

FEDERAL COURT

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA, ASSOCIATION OF JUSTICE COUNSEL, CANADIAN ASSOCIATION OF PROFESSIONAL EMPLOYEES, CANADIAN FEDERAL PILOTS ASSOCIATION, CANADIAN MERCHANT SERVICE GUILD, CANADIAN MILITARY COLLEGES FACULTY ASSOCIATION, 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 LOCAL 2228, PROFESSIONAL ASSOCIATION OF FOREIGN SERVICE OFFICERS, RESEARCH COUNCIL EMPLOYEES' UNION, UNIFOR

Applicants

- and -

CANADA (TREASURY BOARD)

Respondent

**NOTICE OF APPLICATION
(Section 18.1 of the *Federal Courts Act*)**

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED by the Applicants. The relief claimed by the Applicants appear on the following page.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the Applicants. The Applicants request that this application be heard at Ottawa.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must prepare a notice of appearance in Form 305 prescribed by the *Federal Courts Rules*, and serve it on the Applicants' solicitor, or where the applicant is



self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

June , 2016

ORIGINAL SIGNED BY
EMILY PRICE
Issued by: A SIGNÉ L'ORIGINAL
90 rue Sparks (Registry Officer)
Address of **Ottawa, Ontario**
local office: K1A 0H9

TO: CANADA (TREASURY BOARD)

AND TO: ATTORNEY GENERAL OF CANADA

APPLICATION

This is an application for judicial review in respect of the Respondent's failure to meet its pay administration obligations under sections 7 and 11.1 of the *Financial Administration Act*, RSC 1985, c F-11 ("*FAA*"), and the *Directive on Terms and Conditions of Employment*.

In 2009, the Respondent established the Pay Modernization Project to replace the pay system for federal public service employees with Phoenix, an automated payroll system. The Respondent implemented the Phoenix system in February 2016, with additional employee files being added to the system in April 2016.

Since its implementation, Phoenix has exhibited ongoing and significant systemic problems in the administration of pay for public service employees. These problems include, but are not limited to, the outright failure to pay employees; delayed and inaccurate payments; the failure to pay overtime and extra duty pay; and the failure to process information necessary for disability insurance, employment insurance and pension payments. These ongoing circumstances, which raise concerns that affect all public service employees, constitute a breach of the Respondent's duty to provide timely and accurate pay for public service employees, pursuant to the *FAA* and the *Directive on Terms and Conditions of Employment*.

The Applicants are certified bargaining agents for public service employees. They have repeatedly advised the Respondent of their concerns regarding the Phoenix pay administration issues, emphasizing the prejudicial financial and psychological impact that the pay administration program has had on employees, and have requested that the Respondent take all necessary steps to fulfil its pay administration obligations. The Respondent, however, continues to fail to meet its legal obligations and has provided no explanation which would justify the lengthy delay in addressing the issues noted above.

THE APPLICANTS MAKE APPLICATION FOR:

- (a) An Order allowing this application;
- (b) A declaration that the Respondent has failed to meet its legal duty to provide timely and accurate pay for public service employees;
- (c) An Order in the nature of *mandamus*, directing the Respondent to implement a pay administration system that meets its obligations under the *FAA* and the *Directive on Terms and Conditions of Employment*;
- (d) An order for case management, pursuant to Rule 384 of the *Federal Courts Rules*;
- (e) An order for an expedited hearing;
- (f) Interim or interlocutory relief as may be requested by the Applicants;
- (g) Their costs in this application, and;
- (h) Such further and other relief as counsel may advise and this Honourable Court will permit.

THE GROUNDS FOR THE APPLICATION ARE:

- (a) The Respondent is under a legal duty to meet its pay administration obligations outlined in the *FAA* and the *Directive on Terms and Conditions of Employment*, which includes the provision of timely and accurate pay for public service employees;
- (b) That duty is owed to the Applicants, which represent employees across the federal public service;
- (c) The Applicants and their members have a clear right to expect performance

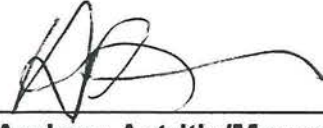
of the duty;

- (d) The Respondent's delay is unreasonable: it is longer than the nature of the process required; the Applicants are not responsible for the delay; and the Respondent has not provided any justification for the delay;
- (e) The Applicants have no other adequate remedy available to them;
- (f) The Orders sought by the Applicants will be of practical value and effect;
- (g) There is no equitable bar to this Court granting the Orders sought by the Applicants;
- (h) The balance of convenience favours the granting of the Orders sought by the Applicants, including due to the prejudice the Applicants and their members have experienced in terms of the impact of the delay;
- (i) Section 18.1 of the *Federal Courts Act*;
- (j) Sections 7 and 11.1 of the *Financial Administration Act*;
- (k) The *Directive on Terms and Conditions of Employment*, and;
- (l) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE APPLICATION WILL BE SUPPORTED BY THE FOLLOWING MATERIAL:

- (a) The Affidavit of Ron Cochrane, Chris Aylward, and such further affidavits, including the exhibits attached thereto; and,
- (b) Such further and other material as counsel may advise and this Honourable Court may permit.

Dated at Ottawa this 28th day of June, 2016.



Per: Andrew Raven/Andrew Astritis/Morgan Rowe

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Solicitors for the Applicants

EMILY YAZBECK
REGISTRY CLERK
MAY 11 2016

FEDERAL COURT

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FEDERAL GOVERNMENT DOCKYARD
CHARGEHANDS ASSOCIATION, FEDERAL
GOVERNMENT DOCKYARD TRADES AND LABOUR
COUNCIL (EAST), FEDERAL GOVERNMENT
DOCKYARD TRADES AND LABOUR COUNCIL
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