving.

Errors are not being corrected, because the pay system was not programmed to support data on shifts, flexible schedules, isolation allowances and overtime. In addition, Correctional Service Canada laid off all its compensation employees just as pay services were being transferred to the Miramichi Pay Centre. Given the complexity of the department's pay requirements, more than two-thirds of employees were paid incorrectly.

B. Statistics Canada

Statistics Canada has retained its compensation advisors and, according to its officials, the agency has been able to mitigate the problems associated with Phoenix.

According to Monia Lahaie, Assistant Chief Statistician, Corporate Services and Chief Financial Officer at Statistics Canada, 20% of Statistics Canada's 7,500 employees have had a payroll problem and this number is declining. She said that one of the reasons for this good relative performance is that the organization has retained its compensation advisor teams in six regional offices to process pay transactions and assist employees. These teams have an in-depth knowledge of payroll, which has allowed the organization to

¹⁰ *Public Service Pay Centre dashboard*, 30 May 2018.

adapt better than other government organizations, despite the fact that its work force is represented by five unions and 11 collective agreements.

Launch of Phoenix

The launch of Phoenix was planned in two stages, in October 2015 and December 2015.

Beth Bell, Vice President and Partner, Canadian Public Sector Leader, IBM Services, said that around July or August 2015, IBM told the government that it was not sure IBM could make the October 2015 and December 2015 timelines for launching Phoenix in two stages. IBM pushed for a launch nine months later, in July 2016 and August 2016, based on the volume of work and changes that still had to be done.

Regan Watts, Head Innovation, Citizenship and Government Affairs, IBM Canada, said that despite IBM's warnings, government managers needed everything implemented by April 2016 at the latest because pay advisors had already been given their notices. He said that IBM representatives had tried to warn the government as late as January or February 2016 that neither the software nor the pay transformation process was ready.¹¹

Chris Aylward, National President, Public Service Alliance of Canada, corroborated Mr. Watts' testimony by explaining that:

Miramichi employees at the time, before the system was deployed, said, "The system is not ready; it will not work. Officials from Public Works and Government Services Canada then simply said, "Yes, it will work. We believe that it will work." The Miramichi employees were right.¹²

In response to departments' and agencies' concerns about Phoenix, the Treasury Board of Canada Secretariat hired an information technology consulting company, Gartner, to assess Phoenix's readiness. In its report, delivered in February 2016, Gartner concluded that Phoenix might not be able to pay employees accurately and on time because the system had not been fully tested and defects might not be corrected before implementation. Gartner recommended that Phoenix be gradually implemented and that the old system be maintained in case anything went wrong with Phoenix. In its audit, the Office of the Auditor General of Canada found that the Secretariat provided PSPC with the Gartner report, but PSPC officials did not consider the report's findings and recommendations before Phoenix was implemented.

The Honourable Carla Qualtrough, Minister of Public Services and Procurement argued that the government did not have a choice and had to move forward with the Phoenix pay system, since there was no longer sufficient people to manage the old system. She said:

Two things happened when our government was faced with Phoenix in early 2016. First of all, we were advised by officials that Phoenix was ready to go and so we confidently moved ahead. The other reality was that it really was not a matter of staying with the existing system or moving to Phoenix. There quite

¹¹ Evidence, 28 March 2018.

¹² Evidence, 7 February 2018.

frankly was not an existing system to stay with. We didn't have people to run the system.¹³

According to Jean Goulet, Principal at the Office of the Auditor General of Canada, the old system continued to operate until April 2016 for departments that did not deploy the Phoenix pay system in February 2016. He said that, "If there had been a catastrophic failure early in Phoenix, the eventuality was to go back to the old system. I guess for a while it might have been possible to do that, but we have not checked that part."¹⁴

What happened?

Representatives from Goss Gilroy, who evaluated the pay transformation initiative for the government, concluded that the initiative had not taken into account the vast scope of the transformation, which was not simply a software replacement or a relocation of employees but was a complete reworking of a complex pay system. Many witnesses, including labour organizations, pointed out that the government did not understand what pay advisors did on a daily basis.

When asked about the performance of IBM, Jim Alexander, an associate at Goss Gilroy, said that after looking at the various documents and talking to stakeholders, it was clear that the government had spent many years developing extremely detailed requirements that specified exactly what a private sector company should do if it won the contract. In his view, IBM did precisely what the government specified, responding to multiple requests for changes throughout the length of the contract.

According to the Auditor General, Phoenix was an incomprehensible failure of project management and oversight, which led to the decision to deploy a system that was not ready.¹⁵ He believes the decision by Phoenix officials to implement Phoenix was unreasonable according to the information available at the time, and the Treasury Board approved a project that didn't have robust oversight mechanisms built into it. According to him, to meet the project budget and timeline, Phoenix officials decided to remove critical functions, scale back testing and cancel a pilot project.

In addition, the Auditor General of Canada noted that Phoenix officials ignored clear signs that the Miramichi Pay Centre was not ready to handle the volume of pay transactions, that departments and agencies were not ready to move to the new system, and that Phoenix was not ready to correctly process the pay of federal employees.¹⁶

Moreover, officials did not provide complete and accurate information to deputy ministers and associate deputy ministers of departments and agencies, including the Deputy Minister of Public Services and Procurement, when briefing them on Phoenix readiness for implementation.¹⁷

¹³ Evidence, 21 March 2018.

¹⁴ Evidence, 12 June 2018.

¹⁵ Evidence, 12 June 2018.

¹⁶ Ibid.

¹⁷ Ibid.

Impact on public sector employees

While our committee did not have the opportunity to meet directly with employees affected by Phoenix problems, Greg Phillips, National President of the Canadian Association of Professional Employees, described two of the many cases faced by his members.

One employee was on long-term disability following an accident, trying to recover and return to work. During her five months of leave, her pay was sporadic. For her first two months back at work she received no pay. Over the following eight months, her pay resumed, but the amounts were inconsistent. She received sudden lump sum payments and then periods without pay. She requested a revised T4 income tax slip but didn't get one, and had to pay taxes on the gross amount of pay. Throughout all of this, she received numerous requests to return overpayments.

Another employee experienced problems during the birth of his child. First, he had problems obtaining a record of employment, which is required for Employment Insurance during parental leave. Then, while on leave, he reported being overpaid. As a result, he went entire pay periods without getting paid. Five months after going on parental leave, the employee received all the necessary documents. Yet, while he was trying to obtain emergency salary advances, he was also asked to refund overpayments. He spent 15 months trying to fix the resulting financial mess.

Mr. Phillips commented that other members who are also experiencing stressful life changes have had the added anxiety of not knowing when their next pay cheque will arrive. He said, "life doesn't take a break just because your employer can't pay you on time."¹⁸

He added that Phoenix problems have affected Canadians because public servants have cut back on their charitable donations, and their financial insecurity has a negative impact on Canada's economy.

Minister Qualtrough told our committee that there is no greater priority for her than fixing Phoenix: "It is completely unacceptable that our hard-working public servants are not being paid properly. Every day, I hear stories of hardship, anxiety and stress caused by the failings of our pay system."¹⁹

The fact remains, however, that union representatives are still very concerned about the many stories of their members who are struggling to pay their bills, rent and mortgages due to Phoenix problems. Unions have filed numerous grievances and are also trying to resolve some cases through unofficial mechanisms, not to mention the many members who are trying to solve their own problems.

Income tax returns affected

Under current legislation, an employee who receives an overpayment is required to repay their employer the amount of gross pay shown on their paycheque rather than the actual

¹⁸ Evidence, 7 February 2018.

¹⁹ Ibid.

net pay received, if the repayment is made in the following tax year. The employee would recover the difference, including income taxes and other pay deductions, when filing their income tax return with the Canada Revenue Agency.

To help public servants avoid having to repay gross amounts, PSPC representatives expressed confidence that the department would be able to issue error-free T4 income tax slips to employees who reported their overpayments to the government no later than 19 January 2018.

However, union representatives remained concerned because they believe that not all affected employees were able, despite their best efforts, to contact the government's call centres and report overpayments. Even for those who managed to report an overpayment, union representatives believe that the government will not be able to process all these changes in time, penalizing thousands of workers who have done everything right.

According to information provided by PSPC, more than 12,165 pay actions involving overpayments were pending as of 24 January 2018.

Visit to the Miramichi Pay Centre

Our committee decided to continue its work by sending a delegation of four senators on a fact-finding mission to the Public Service Pay Centre office in Miramichi, New Brunswick. The primary purpose of the visit was to meet with pay advisors who work with Phoenix and hear their views where they work - on site. The testimony comes from fourteen current and former employees of the Pay Centre.

A. Employee training and supervision

One of the key messages from Pay Centre employees is that they lack training to do their jobs effectively and efficiently. All of the employees we spoke to at the Pay Centre want to see a return to 18 months of general compensation training, which was reduced to 12 months one year ago. Employees are given four days of Phoenix-specific training, which is grossly inadequate according to all the employees consulted.

A representative from a group of employees who are trained to handle simple pay transactions said that once their training is over, they are required to work on complex transactions for which they were not adequately trained.

Many employees said that their supervisors are often overworked and that they have to get by on their own for weeks, solving Phoenix problems that are too complex for them. On a more positive note, some employees said that employee supervision and support have improved over the past two years, but significant progress is still needed on many teams.

B. Morale of Pay Centre staff

According to a Government Services Union survey, as of 31 March 2017, close to 56% of the Pay Centre employees consulted have seen their family doctor because of work-related

concerns and stress and 80% of them are concerned about the mental health of their colleagues.²⁰ The employees spoken with at the Pay Centre want to make a difference and care about their work, but they are often discouraged by the sheer magnitude and difficulty of the task at hand.

While overtime is not mandatory for Pay Centre pay advisors, some said they feel obligated to do overtime in order to help federal employees with Phoenix problems as quickly as possible.

Employees told us that they appreciated having mental health professionals on site every day. On a positive note, some employees said that employee morale has increased while absenteeism and mental health problems have decreased in the last six months. They also said that the availability of additional technical tools and training opportunities have helped improve morale. However, several employees consulted say the situation continues to be a concern.

C. Technical problems reported by Pay Centre staff

Pay Centre staff discussed the technical problems with Phoenix. Many employees said that Phoenix is unpredictable, as changes to the system are often made without them being informed, meaning that solutions to pay system problems can change from one day to the next, without warning.

The main technical problems raised by Pay Centre staff include:

- thousands of outstanding pay transactions are not catalogued or accounted for in the Public Service Dashboard;
- thousands of pay transactions are overlooked and closed in batches without having been processed;
- thousands of pay transactions are not seen by a supervisor and instead accepted as is in batches;
- numerous technical problems related to automated procedures triggered by Phoenix are not resolved and impede progress;
- many employees have permission to override Phoenix's automated procedures, which poses a risk to the security of the pay system; and
- Phoenix sometimes generates multiple pays for some employees; for example, we were informed that a paycheque for \$3.5 million was generated by Phoenix, but it was intercepted before the payment was issued. Pay Centre employees refer to it as "the Phoenix Lottery."

Moreover, the employees consulted were especially concerned about the inability of Phoenix to process the pay of the following employee groups, who sometimes have to wait months to be paid:

²⁰ This survey, completed by 199 employees, was given to our committee by employees from the Public Service Alliance of Canada.

- Health Canada nurses, especially those working in remote regions;
- Canadian Coast Guard officers;
- National Defence firefighters; and
- Correctional Service Canada officers.

D. Pod Project

Based on recommendations from employees, the Pay Centre undertook a pilot project of "pods," which are teams of compensation advisors assigned to specific departments, rather than certain types of transactions. Based on a successful pilot project of 25 pay advisors serving a total of 10,000 employees of three organizations, the pod or "joint compensation team" approach will be rolled out for all of the Pay Centre's 46 client departments by July 2019.

According to several employees, efficiency gains are expected from this approach since Pay Centre staff will be very familiar with departments' specific pay problems and will be able to cooperate more effectively with human resources employees in the departments, which should increase the quality of pay information.

Based on the pod approach, priority is given whenever possible to processing pay transactions in the period in which the underlying event occurred to ensure the most effective use of resources. Employees stated that this process will increase their productivity because it is easier to use Phoenix for current pay transactions.

E. Solutions proposed by Pay Centre staff

All the employees who were consulted agree that Pay Centre managers should listen to employees more in order to maximize the chances of identifying and correcting technical problems in Phoenix. Many employees said that communication and collaboration between departmental human resources staff and Pay Centre staff should be encouraged. They believe this would ensure the quality of data entered in Phoenix and save time for everyone involved.

Many employees said that the government should standardize pay-related human resources processes and educate departments about the importance of entering correct pay information in a timely manner. This would significantly reduce the workload of Pay Centre employees.

F. Scrap or keep Phoenix?

There was a lack of consensus among Pay Centre employees on whether to keep Phoenix.

Some employees consulted believe that Phoenix should be scrapped, since it causes too many errors and requires too much manual intervention for pay prior to the current period. However, some employees believe that Phoenix could be kept for departments with simpler compensation models as long as the work of human resources employees is integrated into that of the Pay Centre and by providing all staff with proper training.

Other employees believe that the government should resolve the problems with Phoenix, as the system provides interesting opportunities; processing routine pay transactions is four times faster with Phoenix.

Culture of the public service

The rules, processes and procedures in place to ensure proper project management and oversight of the pay modernization project appear to have failed. Additionally, despite warnings from employees, unions, departments and agencies, IBM, and the Gartner report, the government implemented the Phoenix pay system.

In his message accompanying the Spring 2018 reports, the Auditor General of Canada said the failure of Phoenix lies, in part, in the culture of the public service that tries to eliminate risks and mistakes, and avoids responsibility when mistakes occur. He said the public service's ability to convey hard truths has eroded, as has the willingness of ministers to hear them. He asked:

"How could Phoenix have failed so thoroughly in a system that has a management accountability framework; risk management policies; program evaluations; internal audit groups; departmental audit committees; accounting officers; departmental plans; departmental performance reports; pay-for-performance compensation; and audits by the Office of the Auditor General?"²¹

Michael Ferguson, Auditor General of Canada

The Auditor General's observations were confirmed by the Goss Gilroy report, which noted, "In a culture where errors and failure are not tolerated, learning and innovation are stunted and with this the agility to respond to a complex and changing transformation agenda."²²

²¹ Auditor General of Canada, *Message from the Auditor General of Canada*, 2018 Spring Reports of the Auditor General of Canada, May 2018.

²² Goss Gilroy Inc., *Lessons Learned from the Transformation Pay Administration Initiative*, July 2017.

Michael Wernick, Clerk of the Privy Council told our committee that the Auditor General of Canada's "opinion piece" unfairly and inaccurately characterized the culture of the entire public service, which Mr. Wernick believes is one of the best in the world.²³

Peter Wallace, Secretary of the Treasury Board, acknowledged that some controls were not implemented, and may have even been stepped around, in the management of Phoenix. He said it is important to live the values and not just have procedural checkboxes.²⁴

Notwithstanding our agreement with Mr. Wernick's positive comments about the public service as a whole, his views don't address what went wrong with Phoenix. We are also concerned that no one from the Privy Council Office or the Treasury Board of Canada Secretariat, the government's two main central agencies, challenged the decisions of the PSPC officials who had authority for the Phoenix project, especially given the risks involved, and no one has taken responsibility or been held to account for those decisions.

Mr. Wernick said he asked deputy ministers to write to him describing the actions they are taking to help employees, and their responses are available online. He also suggested that the *Public Service Employment Act* be amended to make it easier to fire public servants. However, he did not explain how this would have affected the management of Phoenix, or outline actions he had taken, as head of the public service, to hold responsible individuals to account. We are disappointed that the Clerk did not acknowledge that there may be a cultural problem in the public service.

On the other hand, our committee was impressed by the dedication, mutual support, and engagement of the employees of the Public Service Pay Centre in Miramichi. These employees are working hard with the tools available to fix pay errors, as well as find innovative solutions to problems with the Phoenix pay system. One of the employees won an innovation award for an IT solution that enabled thousands of pending transactions to be processed more quickly. The employees said they have a sense of belonging to the Pay Centre and want to make a difference.

Next steps

Now that the Phoenix pay system has been implemented, and the errors have been made, it is time to look forward, in the short, medium and long terms.

A. Supporting Employees

The first priority in addressing the failure of the Phoenix pay system is for the government to support its employees.

Michael Walsh, who was at the forefront of fixing the problems with the Queensland Health, Australia, pay system in 2010, crystalized the importance of having a functioning payroll system.

²³ Evidence, 20 June 2018.

²⁴ Ibid.

"A payroll system in any organization is one of the fundamental relationships that exist between an employer and an employee, and that is a fair day's pay for a fair day's work. When an employer doesn't live up to its side of that relationship and provide the fair day's pay, you are undermining the fundamental relationship that exists between an employer and employee."²⁵

Michael Walsh, Director General, Queensland Health

The Phoenix pay problems have had considerable negative effects on public servants. A poll by the largest federal public service union, the Public Service Alliance of Canada, found that two-thirds of the respondents had their pay or compensation impacted by Phoenix.²⁶ Trying to fix these problems has taken hours of their time, adversely affecting mental health and work choices.

While the government has communicated general information to its employees, public servants still have no idea when their specific pay problems, among the approximately 600,000 outstanding pay transactions at the Public Service Pay Centre, will be processed.

Mr. Walsh said that one of the first things he did in Queensland was to respond to the issues raised by staff as quickly as possible, as well as meeting with staff who were affected to apologize.

The government has hired more compensation advisors, put in place new procedures and processes, and is working to improve the Phoenix pay system. But it needs to keep in mind that behind each of the reported pay problems is a personal story with someone anxiously waiting for the issue to be resolved. Given the incredible volume of problems, it is difficult to provide a timeline for the resolution of each problem, but the government needs to provide its employees with a sense of how long they need to wait for their problem to be resolved. Hence, we recommend:

RECOMMENDATION 1

That Public Services and Procurement Canada identify priorities for processing outstanding pay requests and that it establish targets for the time to process these requests.

²⁵ [Evidence](#), 28 March 2018.

²⁶ Public Service Alliance of Canada, [Phoenix: Government and PSAC surveys confirm need for damages](#).

B. Stabilizing Phoenix

Minister Qualtrough told our committee that “Our immediate goal is to stabilize the pay system to ensure pay is being provided accurately and on time.”²⁷ In a letter to the House of Commons Standing Committee on Public Accounts, Minister Qualtrough and the Honourable Scott Brison, President of the Treasury Board, outlined actions their departments have taken, and are taking, to stabilize Phoenix. The government:

- put in place an integrated HR-to-Pay governance structure and a project management office;
- undertook a root cause analysis study;
- held stakeholder forums and consulted with unions;
- provided online mandatory Phoenix training for employees and managers;
- provided more flexibility for the recovery of overpayments and the provision of emergency salary advances and priority payments;
- undertook a pilot project of pay “pods,” or groups of compensation advisors serving specific departments, which will be expanded to all departments;
- hired additional compensation advisors at the Pay Centre and satellite offices;
- moved to a fixed price, outcomes-based contract with IBM; and
- is developing standardized HR-to-pay business processes.

We appreciate the steps the government has taken to date to stabilize Phoenix, and note some encouraging signs: the backlog of pay requests is no longer growing and has diminished slightly; some pay problems, such as those affecting maternity leave, appear to have been resolved; and the pod project of dedicated teams of compensation advisors to specific departments is improving efficiency and effectiveness.

However, we continue to have concerns about the adequacy of training for compensation advisors, human resources staff and public servants generally. The employees of the Public Service Pay Centre clearly indicated to us that they needed more training. They also said that there would be fewer pay errors if the information entered into Phoenix was more accurate and timely, especially as Phoenix processes pay information much differently than the previous system. As employees enter some information directly into Phoenix, it is important that all public servants have adequate training on how to use Phoenix and enter information properly.

Also, Chris Aylward, President of the Public Service Alliance of Canada, said more compensation advisors are required to achieve and maintain a state of stability.²⁸ In his opinion, the government must adopt a robust process with appropriate resources for hiring and training compensation advisors. We heard that Queensland Health added payroll staff, from 550 to 650, to help design, build and test their new payroll system, and when problems with their system arose, they increased their payroll staff to 900.

While we are not in a position to comment on the government’s appropriate staffing levels, we believe that the government needs to reassess the adequacy of its training and staffing, especially in light of the fact that after two years, the government has yet to demonstrate that it can handle all incoming pay requests. We recommend:

²⁷ [Evidence](#), 21 March 2018.

²⁸ [Evidence](#), 7 February 2018.

RECOMMENDATION 2

That the government reassess the adequacy of training provided to compensation advisors, human resources staff, and public servants, as well as its staffing levels for compensation advisors and human resources staff.

C. Costing

In response to a recommendation from the Office of the Auditor General of Canada, the Treasury Board of Canada Secretariat prepared an estimate of the total costs associated with Phoenix.²⁹ According to the report, current capacity and existing trend lines indicate that it may take five years to stabilize Phoenix.

The report states that unplanned costs for 2016–2017 and 2017–2018 were \$361 million. Of note, according to information provided to our committee by PSPC in February 2018, the government has paid IBM \$66.8 million since February 2016.

Going forward, the unplanned costs are estimated to be \$336 million per year, as well as unplanned one-time costs of \$124 million. The largest element of this cost is \$258 million for enhanced capacity at PSPC, especially at the Public Service Pay Centre, which now has 1,455 employees. It will also include \$49 million for a pay file review and \$9.8 million per year to implement changes and enhancements to the pay system. The total unplanned costs to operate and stabilize the Phoenix pay system are estimated to be approximately \$2.2 billion, over the seven-year period of 2016–2017 to 2022–2023. This far exceeds the \$70 million of annual savings that were anticipated as a result of the Transformation of Pay Administration Initiative.

And there is no assurance that Phoenix will be stabilized within five years. We heard that after spending \$1.2 billion over eight years to resolve its pay problems, Queensland Health continued to experience issues. Jim Alexander, Associate with Goss Gilroy, said, “the rough rule of thumb is that if it takes a given number of years to create a problem, it’s going to be something similar to that to fix the problem as well.”³⁰

In order to ensure continued accountability and transparency for the costs associated with operating and stabilizing the pay system, we recommend:

RECOMMENDATION 3

That the Treasury Board of Canada Secretariat annually provide Parliament in its departmental results report the government’s total costs associated with the Phoenix pay system.

²⁹ Treasury Board of Canada Secretariat, *The Treasury Board of Canada Secretariat’s Response to the Office of the Auditor General of Canada’s Report on Phoenix Pay Problems: An Estimates of Costs to Stabilize Phoenix and Operate the Pay System*, June 2018.

³⁰ *Evidence*, 27 March 2018.

D. Interim Solutions

As the government works to stabilize Phoenix and considers options for replacing it, the government also needs to consider interim options.

Previously, pay was managed by each department and agency, with internal payroll staff making manual changes as required. Organizations with complex pay transactions, such as Correctional Service Canada, developed internal systems to calculate pay, which then fed into the Regional Pay System.

In selecting and implementing the Phoenix pay system, the government chose a single, centralized system to serve 101 departments and agencies with 80 collective agreements and 80,000 pay rules. This decision created extensive pay problems for organizations that have complex pay rules, especially for organizations with a large number of shift workers, such as the Canadian Coast Guard. These organizations lost the flexibility of the previous system and the ability to make changes to suit their circumstances, as they have no direct access to Phoenix.

The government has stated that it will be examining ways to reduce the complexity of its pay system before moving forward, for example, by simplifying pay rules and by integrating human resources and pay functions. However, these initiatives will not resolve the problems of organizations with complex pay. Instead of seeking to impose one solution for all departments and agencies, we believe the government should explore the possibility of allowing some organizations to pursue options that better suit their complex needs. We recommend:

RECOMMENDATION 4

That Public Services and Procurement Canada explore the possibility of alternative pay solutions for departments and agencies whose complex pay rules make the use of Phoenix difficult.

E. Replacing Phoenix

In Budget 2018, the government announced its intention “to eventually move away from Phoenix and begin development of the next generation of the federal government’s pay system.”³¹ Minister Qualtrough elaborated, “Phoenix is on the chopping block, but it is not tomorrow and it could be a couple of years.”³² She said it is premature to speculate what a new system would look like, as it could be cloud-based, proprietary, developed by the government or utilize different software that was integrated with human resources.

The Auditor General of Canada told us that it would take years to develop a new pay system, as the government would need to identify what it needs to do, decide how to implement it, and test it.³³ The government also needs to address the backlog of problems with the current system before moving to a new system.

³¹ Department of Finance Canada, *Budget2018, Equality + Growth = A Strong Middle Class*, February 2018, p. 190.

³² *Evidence*, 21 March 2018.

³³ *Evidence*, 31 January 2018.

Officials from IBM stated quite clearly that, in their opinion, they delivered a software application that works.³⁴ They believe that replacing the software will not resolve the government's pay problems. On the other hand, employees at the Pay Centre said the current system produces too many unexplained errors and requires too much manual intervention.

Given its experience with Phoenix, we understand the government's desire to look toward a new pay system. However, we are concerned about the \$2.2 billion in unplanned costs to operate and stabilize Phoenix. We are also worried that the development of a future system could simply reproduce the mistakes and problems experienced with Phoenix. The option chosen for Phoenix, an off-the-shelf customized system that was not integrated human resources processes, did not work well. Lastly, compensation advisors and public servants in general are legitimately wary of the burdens they may face with the implementation of a new system.

To date, the government has not explained why a new system is required, how it would represent value-for-money, what options are being considered, and how the government would avoid making the same mistakes again. In light of how Phoenix was managed, we believe there should be more accountability and transparency with respect to how the government decides to move forward. Hence, we recommend:

RECOMMENDATION 5

That, before embarking on a future pay transformation initiative, Public Services and Procurement Canada submit a report to Parliament outlining the options to replace Phoenix, including the costs of each option, examining the expected impact on employees, as well as setting out the monitoring and project management measures that would be put in place to avoid repeating the mistakes of the Phoenix pay system.

Conclusion

Phoenix did not fail due to unforeseen events or challenging circumstances. Nor did it fail due to a single error or mistake. Rather, it failed due to a series of avoidable, poor management decisions, including:

³⁴ Evidence, 28 March 2018.

- failing to appreciate the complexity of the human resources to pay process;
- failing to simplify pay rules before developing a new system;
- failing to put in place an appropriate governance and oversight structure;
- failing to align human resources practices with new pay system;
- selecting an off-the-shelf system that required extensive customization and was not integrated with human resources systems;
- removing critical pay processing functions from the system;
- providing inadequate training to compensation advisors, human resources staff, and employees;
- laying off experienced compensation advisors and reducing the total number of advisors before implementing the new system;
- failing to test the system through a pilot project;
- failing to develop a detailed contingency plan;
- ignoring repeated warnings from employees, unions, IBM, and an independent report that the system wasn't ready; and
- reacting slowly to problems after implementation.

We agree with the Auditor General of Canada that more rules and procedures are unlikely to prevent management failures in the future, especially as they haven't prevented similar failures in the past. Instead, there is a fundamental management cultural problem that needs to be addressed. We are dismayed that this important project proceeded with minimal independent oversight, including from central agencies, and that no one has accepted responsibility for the failure of Phoenix or has been held to account.

The consequences of this failure are significant and ongoing. In addition to substantial unplanned expenditures of over \$2 billion, the hardships imposed on thousands of public servants are unacceptable. The stories of Phoenix problems reported in the media, communicated to our committee, or described to us individually as senators are truly heartbreaking. We commend the patience of public servants, who continue to provide professional service despite anxieties over their pay. We also commend the hard work and dedication of the Public Service Pay Centre employees who are trying to resolve hundreds of thousands of pay problems as quickly as possible.

We believe that employees must be placed at the heart of any solution to the Phoenix failure. Not only must the government take the necessary means to ensure that its employees are paid accurately and on time, but also it needs to develop a culture that encourages employee engagement, feedback and collaboration. Ultimately, it is employees who had the knowledge of how the pay system worked, provided warnings when things were going off track, and suffered the consequences when the pay transformation project didn't succeed.

Appendix A – Witnesses Who Appeared Before the Committee

Canadian Association of Professional Employees

Greg Phillips, National Président
Claude Vézina, Executive Director
(07-02-2018)

Correctional Service Canada

Nick Fabiano, Acting Assistant Commissioner, Human Resources Management
John Kearney, Acting Senior Director, HR Modernization and Governance
(21-03-2018)

Goss Gilroy Inc.

Jim Alexander, Associate
Sandy Moir, Managing Partner - Ottawa Office
(27-03-2018)

IBM Canada

Beth Bell, Vice President and Partner, Canadian Public Sector Leader
Bernie Semenjuk, Partner, Oracle Cloud, PeopleSoft Practice Leader, Canada
Regan Watts, Head: Innovation, Citizenship and Government Affairs
(28-03-2018)

Office of the Auditor General of Canada

Michael Ferguson, Auditor General of Canada
Martin Dompierre, Principal
Jean Goulet, Principal
(31-01-2018)
Michael Ferguson, Auditor General of Canada
Jean Goulet, Principal
(12-06-2018)

Privy Council Office

Michael Wernick, Clerk of the Privy Council and Secretary to the Cabinet
(20-06-2018)

Professional Institute of the Public Service of Canada

Stéphane Aubry, vice-president
Emily Watkins, Senior Advisor to the President
(07-02-2018)

Public Service Alliance of Canada

Chris Aylward, National Executive Vice President
Heather Finn, Special Projects Officer - Phoenix
(07-02-2018)

Public Services and Procurement Canada

Les Linklater, Associate Deputy Minister

Marc Lemieux, Assistant Deputy Minister of Pay Administration Branch

Danielle May-Cuconato, Assistant Deputy Minister of Pay Stabilization Project
(06-02-2018)

The Honourable Carla Qualtrough, P.C., M.P., Minister of Public Services and
Procurement

Les Linklater, Associate Deputy Minister
(21-03-2018)

Queensland Health

Michael Walsh, Director General
(03-28-2018)

Statistics Canada

Martin Chapman, Director, Financial and Administrative Services Division

Monia Lahaie, Assistant Chief Statistician, Corporate Services, and Chief
Financial Officer

Stacey Money, Director General, Human Resources
(21-03-2018)

Treasury Board of Canada Secretariat

Cécile Cléroux, Assistant Deputy Minister, Human Resources Management
Transformation Sector, Office of the Chief Human Resources Officer

Tom Scrimger, Assistant Comptroller General, Financial Management, Office of
the Comptroller General
(06-02-2018)

Peter Wallace, Secretary to the Treasury Board
(20-06-2018)


Appendix B – Public Service Pay Centre Capacity and Locations

	A+B+C+D+E	A+B+C	A	B	C	D	E
	Total Headcount	All Processors	CR05s hired Winter 2018	CR05s hired Spring 2018	Experienced Processors	Pay Business Support	Mgmt. and Admin
Charlottetown	64	58	42	0	16	2	4
Edmonton	12	11	0	0	11	0	1
Halifax	29	26	0	0	26	1	2
Kingston	9	7	0	0	7	1	1
Kirkland Lake	6	4	4	0	0	1	1
Miramichi	836	589	193	25	371	92	155
Moncton	100	97	67	30	0	0	3
Montreal	43	37	0	0	37	1	5
Ottawa/Gatineau	159	115	0	53	62	14	30
Shawinigan	11	10	0	0	10	1	0
Shediac	57	45	2	1	45	0	9
Toronto	26	24	1	0	23	1	1
University of Moncton	22	20	0	0	20	0	2
Vancouver	27	25	0	0	25	0	2
Winnipeg	54	47	0	0	47	2	5
Grand Total	1455	1115	309	109	700	116	221

Source: Public Services And Procurement Canada, 20 April 2018



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day of January, 2023


A Commissioner for Oaths in and for the
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News & Issues

Phoenix Claims Office to Open after Pressure from PIPSC

The Treasury Board has announced that a claims office will open this week to reimburse out-of-pocket expenses public servants have incurred due to problems with the Phoenix pay system.

"I'm glad that our advocacy has resulted in real action," said PIPSC President Debi Daviau. "Some of our members have had to go into debt just to make ends meet. Hard working public service professionals should not be paying the price for the failure of the new pay system."

Daviau first wrote to the Hon. Scott Brison, President of the Treasury Board, earlier this summer asking that a system of reimbursement be set up to compensate public servants financially hit by the disastrous Phoenix pay system. She reiterated this demand in August when she appeared before the parliamentary committee studying the problems with the pay system.

What we know to date is that the claims office is designed to reimburse people as quickly as possible and departments will have the authority to pay any claims under \$500. Larger and more complex claims will go to the Treasury Board to be settled.

[Claim forms](#) and [Frequently Asked Questions](#) are available on the Treasury Board website, as well other [Phoenix-related information](#). PIPSC will work to file grievances if we are unhappy with the settlements offered. PIPSC will remain vigilant to ensure this claims office meets members' needs and will use forums such as the new joint union-management committee on Phoenix to raise concerns.

We will keep members posted on further details of the claims office as they become available.

"We will continue to work together to find solutions and get our members the help and protections they deserve," said Daviau.

Published on 16 September 2016

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Clint Docken
Barrister & Solicitor

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- ① [Request an advance for government benefits](#)
- ① [Reimbursement for tax advice](#)
- ① [Claim compensation for severe impacts](#)
- ① [General compensation for damages related to Phoenix](#)
- ① [Contact us](#)

Claims for losses and damages related to Phoenix

Claim out-of-pocket expenses

On this page

- [Who can submit a claim](#)
- [How to submit a claim](#)

The Government of Canada is doing everything possible to ensure that no employee remains out of pocket because of errors caused by the Phoenix pay system.

Who can submit a claim

This claims process applies to **all employees** who experienced problems caused by the Phoenix pay system.

If you have incurred out-of-pocket expenses because you were underpaid, you can submit a claim. For example, if you used your line of credit to cover regular payments while you were underpaid and have incurred interest charges, you can claim those expenses.

How to submit a claim

We recognize that each employee has a different situation and will review each claim on a case-by-case basis.

Consult the list of eligible expenses in the [frequently asked questions](#). If possible, bundle your eligible expenses. This makes it easier to process your reimbursement. You will be able to file another claim if new information comes to light or if you have more pay problems.

Provide a summary of your pay issue and the expenses that you had because of it.

To support your claim, gather relevant documents and receipts that show:

- **interest charges related to late or missed payments** from credit cards, lines of credit, personal loans, car loans, etc.
- **NSF (not sufficient funds) charges and other financial penalty charges** resulting from late or missed payments for household utilities, condo fees, mortgages and other ongoing monthly financial commitments, insurance reinstatement fees, etc.
- **interest charges** from credit cards, lines of credit and personal loans temporarily used by you to pay mortgage payments, condo fees, rent,

personal loan payments, household utilities, and other such expenses until your pay issue was resolved

- **administrative fees or financial penalties for early withdrawal** of investments or savings instruments, such as Guaranteed Investment Certificates (GICs)
- **documents to substantiate your claim**, such as pay stubs showing your incomplete or inaccurate pay, letters of offer or other documents to confirm what you should be paid, requests for salary advances, financial documents such as bank or credit card statements, etc.

Once you have gathered all your information, print and fill out the claim form. Attach a separate document to your claim if you need to provide additional explanations.

Filing a claim will not impact your pay, since claims are not processed through the Phoenix pay system.

Keep a copy for your records!

▼ Privacy notice statement

Provision of the personal information requested in this form is collected under the authority of the *Financial Administration Act* and will be used for assessing your claim in accordance with the *Directive on Payments*. Refusal to provide the requested information may delay or prevent the processing of your claim. The personal information you provide may be shared with the Treasury Board of Canada Secretariat's Claims Office and with Public Services and Procurement Canada.

Your personal information will be protected, used and disclosed in accordance with the *Privacy Act* and as described in Personal Information Bank PSU 931 (Accounts Payable). Your information may also be used or disclosed for financial reporting and program evaluation. The information will be retained for seven years following the last administrative action and then destroyed. Under the Act, individuals have rights to request access to and correction of their personal information.

If you wish to avail yourself of these rights or require clarification about this Privacy Notice Statement, please contact your organization's Privacy Coordinator. If you are not satisfied with the response to your privacy concern, you may wish to communicate with the Office of the Privacy Commissioner by telephone at 1-800-282-1376 or by email at info@priv.gc.ca.

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Chloe Doolan
Commissioner & Swearer

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Claims for losses and damages related to Phoenix

Claims for impacts to income taxes and government benefits

On this page

- [Who can submit a claim](#)
- [What is your situation?](#)
- [How to submit a claim](#)
- [Related links](#)

The Government of Canada is doing everything possible to ensure that no employee suffers financial losses because of Phoenix.

If you were **owed salary from one year** that was **paid the following year** (for example, salary owed from 2016 was paid in 2017), you might incur a financial loss related to:

- paying a higher rate of income tax
- reduced government benefits and credits, such as the Canada child benefit

Who can submit a claim

This claims process applies to **all employees** who experienced problems caused by the Phoenix pay system.

To submit a claim for impacts to income taxes and government benefits, you must meet all of the following requirements:

1. You must be a current or former federal public servant (includes students and casual employees) whose pay is or was administered by the Phoenix pay system
2. You were **owed salary from one year** that was **paid the following year** (for example, salary owed from 2016 was paid in 2017)
3. The time taken to receive your outstanding salary exceeded normal service standards

This claims process applies to all employees who experienced problems caused by the Phoenix pay system. If you experienced greater financial impacts or missed investments opportunities, you may be eligible for compensation for damages under the Phoenix pay system damages agreement.

What is your situation?

- Did you or will you pay **too much income tax** because your pay issues put you in a higher income bracket?
- Were your **government benefits and credits**, such as the Canada child benefit or subsidized daycare, lower because, once the salary owed to you was paid out, your annual income was greater than usual?

If you have been on **maternity or parental leave** since the implementation of Phoenix, you might be eligible to file a claim.

You may be in a **unique situation** not described here. Our goal is to ensure that no one affected by Phoenix suffers financial losses.

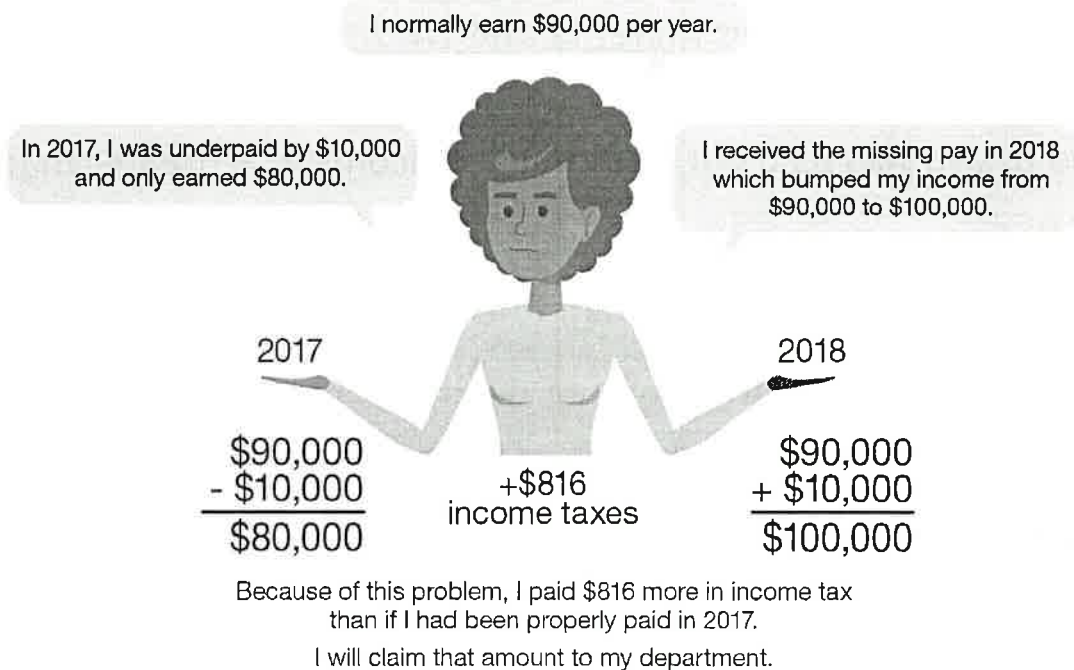
If you have incurred a financial loss because of Phoenix, fill out a claim and provide as much information as you can. **Our goal is to correct each situation** and review each claim on a case-by-case basis.

▼ Paying too much income tax

Figure 1: Scenario 1 - Marie

Are you paying too much income tax?

Meet Marie, who was underpaid in 2017 and received that missing pay in 2018. In 2017, she paid a little less income tax than usual. But in 2018, she paid more income tax than usual, because she was in a higher tax bracket.



▼ Figure 1 - Text version

Meet Marie, who was underpaid in 2017 and received that missing pay in 2018. In 2017, she paid a little less income tax than usual. But in 2018, she paid more income tax than usual, because she was in a higher tax bracket.

- Marie normally earns \$90,000 per year (she lives and works in Ontario)
- In 2017 she was underpaid by \$10,000, earning a total of \$80,000 that year
- She subsequently received the missing \$10,000 in 2018, which bumped her income from \$90,000 to \$100,000
- Because of this pay problem, Marie paid \$816 more in income taxes than if she had been properly paid and taxed in

2017

In dollars	Normal (no Phoenix issues)			Actual (Phoenix issues)			Difference
	2017	2018	Total	2017	2018	Total	
Income	90,000	90,000	180,000	80,000	100,000	180,000	0
Income Taxes	-20,486	-20,118	-40,604	-17,166	-24,254	-41,420	816
After Tax Income	69,514	69,882	139,396	62,834	75,746	138,580	-816

▼ Entitlements to government benefits and credits

Your **government benefits and credits**, such as the Canada child benefit or subsidized daycare, **may be lower** because, once the salary owed to you was paid out, your annual income was greater than usual.

Figure 2: Scenario 2 - David

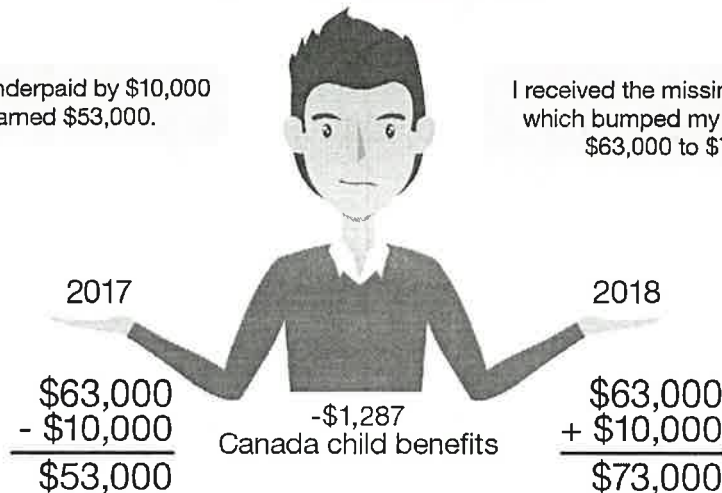
Are your government benefits and credits lower?

Meet David, who was underpaid in 2017 and received that missing pay in 2018. During 2019, he will receive a little less in government benefits because, in 2018, his income was higher than normal.

I normally earn \$63,000 per year.

In 2017, I was underpaid by \$10,000 and only earned \$53,000.

I received the missing pay in 2018 which bumped my income from \$63,000 to \$73,000.



Because of this problem, my 2019 Canada child benefits are \$1,287 lower because my income in 2018 was higher than it should have been.

I will claim that loss of benefits to my department.

▼ Figure 2 - Text version

Meet David, who was underpaid in 2017 and received that missing pay in 2018. During 2019, he will receive a little less in government benefits because, in 2018, his income was higher than normal.

- David normally earns \$63,000 per year (he lives and works in Manitoba)
- In 2017 he was underpaid by \$10,000, earning a total of \$53,000 that year
- He subsequently received the missing \$10,000 in 2018, which bumped his income from \$63,000 to \$73,000
- Because of this pay error, David received \$1,287 less in social benefits as a result the higher-than-normal income in 2018

Amount description	2018 (normal)	2018 (Phoenix)	Difference
Normal salary	\$63,000	\$63,000	\$0
2017 underpayment	\$0	\$10,000	\$10,000
Revised income	\$63,000	\$73,000	\$10,000
Social benefits *	\$13,860	\$12,573	-\$1,287

* Estimated using CRA's Child and family benefits calculator; single income with 3 children

How to submit a claim

To submit a claim for impacts to your **income tax**

- you will need your notices of assessment from the Canada Revenue Agency and Revenu Québec (where appropriate) for **both** applicable years.
- Use form TBS-SCT330323.pdf.

If your claim also covers impacts to your **government benefits**,

- you will need all pertinent federal, provincial or municipal government benefit statements for **both** applicable years.
- Use form TBS-SCT330324.pdf.

Please note that claims for impacts to government benefits are taxable. If you receive a taxable payment through this claims process, the Treasury Board of Canada Secretariat (address: 90 Elgin, Ottawa, Ontario) will send you tax slips in February of the following year to submit with your income tax return.

Read the [frequently asked questions](#) carefully for more information on how to complete your claim.

Fill out the forms as best you can. Attach a separate document to your claim if you need to provide additional explanations.

If there is any missing information, we will follow up with you or your department.

Filing a claim will not impact your pay since claims are not processed through the Phoenix pay system.

Keep a copy for your records!

▼ Privacy notice statement

Provision of the personal information requested in this form is collected under the authority of the *Financial Administration Act* and will be used for assessing your claim in accordance with the *Directive on Payments*. Refusal to provide the requested information may delay or prevent the processing of your claim.

The personal information you provide may be shared with the Treasury Board of Canada Secretariat's Claims Office and with Public Services and Procurement Canada. Your personal information will be protected, used and disclosed in accordance with the *Privacy Act* and as described in Personal Information Bank PSU 931 (Accounts Payable). Your information may also be used or disclosed for financial

reporting and program evaluation. The information will be retained for seven years following the last administrative action and then destroyed. Under the act, individuals have rights to request access to and correction of their personal information. If you wish to avail yourself of these rights or require clarification about this Privacy Notice Statement, please contact your organization's Privacy Coordinator. If you are not satisfied with the response to your privacy concern, you may wish to communicate with the Office of the Privacy Commissioner by telephone at 1-800-282-1376 or by email at info@priv.gc.ca.

[Claim for impacts to income tax \(TBS-SCT3300323\)](#)

[Claim for impacts to government benefits and credits \(TBS-SCT3300324\)](#)

Related links

- [Tax-related issues](#)
- [FAQs: claims for impacts to income tax and government benefits](#)
- [FAQs: 2020 tax implications of Phoenix payroll issues](#)
- [Child and family benefits](#)

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Christy Deeken
Commissioner for Oaths

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Claims for losses and damages related to Phoenix

Reimbursement for tax advice

On this page

- [Who can submit a claim](#)
- [How to submit a claim](#)
- [Related links](#)

To ensure that employees are treated fairly, and that they understand the tax implications caused by errors in their pay, the Government of Canada will reimburse expenses (up to \$200, per year, with taxes included) related

to obtaining tax advice.

Who can submit a claim

This claims process applies to **all employees** who experienced problems caused by the Phoenix pay system.

If you experienced pay issues because of Phoenix and needed to consult an expert in order to sort out your income tax, you may submit a claim for tax advisory services in relation to your 2016, 2017, 2018, 2019, 2020 or 2021 income taxes.

How to submit a claim

Your request is important to us. Each employee has a different situation, and we are committed to process each claim on a case-by-case basis.

Filing a claim will not impact your pay, as claims are not processed through the Phoenix pay system.

Please read the [frequently asked questions](#) carefully to understand what costs are covered under this process.

Print and fill out the claim form. Attach a separate document to your claim if you need to provide additional explanations. Don't forget to include the receipt from the supplier for tax advisory services.

Keep a copy for your records!

► [Privacy notice statement](#)

[Complete the claim form](#)

Related links

- [Tax-related issues](#)
- [FAQ - 2019 Tax Implications of Phoenix payroll issues](#)

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Claims for losses and damages related to Phoenix

Request an advance for government benefits

On this page

- [Who can submit a claim](#)
- [How to submit a claim](#)
- [Related links](#)

If you have been overpaid since the implementation of the Phoenix pay system, the amount you received for government benefits and credits may have been reduced. You can request an advance for these benefits to compensate for these benefits on a temporary basis.

An advance is interest-free money from the government for your use until your Phoenix pay issue is resolved. The amount is based on the difference between your normal income and your overstated income.

The advance is a temporary measure put in place until the employee's tax slip is corrected. The correction will allow the employee's government benefit and credit entitlements to be recalculated using the employee's correct employment income. It is not taxable. Once your pay issue is resolved and your benefits are restored, you must pay it back.

Who can submit a claim

This claims process applies to **all employees** who experienced problems caused by the Phoenix pay system.

You qualify for an advance if you were overpaid in 2016, 2017, or 2018, and:

- the amount of your provincial/territorial or federal benefits was reduced because your employment income was overstated
- you have reported your overpayment to Public Services and Procurement Canada
- you have not yet received your amended tax slip to correct the overstated employment income
- you have filed your income tax return for the year which you were overpaid with the Canada Revenue Agency or with Revenu Québec

How to submit a claim

You can request an advance that is roughly equal to the difference between the amount of government benefits you expected and what you received.

You may request advances for 3 months at a time, plus the number of months that have elapsed between July 2017 (for 2017 benefits), July 2018 (for 2018 benefits), or July 2019 (for 2019 benefits) and the date of your request for an advance.

Your request for an advance is important to us. We will review each request carefully, and we will review exceptional situations on a case-by-case basis.

Requesting an advance will not impact your pay, as advances are not processed through the Phoenix pay system.

Gather all documents related to your federal and provincial/territorial benefits and credits, such as the Canada child benefit statement or the notice of determination for the GST/HST credit.

Print and complete the claim form. Attach a separate document to your completed form if you need to provide additional explanation.

Keep a copy for your records!

▼ Privacy Statement

The personal information requested in this form is collected under the authority of the Financial Administration Act and will be used for assessing your request in accordance with the Directive on Payments and with the Directive on Public Money and Receivables. Refusal to provide the requested information may delay or prevent the processing of your request.

The personal information you provide may be shared with the Treasury Board of Canada Secretariat's Claims Office and Public Services and Procurement Canada. Your personal information will be protected, used and disclosed in accordance with the Privacy Act and as described in Personal Information Bank PSU 931 (Accounts Payable) and PSU 932 (Accounts Receivable). Your information may also be used or disclosed for financial reporting and program evaluation. The information will be retained for seven years following the last administrative action and then destroyed.

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[Complete claim form](#)

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Phoenix pay system damages agreement (2019)

Agreement between the Treasury Board and the Association of Canadian Financial Officers, Association of Justice Counsel, Canadian Association of Professional Employees, Canadian Federal Pilots Association, Canadian Merchants Service Guild, Canadian Military Colleges Faculty Association, Canadian Union of Public Employees 104, Federal Government Dockyard Trades and Labour Council (East), Federal Government Dockyard Trades and Labour Council (West), Federal Government Dockyard Chargehands Association, International Brotherhood of Electrical Workers, Professional Association of Foreign Service Officers, Professional Institute of the Public Service of Canada, Unifor, Union of Canadian Correctional Officers

General principles

1. The objective of this agreement is to make whole the members of the Core Public Administration (CPA) bargaining units ("employees") represented by the CPA Bargaining agents ("Bargaining Agents") who have been, and continue to be, harmed by the Phoenix Pay System.
2. For greater certainty, this agreement does not apply to members of the class action as certified by the Québec Superior Court in *Bouchard*

c. Procureur Général du Canada (200-06-000214-174), or to others that may be added by the court.

3. The parties agree to the following plan for the compensation of damages to employees who have suffered financial and non-financial damages due to issues with their pay caused by the Phoenix Pay System. The parties have designed this process to minimize the impact on the Phoenix Pay System and to provide compensation to all affected employees expeditiously. Employees who work with the Phoenix Pay System are only covered by this agreement insofar as they have had issues with their pay caused by the Phoenix Pay system.
4. The agreement covers damages for the following four (4) fiscal years: 2016/2017, 2017/2018, 2018/2019 and 2019/2020.
5. All current employees covered by this agreement are eligible for and will be credited with leave in accordance with the amounts, conditions and timing set out in this agreement, in recognition of the fact that they have been impacted, directly and/or indirectly, by the implementation of Phoenix, and may have experienced financial and/or non-financial damages. This leave represents general compensation for financial and/or non-financial damages, including but not limited to interest, general stress, aggravation and lost time.
6. This agreement also sets out the compensation framework for former employees. Former employees and estates of deceased employees will be eligible to file claims in respect of matters addressed in this agreement. Following the submission of a claim and validation, former employees and the estates of deceased employees, will be compensated the equivalent payment of leave as current employees.
7. Current and former employees who have suffered exceptional and severe cases of financial and non-financial damages as a result of

Phoenix pay issues will be entitled to those damages set out under the heading Damages for Severe Impacts and Other Demonstrable Cases.

8. Where a current or former employee has received compensation for damages in another forum, for example, as a result of a grievance or complaint stemming from a claim for workplace injury benefits, the amount of damages for severe impacts and other demonstrable cases that they receive under this agreement may be reduced by the amount of the compensation (in money or in kind) that they have received in that other forum.
9. The entitlement in clause 11 or 16 is to be paid only once per employee (or former employee) per fiscal year (whether as a current employee or former employee) of the CPA, or of a separate agency.
10. The failure to apply for an emergency advance or priority payment will not be a barrier to current or former employees making a claim for damages for severe impacts and other demonstrable cases. Mitigation measures taken by the Employer shall be considered in reaching a decision on a claim for damages for severe impacts and other demonstrable cases. For example, the receipt of an emergency salary advance or priority pay shall be considered in reaching a decision on a claim for damages for severe impacts and other demonstrable cases.

General compensation for current employees

11. The Employer will credit the annual leave banks of all current employees two (2) days of leave for 2016/2017 and one (1) day of leave for each of the subsequent years of 2017/2018 and 2018/2019 fiscal

years. It will also credit the annual leave banks of all current employees one (1) day of leave for the fiscal year 2019/2020.

12. In order to be eligible for the leave provided for in clause 11, an employee need only be on strength for one day in the fiscal year(s). For greater clarity, the term “on strength” refers to all employees employed in the CPA, whether or not they are on leave, assignment or otherwise not active.
13. The periods of leave for 2016/2017, 2017/2018 and 2018/2019, will be credited no later than one hundred and fifty (150) days from the signing of this agreement for current employees. The leave for 2019/2020 will be credited within one hundred and fifty (150) days after the end of that fiscal year.
14. For greater certainty, nothing in this agreement diminishes employees’ entitlements to compensation pursuant to their collective agreement. The entitlement in clause 11 is also without prejudice to the right of the employees or Bargaining Agents on behalf of their members to seek compensation for interest, aggravation, and lost time in subsequent fiscal years to those cited above, for events attributable to those subsequent years.
15. The applicable annual leave collective agreement provisions will apply to all leave credited in accordance with this agreement.

General compensation for former employees

16. Former employees will be eligible, following the submission of a claim and validation, to be compensated the salary equivalent of leave on the

basis of clause 11 and 12 at their salary rate on the day the claim is processed.

17. In order to be eligible for the payment provided for in clause 16, a former employee need only to have been on strength for one day in the period covered by this agreement. For greater clarity, the term “on strength” refers to all employees employed in the CPA, whether or not they are on leave, assignment or otherwise not active.
18. Any monies paid pursuant to clause 16 are subject to any applicable statutory deductions and are non-pensionable.

Claims process for expenses and financial losses

19. The entitlement under the existing claims process for expenses and financial losses due to Phoenix will remain in place until there are no more claims to process. It will continue to provide redress and reimbursement for all damages and expenses which are currently compensated through the claims process.

Damages for severe impacts and other demonstrable cases

20. Unless otherwise specified, a threshold of \$1,500 will apply with respect to claims for severe impacts and other demonstrable cases as outlined in clause 21.
21. In addition to compensation provided in clauses 11 and 16, and in order to address situations involving an employee’s own pay problems, employees will be able to file claims and the Employer will engage in a

detailed review of claims to determine if the claims disclose the following:

- a. Non-speculative investment losses related to the Phoenix Pay System, where evidenced by a pre-existing public investment instrument which was cashed in whole or in part at the time an employee was impacted by unpaid earnings due to the Phoenix Pay System. Compensation is to be commensurate with investment income lost during the unpaid period up to the sums equivalent to missed net pay;
- b. Non-speculative lost RRSP deferred taxation advantages, subject to specific conditions. Compensation is to be commensurate with tax advantages lost during the unpaid period calculated on sums up to the equivalent of the missed net pay (including delayed net severance or pension payments where such delay is caused by the Phoenix Pay System);
- c. With respect to delayed severance or pension payments where such delay is caused by the Phoenix Pay System, any interest on outstanding amounts on loans, mortgages, credit cards or other debt instruments where the outstanding amount is up to the net amount of the delayed severance or pension payment less the portion of the delayed net severance or pension payments applied to calculate the amount payable pursuant to clause 21(b);
- d. For current employees documented use of sick leave, and other paid or unpaid leave caused by illness, stemming from issues with the employee's pay attributed, to the Phoenix Pay System shall be re-credited and/or compensated. The \$1,500 threshold does not apply to this sub-clause;

- e. For former employees, documented use of other paid (except for sick leave) or unpaid leave caused by illness, stemming from issues with the employees' pay attributed to the Phoenix Pay System, shall be compensated. The \$1,500 threshold does not apply to this sub-clause;
- f. Interest attributable to the Phoenix Pay System, at the rate of the *Interest and Administrative Charges Regulations* on:
 - i. all delayed severance payments, beyond what would be a normal established processing time (within thirty (30) days of receipt of severance pay annex);
 - ii. all delayed pension entitlements, beyond what would be a normal established processing time (goal is to process the pension benefit division payment within one hundred and twenty (120) days of the date the application is approved or within forty-five (45) days of receipt of all required documents, whichever is later);
 - iii. missing pay.
- g. The Employer agrees to apply retroactively to February 2016, section 17 of the *Directive on Terms and Conditions of Employment* (emergency replacement pay services or priority pay for individuals beginning disability insurance, maternity or parental leave). The \$1,500 threshold does not apply to this sub-clause;
- h. Claims alleging a discriminatory practice as defined under the *Canadian Human Rights Act*, including but not limited to issues related to maternity, parental or disability leave, which may warrant additional damages being awarded;

- i. Claims in respect of the consequences of lost occupational capacity, lost security clearances, bankruptcy or significant credit rating impact which are directly attributable in whole or in part to their Phoenix Pay problems, in order to compensate the consequences thereof;
 - j. Claims in respect of employees who resigned from the public service as a consequence of a loss of income leading to financial hardship caused by the Phoenix Pay System;
 - k. Claims in respect of mental anguish or trauma, which interfered with the ability of the employee, to a profound degree, to lead a normal life; caused in whole or in part by the Phoenix Pay System; and
 - l. Other damages which are in the nature of the above, for situations which disclose comparable personal hardship or impact caused in whole or in part by the Phoenix Pay System.
22. The Employer will rely on all relevant information in reviewing damages for severe impacts and other demonstrable cases including information held by other departments or agencies.
23. An employee whose claim has been approved will need to sign a release form. It will only be effective for the portion of the claim that is approved.
24. Employees may only grieve the denied portions of their claim for damages for severe impacts and other demonstrable cases in accordance with the grievance process established under this agreement.

Grievance process

25. Grievances for damages resulting from the Phoenix Pay problems that were filed prior to the date of this agreement being into force and which have not been resolved will be processed pursuant to this agreement.
26. Grievances for damages resulting from the Phoenix Pay problems filed after the date of this agreement coming into force shall be processed pursuant to this agreement.
27. The Employer will not seek to enforce any objection of timeliness with respect to the grievance process until two (2) years from the date of the signature of this memorandum of agreement.
28. A decision with respect to a claim under this agreement shall constitute a final level grievance decision.
29. Grievances arising out of clause 21(a) to (f) shall be argued by way of written submissions, unless exceptional circumstances, as determined by the adjudicator, or on consent of the parties, require oral evidence.
30. Grievances arising out of clause 21(g) to (k) may be argued by way of written submissions, where the parties agree or where the adjudicator determines that, it is in accordance with the principles of natural justice to dispense with viva voce evidence and oral argument.

Bargaining Agents' obligations

31. Bargaining Agents must review and evaluate, prior to an employee filing a claim, all existing grievances submitted by their members in a manner consistent with their duty of fair representation. Bargaining

Agents will make reasonable efforts to complete this review within one hundred and fifty (150) days of implementation of this agreement.

32. Bargaining Agents will withdraw the grievances within one hundred and fifty (150) days of implementation of this agreement. Bargaining Agents retain carriage of their grievances subject only to the statutory duty of fair representation.
33. Upon signing of this agreement, the Bargaining Agents agree not to pursue any portion of policy grievances and unfair labour practice complaints relating to damages covered by this agreement.

Oversight committee

34. The parties agree to create an oversight committee.
35. The committee will be established within ninety (90) days of the signature of this agreement. The committee will be comprised of an equal number of Employer and Bargaining Agent representatives and not exceeding eight (8) members.
36. The committee's objective is to resolve issues related to the implementation of this memorandum of agreement. The committee will not review substantive matters related to individual claims and grievances.
37. The committee will work towards establishing an accelerated adjudication process for grievances under this agreement.

Definitions

38. Current employees: are individuals employed under the *Public Service Employment Act* that are indeterminate or terms of more than

three (3) months as of the date of signing of this agreement.

39. Former employees: are individuals who were employed under the *Public Service Employment Act* either on an indeterminate basis or for a term of more than three (3) months during the period covered by this agreement and who have resigned, been terminated, retired or become deceased (estates of deceased employees) before the date of signing of this agreement.
40. A day of leave shall be equal to eight (8) hours per day, or seven and one-half (7.5) hours per day where the standard workweek is thirty-seven decimal five (37.5) hours per week.

Without prejudice

This agreement is made without prejudice to the rights of Bargaining Agents in respect of:

41. damages suffered by employees working with the Phoenix Pay System, for example by compensation advisors, which are not covered by this agreement;
42. damages or other corrective measures in respect of the late implementation of collective agreements;
43. damages or other corrective measures in respect of the consequences of the Phoenix Pay System with regard to the processing of dues;
44. the application for judicial review filed before the Federal Court of Canada on December 19, 2016.

The parties recognize that final agreement is subject to approval by the Employer and each Bargaining Agent's governing bodies.

The Employer agrees to incorporate into this agreement any damages measures negotiated with any other Bargaining Agents representing CPA employees that are more generous than those in this agreement.

Dates may be extended by mutual agreement of the parties.

Date modified:

2020-10-23



Government
of Canada

Gouvernement
du Canada

This is Exhibit ""Q" to the
Affidavit of RENÉE DELORME
sworn before this 13 day of
January, 2023

Canada.ca > Public service and military > Pay, pension and benefits
> Pay for the public service > Claims and compensation: Phoenix Pay System
A Commissioner for Oaths in
and for the Province of Alberta

Damages: Compensation for eligible employees impacted by the Phoenix pay system (represented by signatory bargaining agents) – 2019 Agreement

From: Treasury Board of Canada Secretariat

- ❶ The Government of Canada signed a separate damages agreement in October 2020, **for federal employees represented by the Public Service Alliance of Canada (PSAC)**.
 - Compensation for federal employees represented by PSAC

In June 2019, the Government of Canada and a number of public service unions finalized an agreement to compensate employees, current and former, who were paid through the Phoenix pay system. Separate agencies have since negotiated a similar agreement with their bargaining agents.

Eligible current and former employees covered under this 2019 damages agreement may also be eligible for other monetary benefits, such as general damages compensation of up to \$1,000 for the late implementation of the 2014 collective agreements. A memorandum of agreement was reached between the Government of Canada and these public service unions to provide additional damages provisions that align

or “catch up” with the damages agreement finalized between the Government of Canada and the Public Service Alliance of Canada in October 2020.

On this page

- [Who this 2019 agreement applies to](#)
- [Compensation overview](#)
 - [General compensation for damages](#)
 - [Additional compensation - Catch-up payments](#)
 - [Compensation for severe impacts](#)
- [Related links](#)

Who this 2019 agreement applies to

The Phoenix damages agreement **applies to** current and former employees, and the estates of deceased employees represented by these bargaining agents:

- Association of Canadian Financial Officers
- Association of Justice Counsel
- Canadian Association of Professional Employees
- Canadian Federal Pilots Association
- Canadian Merchant Service Guild
- Canadian Military Colleges Faculty Association
- Canadian Union of Public Employees Local 104
- Canadian Union of Public Employees Local 2656 (National Film Board)
- Canadian Union of Public Employees SGCT 4835 (National Film Board)
- Federal Government Dockyard Chargehands Association
- Federal Government Dockyard Trades and Labour Council (East)

- Federal Government Dockyard Trades and Labour Council (West)
- International Brotherhood of Electrical Workers
- Professional Association of Foreign Service Officers
- Research Council Employees' Association
- The Professional Institute of the Public Service of Canada
- Unifor Local 87-M (Non-Supervisory Printing Services)
- Unifor Local 5454 (Canadian Air Traffic Control Association)
- Unifor Local 2182 (Radio Operations)
- Union of Canadian Correctional Officers

Other eligible employees

The agreement **also applies to:**

- employees excluded from bargaining agents who have signed on to the agreement
- unrepresented employees
- executives

Employees of **separate agencies** who have a similar agreement are eligible for compensation.

This agreement **does not apply** to:

- members of the class action as certified in *Bouchard c. Procureur Général du Canada* (200-06-000214-174), and any other member of the class that could be added by the courts, including:
 - students
 - casual employees
 - workers working no more than 1/3 of regular hours
 - employees with terms of less than 3 months

Compensation overview

► In this section

The agreement provides compensation to current and former employees who have suffered financial and non-financial damages due to pay issues caused by the Phoenix pay system. The agreement covers damages from April 1, 2016 to March 31, 2020.

An employee who retired or left the public service before June 12, 2019, is considered a former employee.

General compensation for damages

In recognition that employees have been impacted, either directly or indirectly, by the implementation of the Phoenix pay system, the government has negotiated an agreement by which employees, former employees, and the estates of deceased employees are awarded general compensation in the form of additional leave.

This leave represents general compensation for financial and/or non-financial damages, including but not limited to interest, general stress, aggravation, and lost time.

The agreement provides for:

- crediting employees' leave banks with up to 5 days additional annual leave
- a payment equivalent of up to 5 days additional annual leave to former employees and the estates of deceased employees

Additional compensation – Catch-up payments

Amendments have been made to the 2019 damages agreement, through a separate memorandum of agreement, to provide eligible individuals with monetary benefits that align with those contained in the PSAC damages agreement. These amendments, or “catch-up” provisions, provide for:

1. Additional payments that are equal to the difference between \$300 and an employee’s daily rate of pay.
 - For each fiscal year, the amount of the additional payment is equal to the difference between \$300 and the daily rate of pay of the employee’s substantive position in Phoenix on October 23, 2020.
 - For former employees, this amount is based on the rate of pay in Phoenix on the day the claim is processed.
 - In both cases, this payment will only apply if the difference is more than \$10.
2. General damages compensation of up to \$1,000 for the late implementation of the 2014 collective agreements (excludes executives and unrepresented employees).

▼ Current employees: Additional annual leave and catch-up payments

Current employees are entitled to the following:

- 2 additional days of leave for the 2016–17 fiscal year
- 1 additional day of leave for the 2017–18 fiscal year
- 1 additional day of leave for the 2018–19 fiscal year
- 1 additional day of leave for the 2019–20 fiscal year

Over 2019 and 2020, employees were credited the days of leave they were eligible to receive.

In September 2021, employees received catch-up payments as part of their regular pay.

▼ Former employees: Payment equivalent to additional annual leave and catch-up payments

Over 2019 and 2020, federal organizations credited up to 5 days of leave to eligible employees. In September 2021, eligible current employees received catch-up payments as part of their regular pay.

Former employees who are also eligible for this compensation can submit a general damages claim for:

- a payment equivalent to the additional leave granted to current employees
- up to \$1,000 for the late implementation of the 2014 collective agreements
 - excludes former executives and unrepresented employees
- an additional payment that is equal to the difference between \$300 and the rate of pay in Phoenix on the day the claim is processed. Payments are made only if the difference is more than \$10

Payments will be calculated based on the rate of pay in Phoenix of the former employee's substantive position on the day the claim is processed.

For catch-up amounts, former employees are those who were no longer working as of October 23, 2020.

Read about general compensation for damages related to Phoenix for former employees to learn more or to submit a claim.

Compensation for severe impacts

Current and former employees who suffered severe impacts and hardship because of Phoenix can receive financial compensation for damages valued above and beyond the 5 days of additional leave granted as general compensation for financial and/or non-financial damages.

The provisions for compensation for **severe impacts** apply to current employees, former employees, and the estates of deceased employees eligible under the terms of the agreement.

A threshold of \$1,500 will apply to most of these claims. This means employees must experience a total loss greater than \$1,500 to submit a claim.

All claims will be processed on a **case-by-case basis**.

▼ Financial costs and lost investment income

Individuals who have been financially impacted by Phoenix may request compensation if, for example, they cashed in investments, missed opportunities to earn interest on savings accounts, or experienced delays in receiving severance, pension or pay and were not able to earn interest on those sums.

▼ Leave taken because of health issues related to Phoenix

Employees who took sick leave or other types of paid or unpaid leave because of an illness stemming from pay issues can also submit a claim to be compensated.

For claims that are accepted, leave can be re-credited or otherwise compensated:

- For current employees: Sick leave or paid leave used will be re-credited to the employee's leave bank, if applicable, and unpaid leave may be compensated
- For former employees: The use of other paid leave (excluding sick leave) or unpaid leave will be compensated

The \$1,500 threshold does not apply to this type of claim.

▼ Severe personal or financial hardship

A claims process is available for individuals who, because of Phoenix pay issues, experienced severe personal or financial hardship such as, but not limited to, bankruptcy, impacts to credit ratings, mental anguish or trauma.

Related links

- [Phoenix pay system damages agreement \(2019\)](#)
- [Memorandum of Agreement related to catch-up payments](#)
- [Claim expenses, financial losses and damages caused by Phoenix](#)

Date modified:

2021-12-16



Government
of Canada

Gouvernement
du Canada

This is Exhibit "R" to the Affidavit of
RENÉE DELORME sworn before this
13 day of January, 2023


A Commissioner for Oaths in and for
the Province of Alberta

[Canada.ca](#) > [Public service and military](#) > [Pay, pension and benefits](#)

> [Pay for the public service](#) > [Claims and compensation: Phoenix Pay System](#)

Phoenix pay system damages agreement (2020)

Agreement between the Treasury Board of Canada and the Public Service Alliance of Canada (PSAC)

General principles

1. The objective of this agreement is to make whole the members of the Core Public Administration in PSAC bargaining units ("employees") who have been, and continue to be, harmed by the Phoenix Pay System.
2. For greater certainty, this agreement does not apply to members of the class action as certified by the Québec Superior Court in *Bouchard c. Procureur Général du Canada* (200 06 000214 174), or to others that may be added by the court.
3. The parties agree to the following plan for the compensation of damages to employees who have suffered financial and non financial damages due to issues with their pay caused by the Phoenix Pay System. The parties have designed this process to minimize the impact on the Phoenix Pay System and to provide compensation to all affected employees expeditiously. Employees who work with the Phoenix Pay

System are only covered by this agreement insofar as they have had issues with their pay caused by the Phoenix Pay system.

4. The agreement covers damages for the following four (4) fiscal years: 2016/2017, 2017/2018, 2018/2019 and 2019/2020 and late implementation of 2014 collective agreements.
5. All current employees covered by this agreement are eligible for and will receive financial compensation in accordance with the amounts, conditions and timing set out in this agreement, in recognition of the fact that they have been impacted, directly and/or indirectly, by the implementation of Phoenix. The financial compensation outlined in clause 11, 16 and 19 constitutes general damages for stress, aggravation, and pain and suffering incurred.
6. This agreement also sets out the compensation framework for former employees. Former employees and estates of deceased employees will be eligible to file claims in respect of matters addressed in this agreement. Following the submission of a claim and validation, former employees and the estates of deceased employees, will receive financial compensation equivalent to that of current employees.
7. Current and former employees who have suffered exceptional and severe cases of financial and non financial damages as a result of Phoenix pay issues will be entitled to those damages set out under the heading Damages for Severe Impacts and Other Demonstrable Cases.
8. Where a current or former employee has received compensation for damages in another forum, for example, as a result of a grievance or complaint stemming from a claim for workplace injury benefits, the amount of damages for severe impacts and other demonstrable cases that they receive under this agreement may be reduced by the amount of the compensation (in money or in kind) that they have received in that other forum.

9. The entitlements in clauses 11, 16 and 19 are to be paid only once per employee (or former employee) per fiscal year (whether as a current employee or former employee) of the CPA, or of a separate agency.
10. The failure to apply for an emergency advance or priority payment will not be a barrier to current or former employees making a claim for damages for severe impacts and other demonstrable cases. Mitigation measures taken by the Employer shall be considered in reaching a decision on a claim for damages for severe impacts and other demonstrable cases. For example, the receipt of an emergency salary advance or priority pay shall be considered in reaching a decision on a claim for damages for severe impacts and other demonstrable cases.

General compensation for current employees

11. The Employer will compensate all current employees with a lump sum payment of \$1,000 for 2016/2017 and \$500 for each of the 2017/2018, 2018/2019 and 2019/2020 fiscal years in general damages as compensation for stress, aggravation, and pain and suffering and for the late implementation of 2014 collective agreements. For reference, \$200 per year (\$400 in 2016-17) pertains to late implementation of 2014 collective agreements, as applicable.
12. In order to be eligible for the financial compensation provided for in clause 11, an employee need only be on strength for one day in the fiscal year to which a lump sum payment pertains. For greater clarity, the term "on strength" refers to all employees employed in the CPA, whether or not they are on leave, assignment or otherwise not active.
13. The financial compensation provided in clause 11, will be provided to current employees on a best effort basis by the Employer.

14. For greater certainty, nothing in this agreement diminishes employees' entitlements to compensation pursuant to their collective agreement. The entitlement in clause 11 is also without prejudice to the right of the employees or Bargaining Agent on behalf of their members to seek compensation for interest, aggravation, and lost time in subsequent fiscal years to those cited above, for events attributable to those subsequent years.
15. Employees eligible under this agreement who may also be eligible under the damages agreement signed by other Bargaining Agents shall only receive one entitlement whether as a current employee or former employee of the CPA, or of a separate agency for any given fiscal year.
16. Notwithstanding clause 15, PSAC and TBS recognize that any leave already credited to employees under the Damages Agreement signed with other bargaining agents, will not be revoked. For the purpose of clauses 15 and 16, the cash equivalent value of a day's leave will be considered to be \$300. Any difference in excess of \$10 between the cash equivalent of leave provided under the other Damages agreement and the cash equivalent value of \$300 per day identified in this clause will be paid where it benefits the employee.
17. The parties recognize that for the purpose of consistency of application across the public service in assessing employee status and entitlements to general compensation during the period covered by the agreement, Phoenix data as of the date of signature of the agreement will be used. To mitigate changes in entitlements due to pending pay transactions, TBS will establish a process to permit an employee to seek an adjustment to payments under this agreement due to the processing of a pending pay transaction.

18. Any monies paid pursuant to clause 11 are subject to applicable statutory deductions, if any, and are non-pensionable.

General compensation for former employees

19. Former employees will be eligible, following the submission of a claim and validation, to be compensated on the basis of clauses 11 and 16.
20. In order to be eligible for the payment provided for in clause 19, a former employee need only to have been on strength for one day in the year to which a lump sum payment pertains. For greater clarity, the term "on strength" refers to all employees employed in the CPA, whether or not they are on leave, assignment or otherwise not active.
21. Any monies paid pursuant to clause 19 are subject to applicable statutory deductions, if any, and are non pensionable.

Claims process for expenses and financial losses

22. The entitlement under the existing claims process for expenses and financial losses due to Phoenix will remain in place until there are no more claims to process. It will continue to provide redress and reimbursement for all damages and expenses which are currently compensated through the claims process.

Damages for severe impacts and other demonstrable cases

23. Unless otherwise specified, a threshold of \$1,500 will apply with respect to claims for severe impacts and other demonstrable cases as outlined in clause 24.
24. In addition to compensation provided in clauses 11, 16, 19 and 22, in order to address situations involving an employee's own pay problems, employees will be able to file claims and the Employer will engage in a detailed review of claims to determine if the claims disclose the following:
 - a. Non speculative investment losses related to the Phoenix Pay System, where evidenced by a pre existing public investment instrument which was cashed in whole or in part at the time an employee was impacted by unpaid earnings due to the Phoenix Pay System. Compensation is to be commensurate with investment income lost during the unpaid period up to the sums equivalent to missed net pay;
 - b. Non speculative lost RRSP deferred taxation advantages, subject to specific conditions. Compensation is to be commensurate with tax advantages lost during the unpaid period calculated on sums up to the equivalent of the missed net pay (including delayed net severance or pension payments where such delay is caused by the Phoenix Pay System);
 - c. With respect to delayed severance or pension payments where such delay is caused by the Phoenix Pay System, any interest on outstanding amounts on loans, mortgages, credit cards or other debt instruments where the outstanding amount is up to the net amount of the delayed severance or pension payment less the

- portion of the delayed net severance or pension payments applied to calculate the amount payable pursuant to clause 24(b);
- d. For current employees documented use of sick leave, and other paid or unpaid leave caused by illness, stemming from issues with the employee's pay attributed, to the Phoenix Pay System shall be re credited and/or compensated. The \$1,500 threshold does not apply to this sub clause;
 - e. For former employees, documented use of other paid (except for sick leave) or unpaid leave caused by illness, stemming from issues with the employees' pay attributed to the Phoenix Pay System, shall be compensated. The \$1,500 threshold does not apply to this sub clause;
 - f. Interest attributable to the Phoenix Pay System, at the rate of the Interest and Administrative Charges Regulations on:
 - i. all delayed severance payments, beyond what would be a normal established processing time (within thirty (30) days of receipt of severance pay annex);
 - ii. all delayed pension entitlements, beyond what would be a normal established processing time (goal is to process the pension benefit division payment within one hundred and twenty (120) days of the date the application is approved or within forty five (45) days of receipt of all required documents, whichever is later);
 - iii. missing pay.
 - g. The Employer agrees to apply retroactively to February 2016, section 17 of the Directive on Terms and Conditions of Employment (emergency replacement pay services or priority pay for individuals beginning disability insurance, maternity or

parental leave). The \$1,500 threshold does not apply to this sub clause;

- h. Claims alleging a discriminatory practice as defined under the Canadian Human Rights Act, including but not limited to issues related to maternity, parental or disability leave, which may warrant additional damages being awarded;
- i. Claims in respect of the consequences of lost occupational capacity, lost security clearances, bankruptcy or significant credit rating impact which are directly attributable in whole or in part to their Phoenix Pay problems, in order to compensate the consequences thereof;
- j. Claims in respect of employees who resigned from the public service as a consequence of a loss of income leading to financial hardship caused by the Phoenix Pay System;
- k. Claims in respect of mental anguish or trauma, which interfered with the ability of the employee, to a profound degree, to lead a normal life; caused in whole or in part by the Phoenix Pay System; and
- l. Other damages which are in the nature of the above, for situations which disclose comparable personal hardship or impact caused in whole or in part by the Phoenix Pay System.

Grievance Process

25. The Employer will rely on all relevant information in reviewing damages for severe impacts and other demonstrable cases, including information held by department(s) or agency(s) where an employee was employed.

26. A decision with respect to a claim under this agreement shall constitute a final level grievance decision. For the purpose of referring a claim to the FPSLREB for adjudication, a claim under this agreement shall constitute a grievance at that point.
27. Employees may only grieve the denied portion of their claim/grievance for damages for severe impacts and other demonstrable cases in accordance with the grievance process established under this agreement.
28. The Employer will provide a decision with respect to a claim within two (2) years of receipt of the necessary information needed to make a decision. The time frame may be amended with the mutual consent of the parties. This clause shall not come into effect until the claims office is established.
29. An employee whose claim has been approved will be required to sign a release form. It will only be effective for the portion of the claim that is approved.
30. Grievances for damages resulting from the Phoenix Pay problems that were filed prior to the date of this agreement coming into force and which have not been resolved will be processed pursuant to this agreement.
31. Grievances for damages resulting from the Phoenix Pay problems that were filed after the date of this agreement coming into force shall be processed pursuant to this agreement.

The Adjudication of Grievances

32. Claims can only be referred to the FPSLREB for adjudication once a decision has been made; or the time period in clause 28 has expired; or upon the mutual consent of the parties.

33. The Bargaining Agent retains the right to refer a final level grievance decision made under this agreement to adjudication where the bargaining agent has carriage of the grievance per article 209(2) of the FPSLRA.
34. The Employer will not seek to enforce any objections of timeliness with respect to the grievance process until two (2) years from the date of the signature of this agreement.
35. Grievances arising out of clause 24 (a to c, f) shall be argued by way of written submissions, except where it is determined by the adjudicator, or on consent of the parties, that either viva voce and/or oral arguments are required for a proper determination of the merits of the grievance.
36. Grievances arising out of clause 24 (d, e, g to k) may be argued by way of written submissions, where the parties agree or where the adjudicator determines that it is in accordance with the principles of natural justice to dispense with viva voce evidence, and oral argument.

Bargaining Agent's obligations

37. The Bargaining Agent must review and evaluate, prior to an employee filing a claim, all existing grievances submitted by their members in a manner consistent with their duty of fair representation. The Bargaining Agent will make reasonable efforts to complete this review within one hundred and eighty (180) days of implementation of this agreement.
38. Where the Bargaining Agent has carriage over an existing grievance, and that matter has been resolved, the Bargaining Agent will withdraw those grievances within one hundred and eighty (180) days of the implementation of this agreement.

39. The Bargaining Agent agrees to withdraw all related grievances (individual, group and policy), Unfair Labour Practices and any other litigation related to damages, and the late implementation of the 2014 collective agreements. In addition, the Bargaining agent will not support or pursue new litigation with regards to these matters.

Oversight Committee

40. The parties agree to create an oversight committee to oversee and facilitate the implementation of this agreement.
41. The committee will be established within ninety (90) days of the signature of this agreement. The committee will be comprised of an equal number of Employer and PSAC representatives, not exceeding 8 members.
42. The committee's objective is to resolve issues related to the implementation of this memorandum of agreement. The committee will not review substantive matters related to individual claims and grievances.
43. The committee will work towards establishing an accelerated adjudication process for grievances under this agreement. The parties may utilize alternative dispute resolution processes such as mediation and/or the process outlined under section 223(2) of the FPSLRA if mutually agreed.

Definitions

44. Current employees: are individuals employed under the Public Service Employment Act that are indeterminate or terms of more than three (3) months on the date of signature of this agreement and who were eligible during the period covered by this agreement.

45. Former employees: are individuals who were employed under the Public Service Employment Act either on an indeterminate basis or for a term of more than three (3) months during the period covered by this agreement and who have resigned, been terminated, retired or become deceased (estates of deceased employees) before the date of signature of this agreement.

Without Prejudice

This agreement is made without prejudice to the rights of the Bargaining Agent in respect of:

- a. Damages suffered by employees working with the Phoenix Pay System, for example by compensation advisors, which are not covered by this agreement;
- b. Damages or other corrective measures in respect of the consequences of the Phoenix Pay System with regard to the processing of dues;
- c. The application for judicial review filed before the Federal Court of Canada on December 19, 2016.

This agreement is made without prejudice to the rights of individual employees in respect of their rights under the Canadian Human Rights Act.

This agreement, as well as any public communications related to it, is subject to conclusion of a tentative collective agreement with the Program and Administrative Services (PA) group.

The parties recognize that final agreement is subject to approval by the Employer and the Bargaining Agent's governing body.

Dates may be extended by mutual agreement of the parties.

For the Bargaining agent:

Chris Aylward

President

Public Service Alliance of Canada

For the Employer:

Sandra Hassan

Assistant Deputy Minister

Employment Conditions and Labour Relations

Treasury Board of Canada Secretariat

Date modified:


2020-10-23



Government
of Canada

Gouvernement
du Canada

This is Exhibit "S" to the Affidavit
of RENÉE DELORME sworn before
this 13 day of January, 2023


A Commissioner for Oaths in and
for the Province of Alberta

[Canada.ca](#) > [Public service and military](#) > [Pay, pension and benefits](#)

> [Pay for the public service](#) > [Claims and compensation: Phoenix Pay System](#)

Damages: Compensation for eligible employees impacted by the Phoenix pay system (represented by the Public Service Alliance of Canada) – 2020 Agreement

From: [Treasury Board of Canada Secretariat](#)

- i** The Government of Canada signed a separate damages agreement in June 2019, **for federal employees represented by other public service unions.**
 - [Compensation for eligible employees represented by other bargaining agents](#)

On this page

- [Who this agreement applies to](#)
- [Who this agreement does not apply to](#)
- [Overview of the agreement](#)
- [Other claims and compensation](#)
- [Related links](#)

The Government of Canada and the Public Service Alliance of Canada (PSAC) reached a joint agreement to compensate current and former employees who may have been impacted by the Phoenix pay system.

Separate agencies that use the Phoenix pay system have reached similar agreements with PSAC as well. This means that the 2020 agreement applies to current and former employees, and the estates of deceased employees represented by PSAC from separate agencies.

Who this agreement applies to

This agreement, and similar agreements, co-developed by PSAC and the federal government, apply to current and former employees and the estates of deceased employees who were:

- represented by PSAC or in excluded positions that fall under PSAC
- employed by separate agencies that use the Phoenix pay system

Excluded positions are defined under the *Directive on Terms and Conditions of Employment for Certain Excluded and Unrepresented Groups and Levels*.

Who this agreement does not apply to

This agreement does not apply to:

- members of the class action as certified in *Bouchard c. Procureur Général du Canada (200-06-000214-174)*, and any other member of the class that could be added by the courts, including
 - students
 - casual employees
 - employees with terms of less than 3 months
 - individuals working no more than 1/3 of regular hours

Overview of the agreement

This agreement provides compensation for four (4) fiscal years:

- 2016–2017
- 2017–2018
- 2018–2019
- 2019–2020

General damages

General damages include compensation for stress, aggravation, pain and suffering and for the late implementation of the 2014 collective agreements. This compensation is a lump-sum payment of:

- up to \$1,000 for fiscal year 2016 to 2017
- up to \$500 for each of the following three fiscal years

To qualify for the lump-sum payment, an employee had to be:

- employed in the core public administration or in a separate agency covered by the agreement, on an indeterminate basis, or as a term for more than three months, and
- on strength ^{*} for at least one day during the applicable fiscal years

Current employees received their lump-sum payments as part of their regular pay in March and September 2021.

Former employees can submit a claim for the lump-sum payment.

Severe impacts

Additional compensation, evaluated on a case-by-case basis, is also available for those who experienced:

- severe personal or financial impacts

- financial costs and lost investment income

Documented leave taken by current and former employees because of an illness caused by Phoenix pay problems may also be re-credited or reimbursed (as applicable). A threshold of \$1,500 applies to most types of severe impacts claims and is applied only once. This means that you can combine several types of severe impacts into one claim to ensure the one-time threshold is met.

Claims are available to all current and former employees eligible under this agreement and are processed on a case-by-case basis.

Other claims and compensation

All employees can continue to submit claims for expenses and financial losses, including:

- out-of-pocket expenses
- advances to social benefits
- reimbursements for tax advice
- impacts to income taxes and government benefits

Related links

- Phoenix pay system damages agreement 2020: eligible employees represented by PSAC
- Phoenix pay system damages agreement 2019: eligible employees represented by signatory bargaining agents

* "On strength" means that employees who were on paid/unpaid leave, assignment or otherwise not active are still considered employed for the purposes of this agreement.

Date modified:

2021-12-16

ENTERED

Form 27
[Rules 6.3 and 10.52(1)]

COURT FILE NUMBER 1801-10956
COURT COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE Calgary
PLAINTIFF(S) RENEE DELORME as Representative Plaintiff
DEFENDANT(S) Her Majesty the Queen in Right of Canada,
IBM Canada Limited
DOCUMENT **APPLICATION BY IBM Canada Limited,
Defendant**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT LENCZNER SLAGHT ROYCE SMITH GRIFFIN LLP
J. Thomas Curry and Paul-Erik Veel
130 Adelaide Street West, Suite 2600
Toronto, ON M5H 3P5
Email: tcurry@litigate.com and pveel@litigate.com
Telephone: 416-865-2842
Facsimile: 416-865-2861



CMH - TBD
ACJ Rooke
302640

**This is Exhibit "T" to the
Affidavit of RENÉE DELORME
sworn before this 13 day of
January, 2023**

**A Commissioner for Oaths in
and for the Province of Alberta**

NOTICE TO RESPONDENT(S): RENEE DELORME as Representative Plaintiff

This application is made against you. You are a respondent. You have the right to state your side of this matter before the master/judge.

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

Date: **To be scheduled by the Court**
Time: **To be scheduled by the Court**
Where: **Calgary - Calgary Courts Centre, 601-5 Street SW, Calgary, AB T2P 5P7**
Before Whom: **Associate Chief Justice 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:

1. An Order striking out all claims in the Amended Statement of Claim against IBM Canada Limited and dismissing this action as against IBM Canada Limited.
2. Costs of this application and this action in favour of IBM Canada Limited.

Grounds for making this application:

3. The only cause of action pleaded as against IBM Canada Limited in the Amended Statement of Claim is negligence.

4. The Amended Statement of Claim pleads no facts that, if true, would establish a relationship of proximity between any member of the proposed Class (as defined in the Amended Statement of Claim) and IBM Canada.
5. It is plain and obvious that IBM Canada Limited does not owe a duty of care to either the representative plaintiff or any member of the proposed Class in respect of the alleged negligence pleaded against IBM Canada Limited.
6. It is plain and obvious that the Amended Statement of Claim discloses no reasonable claim as against IBM Canada Limited.

Material or evidence to be relied on:

7. The Amended Statement of Claim

Applicable rules:

8. Rules 1.2, 1.3, 1.4, 3.68, and 13.6
9. Such other rules as counsel may advise.

Applicable Acts and regulations:

10. N/A

Any irregularity complained of or objection relied on:

11. N/A

How the application is proposed to be heard or considered:

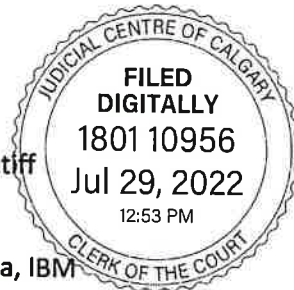
12. Orally by the Case Management Judge, Associate Chief Justice Rooke.

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 give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

CERTIFIED *E. Wheaton*
by the Court Clerk as a true copy of the
document digitally filed on Jul 29, 2022

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.



A Class Proceeding under the *Class Proceedings Act*

DOCUMENT **ORDER**

**ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF
PARTY FILING THIS DOCUMENT**

NAPOLI SHKOLNIK CANADA
Attention: Clint Docken, Q.C. and Mathew Farrell
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Ph: (403) 457-7778
Fax: 1-877-517-6373
Box: 7

This is Exhibit "U" to the Affidavit of
RENÉE DELORME sworn before this
13 day of January, 2023

[Signature]
A Commissioner for Oaths in and for
the Province of Alberta

James H. Brown & Associates
Attention: Rick Mallett
2400 Sun Life Place
10123-99 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788

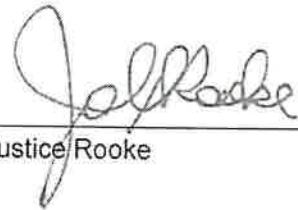
DATE ON WHICH ORDER WAS PRONOUNCED: June 22, 2022
NAME OF JUSTICE WHO MADE THIS ORDER: The Honourable Associate Chief
Justice John D. Rooke
**LOCATION OF WHERE THIS ORDER WAS
PRONOUNCED:** Calgary, Alberta

THIS MOTION, made by the Plaintiff for, *inter alia*, an Order fixing the date of a settlement approval motion, and approving the form, content and method of dissemination of the Notice of Hearing, was heard this day, at the Calgary Courts Centre, Calgary, Alberta.

ON READING the materials filed, including the Settlement Agreement dated May 5, 2022 and attached hereto as **Schedule "A"** (the "**Settlement Agreement**"), and on hearing the submissions of Counsel for the Plaintiff and Counsel for the Defendants; and **AND ON BEING ADVISED** that the Defendants consent to this Order:

1. **THIS COURT ORDERS** that except as otherwise stated, this Order incorporates and adopts the definitions set out in the Settlement Agreement attached hereto as **Schedule "A"**.
2. **THIS COURT ORDERS** that the form and content of the Notice of Settlement Approval Hearing ("**Notice of Hearing**") is hereby approved substantially in the form attached hereto as **Schedule "B"**.
3. **THIS COURT ORDERS** that the hearing of the Plaintiff's motions to approve the Settlement Agreement, approve notice, certify this action as a class proceeding for the purpose of settlement, and approve Class Counsel Fees (the "**Approval Motions**") shall take place on September 7, 2022.
4. **THIS COURT ORDERS** that the Notice of Hearing shall be published and disseminated in accordance with the Plan of Dissemination attached hereto as **Schedule "C"**.
5. **THIS COURT ORDERS** that putative Class Members who wish to file an objection with the Court, or comment on the Settlement Agreement or the request for approval of Class

Counsel Fees, shall deliver a written statement to Class Counsel no later than 14 days prior to the Approval Motions.

A handwritten signature in black ink, appearing to read "J. AlRooke", written over a horizontal line.

Associate Chief Justice Rooke

July 28, 2022

SCHEDULE "A"

- 1 -

SETTLEMENT AGREEMENT

Made as of this 21st day of April, 2022

B E T W E E N:

Renee Delorme

Plaintiff

and

IBM Canada Limited

Defendant

WHEREAS the Plaintiff was an employee of the Federal Government;

AND WHEREAS the Plaintiff is the proposed representative plaintiff in the Action, which advances claims for alleged losses against the Federal Government and IBM relating to the Phoenix Pay System;

AND WHEREAS IBM has brought an application to strike the Plaintiff's claim against IBM as disclosing no reasonable cause of action;

AND WHEREAS the Parties wish to conclusively resolve the issues which were or could have been advanced against IBM in the Action;

NOW THEREFORE in consideration of the mutual agreements set forth below, the Parties agree as follows:

DEFINITIONS

1. In this Agreement, including the Recitals and Schedules hereto:

- (a) **Action** means the proposed class action styled as *Delorme v Her Majesty the Queen in Right of Canada et al* bearing Court file number 1801-10956 commenced in the Alberta Court of Queen's Bench at Calgary;
- (b) **Agreement** means this settlement agreement, including the recitals and schedules;
- (c) **Certification and Approval Order** means an order of the Court substantially in the form attached as Schedule A certifying the Action as a class proceeding for the sole purpose of giving effect to and implementing this Agreement, providing a process for Class Members to opt-out of the Action, approving this Agreement, declaring this Agreement to be binding upon all Settlement Class Members, and dismissing the Action with prejudice and without costs as against IBM;
- (d) **Class** means all individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 through until the date of settlement approval;
- (e) **Class Counsel** means Guardian Law Group LLP and James H. Brown and Associates;
- (f) **Class Counsel Fees** mean the fees, disbursements, costs, and all other applicable taxes or charges of Class Counsel;
- (g) **Class Member(s)** means, individually or collectively, any member or members of the Class;
- (h) **Common Issue** means: "Did IBM Canada Limited owe a duty of care to Class Members in respect of the Phoenix Pay System?"
- (i) **Court** mean the Alberta Court of Queen's Bench;
- (j) **Effective Date** means the next calendar day after the day on which all appellate rights with respect to the Certification and Approval Order have expired or the Certification and Approval Order is affirmed upon a final disposition of all appeals;

- (k) **Federal Government** means the defendant, Her Majesty the Queen in Right of Canada;
- (l) **IBM** means IBM Canada Limited;
- (m) **Notice of Certification and Settlement Approval** means the form(s) of notice as may be agreed to by the Plaintiff and IBM and approved by the Court, which informs the Class of the principal elements of this Agreement, the certification of the Action as a class proceeding, approval of this Agreement, and the right to opt-out of the Action;
- (n) **Opt-Out Period** means the period of time commencing on the date on which the Notice of Certification and Settlement Approval is first sent to any Class Member and ending sixty (60) days thereafter, or such other period as approved by the Court;
- (o) **Parties** mean the Plaintiff, the Settlement Class Members, and IBM;
- (p) **Plaintiff** means Renee Delorme;
- (q) **Proportionate Liability** means the proportion of any judgment that, had they not settled, the Court would have apportioned to the Releasees;
- (r) **Released Claims** mean any and all manner of claims, crossclaims, counterclaims, demands, actions, suits, charges, demands, obligations, debts, setoffs, rights of recovery, causes of action, or liabilities for obligations of any kind whatsoever whether class, individual or otherwise in nature, whether personal or subrogated, known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, asserted or unasserted, personal or subrogated, liquidated or unliquidated, in law or equity, under statute, regulation, ordinance, contract, or otherwise in nature—for relief of any kind—including without limitation compensatory, punitive or other damages, declaratory or injunctive relief, liabilities of any nature whatsoever, interest, costs, expenses, penalties, and lawyers' fees (including Class Counsel Fees)—that the Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or

hereafter can, shall, or may have at any time in the future, relating in any way to any conduct occurring anywhere, from the beginning of time relating in any way to the Phoenix Pay System—including, without limitation, the development, implementation, maintenance, or administration of the Phoenix Pay System by IBM Canada and/or the Federal Government, and all claims that were raised or which could have been raised in the Action. For purposes of clarity, Released Claims include, but are not limited to, claims that arise after the Effective Date;

- (s) **Releasees** mean jointly and severally, individually and collectively, IBM and its past, present, and future, direct and indirect, parents, subsidiaries, affiliates, joint venturers, and related entities, including all of their respective former, present, and future principals, officers, directors, employees, supervisors, shareholders, members, representatives, partners, agents, lawyers, insurers, reinsurers, subrogees, successors, executors, administrators, beneficiaries, and assigns;
- (t) **Releasors** mean individually and collectively, the Plaintiff and each of the Settlement Class Members and their respective predecessors, next of kin, wards, agents, representatives of any kind, insurers, beneficiaries, successors, heirs, executors, administrators, and assigns, whether or not such Settlement Class Members receive any portion of the Settlement Amount;
- (u) **Settlement Amount** means the sum of CDN \$100,000;
- (v) **Settlement Class** mean all Class Members, except persons who validly opt-out of the Settlement Class in accordance with the Certification and Approval Order;
- (w) **Settlement Class Member(s)** means, individually or collectively, any member or members of the Settlement Class;
- (x) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of Class Counsel for the benefit of Settlement Class Members.

BEST EFFORTS TO EFFECT SETTLEMENT

2. The Parties shall use their best efforts to effect the terms of this Agreement and the settlement described herein, including securing the Certification and Approval Order in accordance with this Agreement, and shall coordinate in making any presentations to the Court regarding the Agreement.

3. All motions, pleadings, filings, reports, forms, and other documents related to approval or implementation of this Agreement and settlement shall be provided to IBM for review prior to submission or transmission to the Court. This includes, but is not limited to, the motion for the Certification and Approval Order.

PAYMENT OF SETTLEMENT AMOUNT

4. Within 15 days of the Effective Date, IBM will pay the Settlement Amount to Class Counsel to be held in the Trust Account in accordance with the terms of this Agreement.

5. Class Counsel shall maintain the Trust Account as provided for in this Agreement. Class Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Agreement and any related Orders of the Court.

6. All interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Class Members and shall become and remain part of the Trust Account.

7. The Releases shall bear no risk related to the management or investment of the Trust Account. The Releasees shall not be required to deposit additional funds as a result of investment or other losses to the Trust Account.

THE CERTIFICATION AND APPROVAL ORDER

8. At a time mutually agreed to by the Plaintiff and IBM after this Agreement is executed, and which is as soon as practical, the Plaintiff shall bring an application before the Court for the Certification and Approval Order. The Certification and Approval Order shall be substantially in the form set out in Schedule A to this Agreement.

9. The Parties agree that the Action shall be certified solely for purposes of settlement of the Action against IBM and the approval of this Agreement by the Court.

10. The only common issue the Plaintiff shall seek to certify in connection with such application shall be the Common Issue.

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING

11. At the same time the Plaintiff applies for the Certification and Approval Order, the Plaintiff shall also apply for approval of a Notice of Certification and Settlement Approval in a form that has been approved by IBM.

12. The Notice of Certification and Settlement Approval will be distributed in such manner as the Plaintiff may propose and IBM may agree, subject to approval of the Court. The Releasees shall not be required to take any steps to disseminate the Notice of Certification and Settlement Approval, nor shall the Releasees be required to contribute to the costs of effecting any dissemination of the Notice of Certification and Settlement Approval as the Court might order.

13. The Plaintiff shall disseminate such other notices as the Court might require in connection with the implementation of this Agreement. The Releasees shall not be required to take any steps to disseminate any such notices as might be ordered by the Court, nor shall the Releasees be required to contribute to the costs of effecting such dissemination of any such notices as might be ordered by the Court or to any other costs or fees associated with administration or implementation of this Agreement.

14. It is understood and agreed that no consideration or amount or sum paid, credited, offered, or expended by IBM in performance of this Agreement constitutes a penalty, fine, punitive damages, or other form of assessment for any alleged claim or offence.

OPTING OUT

15. At the same time the Plaintiff applies for the Certification and Approval Order, the Plaintiff shall also apply for approval of an opt-out request form in a form that has been approved by IBM.

16. A Class Member may opt-out of the Action by sending a signed opt-out request form in a form approved by the Court by pre-paid mail, courier, fax, or email to Class Counsel at an address and coordinates to be identified in the Notice of Certification and Settlement Approval.

17. Opt-out requests must contain:

- (a) A statement requesting that the person opting out be excluded from the Settlement Class; and
- (b) The full name, current address, telephone number, and e-mail address of the person who is opting out.

18. An opt-out request may be, but is not required to be, in substantially the form approved by the Court, provided the opt-out request contains all or substantially all of the information listed in paragraph 17 of this Agreement.

19. An opt-out request will only be effective if the executed opt-out request is postmarked or emailed to Class Counsel on or before the end of the Opt-Out Period.

20. Within twenty-one (21) days of the end of the Opt-Out Period, Class Counsel shall notify IBM of each person, if any, who has opted out of the Action.

DISTRIBUTION OF SETTLEMENT AMOUNT

21. At a time solely within the discretion of Class Counsel, which may be at the same time the Plaintiff moves for the Certification and Approval Order, the Plaintiff will seek an Order on notice to IBM regarding the manner of distribution of the Settlement Amount. The Plaintiff agrees to seek an Order that the Settlement Amount, net of Class Counsel Fees, be paid cy-pres to Food Banks Canada.

22. The approval of this Agreement is not conditional upon any particular distribution of the Settlement Amount. For greater certainty, the Court approving or failing to approve any particular manner of distribution of the Settlement Amount shall not be grounds for either the Plaintiff or IBM to terminate this Agreement.

RELEASE AND DISMISSAL

23. Upon the Effective Date, and in consideration of payment of the Settlement Amount and for other valuable consideration set forth in this Agreement, the Releasors finally, fully, forever, and absolutely release and forever discharge and release the Releasees from the Released Claims. The Parties intend that the releases in this Agreement be interpreted and enforced broadly and to the fullest extent permitted by law. Each Releasor shall be deemed to have released all Released Claims against the Releasees regardless of whether any such Releasor ever seeks or obtains by any means, including without limitation through the Claim Process, any distribution from the Settlement Amount.

24. The Releasors shall not now or hereafter institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, whether before any court, tribunal, administrative agency, regulatory body, or other body in any jurisdiction, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or against any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee relating in any way to any Released Claims, except for the continued prosecution of the Action against the Federal Government or participation in similar such action proceeding in Quebec.

25. Each Releasor may hereafter discover facts other than or different from those which he or she knows or believes to be true with respect to Released Claims. Nevertheless, each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon the Effective Date, any known or unknown, suspected or unsuspected, contingent or non-contingent claim with respect to Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

26. Upon the Effective Date, the Action shall be dismissed as against IBM with prejudice and without costs.

27. Notwithstanding any other provision of this Agreement, nothing in this Agreement will prevent Releasees from pleading this Agreement as a full and complete defence to any action, suit, or other proceeding that has been or may be instituted, prosecuted, or attempted with respect to

any of the Released Claims and may be filed, offered, and received into evidence, and otherwise used for such defence.

BAR ORDER

28. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating in any way to Released Claims which were or could have been brought in the Action by the Federal Government or any other person or Party against a Releasee, or by a Releasee against the Federal Government or any other person or Party (excepting (i) a claim by a Releasee pursuant to a policy of insurance, provided any such claim involves no right of subrogation against the Federal Government; and (ii) a claim brought by a person who has validly and timely opted-out of the Settlement Class) are barred, prohibited, and enjoined in accordance with the terms of this section.

29. The Settlement Class Members shall not be entitled to claim or recover from the Federal Government that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest or costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise. The Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action, and any determination by the Courts in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.

EFFECT OF SETTLEMENT

30. The Parties acknowledge that IBM denies the truth of the allegations in the Action and denies any liability or wrongdoing whatsoever.

31. The Plaintiff and IBM expressly reserve all of their rights if this Agreement is not approved, is terminated, or otherwise fails to take effect for any reason, including rights in opposition to certification of any class. Further, whether or not this Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement,

and any action taken to carry out this Agreement, shall not be deemed, construed or interpreted to be an admission by IBM or any Releasee (or evidence thereof) of any violation of any statute or law, of any wrongdoing, or of the truth of any of the claims or allegations contained in the Action or any other pleading filed by the Plaintiff or any other person.

32. Whether or not it is terminated, this Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Agreement, and any action taken to carry out this Agreement, shall not be referred to, offered as evidence or received in evidence in any present, pending or future civil, criminal or administrative action or proceeding, except: (i) by the Parties in a proceeding to approve or enforce this Agreement; (ii) by a Releasee to defend against the assertion of any Released Claims; (iii) by a Releasee in any insurance-related proceeding; or (iv) as otherwise required by law or as provided in this Agreement.

33. Except insofar as such a term is prohibited by law, Class Counsel will hereafter not institute, continue, maintain, assert, participate in or be involved with, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or against any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee which relates to or arises from the Released Claims, except for the continued prosecution of the Action against the Federal Government and the related Quebec action.

34. In the event that this Agreement is not finally approved, is terminated in accordance with its terms, or otherwise fails to take effect, this Agreement shall, subject to an agreement by the Plaintiff and IBM to the contrary, be null and void and of no force and effect and any order certifying or authorizing a class proceeding shall be set aside and the Parties agree that all Parties shall be put in the position they were in before this Agreement was executed and nothing in this Agreement shall prejudice any position that any of the Parties or any Releasee may take on any issue in the Action or any other litigation.

CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES

35. Class Counsel may on notice to IBM seek the Court's approval of Class Counsel Fees contemporaneous with seeking the Certification and Approval Order, or at such other time as they shall determine in their sole discretion. Class Counsel Fees, in such amount as may be approved by the Court, shall be paid solely from the Settlement Amount. IBM shall take no position on such an application.

36. The failure of the Court to approve a request for Class Counsel Fees has no impact or effect on the rights and obligations of the Parties to this Agreement and shall not be grounds for either the Plaintiff or IBM to terminate this Agreement.

37. Except for payment of the Settlement Amount, the Releasees shall not be liable for or required to pay any amounts, damages, costs, fees, disbursements, or taxes arising in any way under this Agreement or the Action, including but not limited to Class Counsel Fees and other any costs, fees, disbursements, or taxes of the Plaintiff or any Settlement Class Members, including any expenses or costs incurred by any lawyers, experts, advisors, agents, or representatives of the Settlement Class Members. No Releasee shall have any responsibility, financial obligations, or liability whatsoever relating to the dissemination of the Notice of Certification and Settlement Approval, the administration of this Settlement, or any distribution that might be made of the Settlement Amount.

38. Releasees do not warrant to Plaintiff, Settlement Class Members, or Class Counsel any tax benefits or consequences arising from this Agreement or any of the payments made pursuant to this Agreement. All federal, provincial, and local taxes owed by Plaintiff, Settlement Class Members, or Class Counsel on any of the amounts paid pursuant to this Agreement are the responsibility of Plaintiff, Settlement Class Members, and Class Counsel, and not the Releasees.

TERMINATION OF AGREEMENT

39. The Plaintiff may terminate this Agreement only in the event that:

- (a) The Court declines to grant the Certification and Approval Order substantially in the form attached as Schedule A, or if any such Certification and Approval Order

is modified, overturned, or reversed in whole or in part on appeal, provided that a modification or reversal on appeal of any Class Counsel Fees or expenses awarded by the Court shall not provide any termination right.

40. IBM may terminate this Agreement in the event that:
- (a) The Court declines to grant the Certification and Approval Order substantially in the form attached as Schedule A, or if any such Certification and Approval Order is modified, overturned, or reversed in whole or in part on appeal, provided that a modification or reversal on appeal of any Class Counsel Fees or expenses awarded by the Court shall not provide any termination right, unless such modification or reversal has the effect of increasing IBM's financial obligation under this Agreement;
 - (b) The Court does not certify the Settlement Class in accordance with the specific Settlement Class definition set forth in this Agreement, or the scope of the Settlement Class is modified, overturned, or reversed in any way on appeal;
 - (c) The Court, or another Court on appeal, makes a further Order in respect of this Action which imposes obligations on IBM or deprives IBM of benefits that are materially inconsistent with the terms of this Agreement; or
 - (d) The total number of Class Members who opt-out of the Action exceeds 10% of the total number of Class Members.

41. To exercise a right of termination under paragraphs 39 or 40, a terminating party shall deliver a written notice of termination pursuant to paragraphs 39 or 40 of this Agreement within thirty (30) days of the ground for termination becoming known to the terminating party. Upon delivery of such a written notice, this Agreement shall be terminated, shall be null and void and have no further force or effect, and shall not be binding on the Parties.

42. If this Agreement is not approved, is terminated by the Plaintiff or IBM in accordance with its terms, or otherwise fails to take effect for any reason, all orders made in respect of this

Agreement shall be set aside and shall be deemed as having no force and effect and shall be without prejudice to any position the Parties may assert in the future.

43. If this Agreement is terminated or otherwise fails to take effect for any reason, the provisions of sections 31-32, 34, and 42, and the definitions applicable thereto shall survive the termination and continue in full force and effect. The definitions shall survive only for the limited purpose of the interpretation of these surviving sections within the meaning of this Agreement. All other provisions of this Agreement and all other obligations pursuant to this Agreement shall cease immediately.

MISCELLANEOUS

44. The Plaintiff and Class Counsel shall not make or cause to be made any public statement or comment regarding this settlement or Agreement until after the motion for Certification has been filed with the Court.

45. The Plaintiff and Class Counsel agree not to disparage, criticize, or denigrate Releasees (individually or collectively) to any person or entity (including but not limited to any media outlet, television station or program, radio station or program, newspaper, magazine, website, editor, reporter, journalist, photo-journalist, interviewer, author, columnist, blogger, mobile application (e.g., Facebook, Twitter, Instagram), writer, or current or former employee or customer of any Releasee regarding any matter related to the Agreement or the Action.

46. Excluding the communications authorized by the Court-approved plan for issuing Notice of Certification and Settlement Approval, all Parties and their counsel will mutually agree upon the content of all website postings and communications to public-facing third parties regarding any matter related to this Agreement or any of the allegations in the Action. The foregoing does not apply to Defendants' communications with their employees, auditors, or regulatory bodies.

47. The Plaintiff or IBM may apply to the Court for directions in respect of the interpretation, implementation, and administration of this Agreement.

48. All applications contemplated by this Agreement shall be on notice to both the Plaintiff and IBM.

49. In this Agreement:
- (a) The division of the Agreement into paragraphs and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement; and
 - (b) The terms "this Agreement", "hereof", "hereunder", "herein" and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement.
50. In the computation of time in this Agreement, except where a contrary intention appears:
- (a) Where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
 - (b) Only in the case where the time for doing an act expires on a statutory holiday, the act may be done on the next day that is not a holiday.
51. The Court shall retain exclusive jurisdiction over this Agreement and the Parties hereto.
52. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of Alberta.
53. This Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations, representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith. None of the Parties will be bound by any prior obligations, conditions, or representations with respect to the subject matter of this Agreement, unless expressly incorporated herein.
54. This Agreement may not be modified or amended except in writing and on consent of the Plaintiff and IBM.

55. This Agreement shall be binding upon, and enure to the benefit of the Plaintiff, IBM, the Settlement Class Members, the Releasors, the Releasees, and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiff shall be binding upon all Releasors and each and every covenant and agreement made herein by IBM shall be binding upon all of the Releasees.

56. This Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile or PDF signature shall be deemed an original signature for purposes of executing this Agreement.

57. This Agreement has been the subject of negotiations and discussions among the Parties, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Agreement, or any agreement in principle, all have no bearing upon the proper interpretation of this Agreement.

58. The recitals to this Agreement are true and form part of the Agreement.

59. The Schedules annexed hereto form part of this Agreement.

60. Any and all notices, requests, directives, or communications required by this Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email PDF files, and shall be addressed as follows:

FOR THE PLAINTIFF AND FOR CLASS COUNSEL:

Clint Docken, Q.C./Mathew Farrell
Guardian Law Group LLP
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Tel: 403-457-7778
Fax: 1-877-517-6373
Email: cdocken@guardian.law

FOR IBM:

Suite 2600
Toronto, Ontario M5H 3P5
Tel: (416) 865-3096
Fax: (416) 865-9010
Email: icurry@litigate.com and pveel@litigate.com

61. Each of the Parties hereby affirms and acknowledges that:

- (a) He, she, or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood this Agreement;
- (b) The terms of this Agreement and the effects thereof have been fully explained to him, her, or the Party's representative by his, her or its counsel;
- (c) He, she, or the Party's representative fully understands each term of this Agreement and its effect; and
- (d) No Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party, beyond the terms of this Agreement, with respect to the first Party's decision to execute this Agreement.

62. Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement on behalf of the Parties identified above their respective signatures below.

63. The Parties have executed this Agreement as of the date on the cover page.

Date: May 5th 2022

Emily
Witness

Renee
RENEE DELORME

Date: _____

IBM CANADA LIMITED

Per:

E-SIGNED by Dave McCann

Name: Dave McCann

Position: President

2022-04-21 20:43:57 GMT

SCHEDULE "A" TO AGREEMENT – CERTIFICATION ORDER

COURT FILE NUMBER	1801-10956
COURT	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE	CALGARY
PLAINTIFF	RENEE DELORME as Representative Plaintiff
DEFENDANTS	Her Majesty the Queen in Right of Canada, IBM Canada Limited
DOCUMENT	ORDER FOR CERTIFICATION AND SETTLEMENT APPROVAL AS AGAINST IBM CANADA LIMITED
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Clint Docken, Q.C./Mathew Farrell Guardian Law Group LLP 342 – 4 Avenue S.E. Calgary, Alberta T2G 1C9 Tel: 403-457-7778 Fax: 1-877-517-6373 J. Thomas Curry/Paul-Erik Veel Lenczner Slaght LLP 130 Adelaide Street West Suite 2600 Toronto, ON M5H 3P5 Tel: 416-865-9500 Fax: 416-965-9010 Email: tcurry@litigate.com and pveel@litigate.com

DATE ON WHICH ORDER WAS PRONOUNCED: ☉

LOCATION OF HEARING OR TRIAL: Calgary, Alberta

NAME OF JUDGE WHO MADE THIS ORDER: ☉

8. Any member of the Class who validly opts out of the Action is not bound by the Agreement.
9. The Agreement is fair, reasonable and in the best interests of the Settlement Class and is hereby given Settlement Approval pursuant to section 35 of the *Class Proceedings Act*, SA 2003, c 0-16.5 and shall be implemented in accordance with its terms and the terms of this Order.
10. This Order, including the Agreement, is binding upon the Parties and on every Settlement Class Member, whether or not the Settlement Class Member receives monetary compensation or value.
11. This Order, including the Agreement, is binding upon each such Settlement Class Member including those persons who are minors or mentally incapable, and the requirements of Rule 2.11 and Rule 2.19 of the Alberta Rules of Court are dispensed with in respect of this proceeding.
12. Upon the Effective Date, the Releasees are forever, finally and absolutely released by the Settlement Class Members from the Released Claims.
13. Upon the Effective Date, this Action is dismissed as against IBM with prejudice and without costs.
14. Upon the Effective Date, Settlement Class Members are barred from making any claims or taking or continuing any proceeding arising out of, or relating to, the Released Claims, except as otherwise expressly provided for in the Agreement, against any Releasee or Party.
15. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims which were or could have been brought in the Action by the Federal Government or any other person or Party, against a Releasee, or by a Releasee against the Federal Government or any other person or Party (excepting (i) a claim by a Releasee pursuant to a policy of Insurance, provided any


such claim involves no right of subrogation against the Federal Government; and (ii) a claim in respect of a person who has validly and timely opted-out of the Settlement Classes) are barred, prohibited, and enjoined in accordance with the terms of this section.

16. The Settlement Class shall not be entitled to claim or recover from the Federal Government that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise.
17. The Court shall determine the Proportionate Liability of the Releasees at the trial or other disposition of the Action, whether or not the Releasees appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Action, and any determination by the Court in respect of the Proportionate Liability of the Releasees shall not be binding on the Releasees.
18. This Court will retain continuing jurisdiction over the Settlement for the purposes of implementing, interpreting and enforcing the Agreement and this Order subject to the terms and conditions set out in the Agreement and this Order.
19. On notice to the Court, but without further order of the Court, the Parties to the Agreement may agree to reasonable extensions of time to carry out any of the provisions in the Agreement.
20. The distribution of the Settlement Amount and any claim for Class Counsel Fees shall be the subject of further applications by the Plaintiff, on notice to IBM Canada Limited.
21. The manner of dissemination of the Notice of Certification and Settlement Approval shall be subject to a separate Order of this Court.
22. No Releasee shall have any responsibility, financial obligations, or liability whatsoever relating to the dissemination of the Notice of Certification and Settlement Approval, the administration of this Settlement, or any distribution that might be made of the Settlement Amount.

23. This Order may be executed in counterpart, electronically or by facsimile.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

J.C.Q.B.A

<p>CONSENTED TO this <u>5th</u> day of <u>May</u>, 2022 by</p> <p>GUARDIAN LAW</p> <p>Per:  Clint G. Docken, Q.C. Counsel for the Plaintiff</p>	<p>CONSENTED TO this ___ day of _____, 2022 by</p> <p>LENCZNER SLAGHT</p> <p>Per: _____ Paul-Erik Veel Counsel for the Defendant IBM Canada Limited</p>
--	---

SCHEDULE "B"

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING IN THE PHOENIX PAY ROLL SYSTEM LITIGATION

Read this Notice carefully as it may affect your rights

NOTICE OF CERTIFICATION AND SETTLEMENT

A Canada-wide settlement has been reached in the Phoenix Class Action with the Defendant, IBM Canada Limited. The Class Action sought compensation for losses which were allegedly related to the implementation of the Phoenix Pay Roll System for Employees of the Government of Canada.

The Defendant, IBM Canada Limited, denies the allegations made in the lawsuit, and it makes no admission as to the truth of these allegations.

The settlement, if approved, will **NOT** resolve this action in relation to the other Defendant, Her Majesty the Queen in Right of Canada.

THE SETTLEMENT REQUIRES COURT APPROVAL

In order for the Settlement to become effective, it must be approved by the Alberta Court of Queen's Bench. The Court must be satisfied that the Settlement is fair, reasonable and in the best interest of the Class. The Settlement Approval Hearing is scheduled for September 7, 2022 at 10:00 a.m. MST via Webex at:

Join link:

<https://albertacourts.webex.com/albertacourts/j.php?MTID=m4a7031cdef6c219ff9dfd2bf14343eac>

Webinar number:

2482 497 0709

Webinar password:

QBCAL0907 (72225090 from phones)

Join by phone

+1-780-851-3573 Canada Toll (Edmonton)

Access code: 248 249 70709

WHO IS INCLUDED IN THE CLASS ACTION?

If approved, the Settlement applies to: "all Individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 through until the date of settlement approval", other than persons who validly opt out.

WHO REPRESENTS THE CLASS?

Clint Docken Q.C. and Mathew Farrell of Napoli Shkolnik Canada.
Rick Mallett of James H. Brown & Associates

WHAT IF I DON'T WANT TO BE IN THE CLASS ACTION?

If you are a class member and do not wish to be bound by the Class Action and/or by the Settlement (if approved), you must Opt Out. You will have an opportunity to opt out of the class action if and when

the Settlement is approved by the Court. Additional details about the opt out process will be provided if and when the Settlement is approved. You do not need to do anything at this time in order to opt out.

If you Opt Out, you will be opting out of the lawsuit for all purposes. In particular, you will no longer be a member of the class for the purpose of the claim against the other Defendant, Her Majesty the Queen in Right of Canada. If you opt out, you will not be entitled to share in any settlement or judgment against the other Defendant, Her Majesty the Queen in Right of Canada, if one is achieved.

WHAT SETTLEMENT HAS BEEN REACHED FOR THE CLASS ACTION?

The Settlement provides for a fixed Settlement Amount of \$100,000.00 (CND) (the “Settlement Payment”). The Settlement Payment will be used to provide a donation to the Canada Food Bank and cover Class Counsel Legal Fees. A copy of the settlement terms can be viewed at www.phoenixIBMsettlement.com

FURTHER DOCUMENTATION AVAILABLE (August 26, 2022)

No later than August 26, 2022 the documents being filed by Class Counsel in relation to the Settlement Approval Hearing and the motion to approve Class Counsel’s fees will be available on the settlement website at:

www.phoenixIBMsettlement.com

OBJECTING TO THE SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the Settlement, you may submit a written objection with reasons, referencing Action Number 1801-10956, to Clint Docken Q.C. at the address below, to be sent no later than September 1, 2022. Filing a written objection is a precondition to attending the Settlement Approval Hearing and making oral submissions to the Court.

LEGAL FEES

At the Settlement Approval Hearing, Class Counsel will make a separate motion requesting approval for payment of fees, disbursements and applicable taxes.

CLASS COUNSEL

NAPOLI SHKOLNIK CANADA

Attention: Clint Docken, Q.C. and Mathew Farrell
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Ph: (403) 457-7778
Fax: 1-877-517-6373

James H. Brown & Associates

Attention: Rick Mallett
2400 Sun Life Place
10123-99 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788

SCHEDULE "C"
Plan of Dissemination

Notices will be delivered via the following systems:

1. A settlement website established at www.phoenixIBMsettlement.com;
2. A one-time Press Release will be published in both French and English with the Globe and Mail, outlining:
 - (a) the certification process;
 - (b) the opt-out process; and
 - (c) the settlement website.
3. The long form notice, notice of the commencement of the claims process and copies of claims forms will be uploaded to the settlement website;
4. Class counsel may apply to the court on notice to the Defendants for approval to make any further distribution of notices to settlement class members as may be deemed necessary to facilitate their interests in the settlement.

Manulife reports \$1.6-billion drop in earnings

CEO says COVID-19 restrictions in Asia and market volatility hurt profit but the insurer remains 'strongly capitalized'



Manulife's Asian operations - which account for more than 38 per cent of its revenue - saw a 17-per-cent decline in sales reflecting COVID-19 lockdown measures in Asia. CHRISTOPHER KAZIANOVITZ/THE GLOBE AND MAIL

CLARE O'HARA WEALTH MANAGEMENT REPORTER

Manulife Financial Corp. missed analyst profit expectations after a \$1.6-billion drop in earnings owing to less first quarter and extended COVID-19 restrictions in Asia.

The largest insurer in Canada reported second-quarter net income of \$1.09-billion, or 32 cents a share - a \$1.6-billion drop from the \$2.69-billion, or \$1.33 a share, that it reported in 2021's second quarter.

Analysts had forecast net income of \$1.47-billion, or 76 cents a share, according to financial markets data firm IHS.

During an analyst call on Thursday, Manulife chief executive officer Roy Gori said while net income for the quarter was negatively affected by market volatility this year, the company

life insurance products.

The company's new chief executive officer of Asia, Damien Green - who replaced Anil Wadhvani in May - said the insurer expects to see improvements "step by step" as the region emerges from pandemic conditions. And he said the company will meet its medium-term core earnings growth target of 15 per cent for Asia.

"What's impacted in the short term by COVID-19 and facing the rest of the world are the constraints of our competitors - such as economic slowdown, tapered consumer sentiment and waves of regulatory changes - earnings have exceeded pre-pandemic levels," Mr. Green told analysts.

"The franchise is in good shape. The distribution remains very diverse. And I think we continue to be focused to capture the secular trends as markets start to normalize."

Manulife's global wealth and asset management divisions also saw a drop in sales for the second quarter, reporting \$7-billion in sales - a steep decline from the \$8.6-billion in sales for the same quarter last year.

Sales for the quarter were largely driven by the institutional and

retirement segments, while retail market saw higher mutual-fund redemptions with investment rolling \$1.9-billion out of sales compared with \$7.3-billion in sales for the second quarter in Asia.

New business sales in both the United States and Canada helped reduce the impact of market and pandemic related headwinds for the insurer. In Canada, sales increased by 8 per cent, largely driven by higher volumes in group insurance plans, while the U.S. saw an increase of 18 per cent with jumps in higher international sales (which are reported in the U.S. segment).

Scotiabank analyst Mery Gramman said in a note to investors that the weaknesses were largely what he thought they would be, and "in fact proved to be a little less negative than forecast."

"More specifically, we had expected COVID to continue to pressure results in Asia, and challenging markets to pressure performance in Manulife's Wealth and Asset Management (WAM) unit, and they did, but not by more than expected," Mr. Gramman wrote.

THIS IS EXHIBIT V referred to in the Affidavit of DENISE DELORNE Sworn before me this 13th day of JANUARY A.D. 2023

[Signature]

Commissioner for Oaths in and for Alberta

MARUJET (MFC) CLOSE: \$23.85 DOWN 304

CI Financial shares jump more than 8% after reporting strong growth

CLARE O'HARA WEALTH MANAGEMENT REPORTER

CI Financial Inc. saw its shares jump by more than 8 per cent on Thursday - their largest jump in almost 18 months - after the independent investment manager reported strong quarterly profits.

On Thursday, CI reported second-quarter net income of \$181-million or its 57 cents a share, up from \$177-million or 57 cents in the same period a year ago.

CI shares surged after the news, before easing off to end the day up 40 cents or 3.7 per cent at \$11.07.

Chief executive officer Rurt MacAlpine told analysts the results "validate" the company's revamped corporate strategy and capital allocation policies which have seen CI aggressively expand into the United States by purchasing more than 75 registered investment adviser firms since January 2020.

"Our expansion in wealth management in the United States and Canada has added stability and diversification to our business, with our U.S. operations making increasing contributions to revenues and earnings," Mr. MacAlpine said.

The IPO was first announced in May, with CI saying it would sell up to 20 per cent of its U.S. wealth management business through a U.S. offering.

Market volatility affected the company's overall level of assets under management, which dropped in the quarter to \$29-billion from about \$30-billion in April.

Much of the decline stems from its asset management division, which dropped to \$18-billion in assets in the second quarter, from \$19-billion a year prior.

Mr. MacAlpine also told analysts on Thursday the company is on track to file the regulatory papers for an initial public offering with the U.S. Securities and Exchange Commission to launch an initial public offering for its U.S. wealth business, which now accounts for more than half the company.

The U.S. wealth management arm saw its assets climb to \$19-billion in the second quarter, up from \$18.5-billion in the second quarter of 2021.

The IPO was first announced in May, with CI saying it would sell up to 30 per cent of its U.S. wealth management business through a U.S. offering. The company said it intends to use the net proceeds from the offering to pay down debt, and that a final decision on the IPO size, conditions and timing is pending and will be subject to market conditions.

With a report from David Mitchell
© FINANCIAL (CI) CLOS: 113.87, UP 404

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING IN THE PHOENIX PAY ROLL SYSTEM LITIGATION

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THE SETTLEMENT REQUIRES COURT APPROVAL

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John Nho:
https://albertacourts.webex.com/albertacourts/?phpMTD=mk47031cde6c2109f4d2b1f4343eac
Webinar number: 2482 497 0709
Webinar password: QRCAL0907 (7225090 from phones)
+1-780-451-3573 Canada Toll (Edmonton)
Access code: 248 249 70709

WHO IS INCLUDED IN THE CLASS ACTION?

If approved, the Settlement applies for: "all individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 through until the date of settlement approval," other than persons who validly opt out.

WHO REPRESENTS THE CLASS?

Cliff Docken Q.C. and Matthew Farrell of Napoli Shkolnik Canada. Rick Mallatt of James H. Brown & Associates

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WHAT SETTLEMENT HAS BEEN REACHED FOR THE CLASS ACTION?

The Settlement provides for a fixed Settlement Amount of \$100,000.00 (CAD) (the "Settlement Payment"). The Settlement Payment will be used to provide a donation to the Canada Food Bank and cover Class Counsel legal fees. A copy of the settlement terms can be viewed at www.phoenixclasssettlement.com

FURTHER DOCUMENTATION AVAILABLE (August 26, 2022)

No later than August 26, 2022 the documents being filed by Class Counsel in relation to the Settlement Approval Hearing and the motion to approve Class Counsel's fees will be available on the settlement website at:

www.phoenixclasssettlement.com

OBJECTING TO THE SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the Settlement, you may submit a written objection with reasons, referencing Action Number 1801-2019-4, to Cliff Docken Q.C. at the address below, to be sent no later than September 1, 2022. Filing a written objection is a precondition to attending the Settlement Approval Hearing and making oral submissions to the Court.

LEGAL FEES

At the Settlement Approval Hearing, Class Counsel will make a separate motion requesting approval for payment of fees, disbursements and applicable taxes.

CLASS COUNSEL

NAPOLI SHKOLNIK CANADA
Attention: Cliff Docken, Q.C. and Matthew Farrell
1500, 144 - 4 Avenue S.W.
Calgary, Alberta T2P 3K4
Ph: (403) 921-8478

JAMES H. BROWN & ASSOCIATES
Attention: Rick Mallatt
3400 Sun Life Place
10123-88 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788

AVIS D'AUDIENCE D'AUTORISATION ET D'APPROBATION DU RÈGLEMENT DANS LE DOSSIER DU SYSTÈME DE PAIE PHOENIX

Veuillez lire cet avis en détails puisque vos droits pourraient être visés

AVIS D'AUTORISATION ET DE RÈGLEMENT

Un règlement pancanadien a été conclu avec le défendeur IBM Canada Limited dans le cadre de l'action collective entreprise en lien avec le système de paie Phoenix. L'action collective vise à obtenir compensation pour les pertes qui auraient été liées à la mise en place du système de paie Phoenix pour les employés du Gouvernement du Canada.

Le défendeur IBM Canada Limited nie les allégations mises de l'avant dans le cadre du recours, et ne fait aucune admission quant à la véracité de ces allégations.

Le règlement, s'il est approuvé, ne mettra PAS fin à l'action collective en ce qui a trait à l'autre défendeur, le Procureur Général du Canada.

LE RÈGLEMENT DOIT ÊTRE APPROUVÉ PAR LA COUR

Pour que le règlement devienne exécutoire, il doit être approuvé par la Cour du Banc de la Reine de l'Alberta. La Cour doit être satisfaite que le règlement est juste, raisonnable, et dans le meilleur intérêt des membres de l'audience d'autorisation et d'approbation du règlement doit avoir lieu le 7 septembre 2022, à 10h au (Banque horaire MST), par l'entremise de la plateforme Webex, accessible avec les informations ci-dessous.

Lien de connexion:
https://albertacourts.webex.com/albertacourts/?phpMTD=mk47031cde6c2109f4d2b1f4343eac
Numéro de webinar: 2482 497 0709
Mot de passe du webinar: QRCAL0907 (7225090 avec un téléphone)

Pour se joindre par téléphone:
+1-780-451-3573 Canada Toll (Edmonton)
Code d'accès: 248 249 70709

QUI EST INCLUS DANS L'ACTION COLLECTIVE?

S'il est approuvé, le règlement s'applique à: "Tous les individus, syndiqués ou non-syndiqués, qui ont travaillé pour le Gouvernement du Canada entre le 1er janvier 2014 et la date d'approbation du règlement", autre que les personnes qui se sont volontairement exclues de l'action collective.

QUI REPRÉSENTE LES MEMBRES?

Cliff Docken Q.C. et Matthew Farrell de la firme Napoli Shkolnik Canada. Rick Mallatt de la firme James H. Brown & Associates

QUE FAIRE SI JE NE VEUX PAS FAIRE PARTIE DE L'ACTION COLLECTIVE?

Si vous êtes un membre visé par la définition du groupe et que vous ne voulez pas être lié par l'action collective visée par le règlement (s'il est approuvé), vous devez vous exclure (Opt Out). Vous aurez l'opportunité de vous exclure lorsque le règlement sera approuvé par la Cour, le cas échéant. Des informations additionnelles quant au processus d'exclusion seront fournies lorsque le règlement sera approuvé, le cas échéant. Vous n'avez pas à faire quoi que ce soit à l'heure actuelle pour être exclu.

Si vous décidez d'être exclu, vous vous excluez de l'action collective à tout niveau. En particulier, vous ne serez plus membre du groupe aux fins de la réclamation contre l'autre défendeur, soit le Procureur Général du Canada. Si vous décidez de vous exclure, vous n'avez pas droit de participer ou de bénéficier de tout règlement ou jugement qui pourrait intervenir avec ou contre l'autre défendeur, le Procureur Général du Canada.

QUEL RÈGLEMENT EST INTERVENU DANS LE CADRE DE L'ACTION COLLECTIVE?

Le règlement prévoit le paiement d'un montant fixe de 100 000,00 CAD (le "Paiement du règlement"). Le Paiement du règlement sera utilisé pour faire un don à la Banque Alimentaire du Canada et pour couvrir les honoraires des avocats du groupe. Une copie des termes du règlement peut être revue sur www.phoenixclasssettlement.com

DISPONIBILITÉ DE LA DOCUMENTATION ADDITIONNELLE (26 août 2022)

d'autorisation et d'approbation du règlement et la demande d'autorisation des honoraires des avocats du groupe seront disponibles, au plus tard le 26 août 2022, sur le site du règlement accessible au:

www.phoenixclasssettlement.com

OBJECTION AU RÈGLEMENT ET OPPORTUNITÉ DE PARTICIPER À L'AUDIENCE

Si vous souhaitez vous opposer au règlement, vous pouvez communiquer une objection motivée, à l'écrit, à l'attention de M. Cliff Docken Q.C., en utilisant l'adresse reproduite ci-dessous et en faisant référence au numéro de dossier 1801-2019-4, et ce, au plus tard le 1er septembre 2022. La communication d'une objection écrite constitue un prérequis à toute participation lors de l'audience d'autorisation et à toute intervention lors de la suite de l'audience.

HONORAIRES LÉGAUX

Lors de l'audience d'autorisation et d'approbation du règlement, les avocats du groupe présenteront une demande distincte pour faire approuver le paiement des honoraires, frais et déboursés, ainsi que les taxes applicables.

AVOCATS DU GROUPE

NAPOLI SHKOLNIK CANADA
À l'attention de: Cliff Docken, Q.C. et Matthew Farrell
1500, 144 - 4 Avenue S.W.
Calgary, Alberta T2P 3K4
Téléphone: (403) 921-8478

James H. Brown & Associates
À l'attention de: Rick Mallatt
3400 Sun Life Place
10123-88 Street
Edmonton, AB T5J 3H1
Téléphone: (780) 428-0088
Télécopieur: (780) 428-7788

SCHEDULE "B"

NOTICE OF CERTIFICATION AND SETTLEMENT APPROVAL HEARING IN THE PHOENIX PAY ROLL SYSTEM LITIGATION

Read this Notice carefully as it may affect your rights

NOTICE OF CERTIFICATION AND SETTLEMENT

A Canada-wide settlement has been reached in the Phoenix Class Action with the Defendant, IBM Canada Limited. The Class Action sought compensation for losses which were allegedly related to the implementation of the Phoenix Pay Roll System for Employees of the Government of Canada.

The Defendant, IBM Canada Limited, denies the allegations made in the lawsuit, and it makes no admission as to the truth of these allegations.

The settlement, if approved, will **NOT** resolve this action in relation to the other Defendant, Her Majesty the Queen in Right of Canada.

THE SETTLEMENT REQUIRES COURT APPROVAL

In order for the Settlement to become effective, it must be approved by the Alberta Court of Queen's Bench. The Court must be satisfied that the Settlement is fair, reasonable and in the best interest of the Class. The Settlement Approval Hearing is scheduled for September 7, 2022 at 10:00 a.m. MST via Webex at:

Join link:

<https://albertacourts.webex.com/albertacourts/j.php?MTID=m4a7031cdef6c219ff9dfd2bf14343eac>

Webinar number:

2482 497 0709

Webinar password:

QBCAL0907 (72225090 from phones)

Join by phone

+1-780-851-3573 Canada Toll (Edmonton)

Access code: 248 249 70709

WHO IS INCLUDED IN THE CLASS ACTION?

If approved, the Settlement applies to: "all Individuals, whether unionized or non-unionized, who worked for the Government of Canada from January 1, 2014 through until the date of settlement approval", other than persons who validly opt out.

WHO REPRESENTS THE CLASS?

Clint Docken Q.C. and Mathew Farrell of Napoli Shkolnik Canada.

Rick Mallett of James H. Brown & Associates

WHAT IF I DON'T WANT TO BE IN THE CLASS ACTION?

If you are a class member and do not wish to be bound by the Class Action and/or by the Settlement (if approved), you must Opt Out. You will have an opportunity to opt out of the class action if and when

the Settlement is approved by the Court. Additional details about the opt out process will be provided if and when the Settlement is approved. You do not need to do anything at this time in order to opt out.

If you Opt Out, you will be opting out of the lawsuit for all purposes. In particular, you will no longer be a member of the class for the purpose of the claim against the other Defendant, Her Majesty the Queen in Right of Canada. If you opt out, you will not be entitled to share in any settlement or judgment against the other Defendant, Her Majesty the Queen in Right of Canada, if one is achieved.

WHAT SETTLEMENT HAS BEEN REACHED FOR THE CLASS ACTION?

The Settlement provides for a fixed Settlement Amount of \$100,000.00 (CND) (the “**Settlement Payment**”). The Settlement Payment will be used to provide a donation to the Canada Food Bank and cover Class Counsel Legal Fees. A copy of the settlement terms can be viewed at www.phoenixIBMsettlement.com

FURTHER DOCUMENTATION AVAILABLE (August 26, 2022)

No later than August 26, 2022 the documents being filed by Class Counsel in relation to the Settlement Approval Hearing and the motion to approve Class Counsel’s fees will be available on the settlement website at:

www.phoenixIBMsettlement.com

OBJECTING TO THE SETTLEMENT AND OPPORTUNITY TO APPEAR

If you wish to object to the Settlement, you may submit a written objection with reasons, referencing Action Number 1801-10956, to Clint Docken Q.C. at the address below, to be sent no later than September 1, 2022. Filing a written objection is a precondition to attending the Settlement Approval Hearing and making oral submissions to the Court.

LEGAL FEES

At the Settlement Approval Hearing, Class Counsel will make a separate motion requesting approval for payment of fees, disbursements and applicable taxes.

CLASS COUNSEL

NAPOLI SHKOLNIK CANADA

Attention: Clint Docken, Q.C. and Mathew Farrell
342 – 4 Avenue S.E.
Calgary, Alberta T2G 1C9
Ph: (403) 457-7778
Fax: 1-877-517-6373

James H. Brown & Associates

Attention: Rick Mallett
2400 Sun Life Place
10123-99 Street
Edmonton, AB T5J 3H1
Phone: (780) 428-0088
Fax: (780) 428-7788