

FPSLREB Webinar:

Adjudication Processes for Phoenix-related Grievances

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On behalf of the FPSLREB
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About this webinar

- You will learn about the Board's processes for Phoenix grievances.
- You will learn how the Board's processes differ for various Phoenix-related grievances.
- You can use the resources listed later to find out more.
- **This presentation is provided for informational purposes and does not constitute legal advice.** For specific questions, please contact your legal representative.

Why we're giving this webinar

To outline and clarify the Board's three adjudication processes for these specific Phoenix matters:

- 1. The accelerated adjudication process for severe impact claims**
 - grievances referred under the 2019 and 2020 damages agreements.
- 2. The overpayment recovery adjudication process (ORAP)**
 - grievances challenging recoveries of (or attempts to recover) salary overpayments from Phoenix errors.
- 3. The regular adjudication process**
 - all other Phoenix- or pay-related grievances.

The two damages agreements

The Treasury Board and the core public administration bargaining agents reached two agreements:

1. Phoenix pay system damages agreement (2019), (“2019 Damages Agreement”)
 - 16 bargaining agents (not PSAC)
2. Phoenix pay system damages agreement (2020), (“2020 Damages Agreement”)
 - PSAC

This presentation does not interpret these agreements. Contact your legal counsel with your questions about them.

The two accelerated adjudication processes

These two accelerated adjudication processes were developed for **severe impacts claim grievances** covered by the two damages agreements:

1. **Procedural Guide for the Accelerated Adjudication of grievances filed in accordance with the *Phoenix Pay System Damages Agreement (2019)***
 - The Board developed this process in collaboration with the parties to the 2019 Damages Agreement (Treasury Board of Canada, separate agencies, and 16 bargaining agents).
 - In effect from October 17, 2023, until the Board’s Chairperson revokes it.
 - Referred to as “**Accelerated Adjudication, 2019 Damages Agreement**”.

2. **Procedural Guide for the Accelerated Adjudication of Grievances filed in accordance with the *Memorandum of Agreement on Damages caused by the Phoenix Pay System (2020)***
 - The Board developed this process in collaboration with the parties to the 2020 Damages Agreement (Treasury Board of Canada, separate agencies, and PSAC).
 - In effect from June 24, 2024, until the Board’s Chairperson revokes it.
 - Referred to as “**Accelerated Adjudication, 2020 Damages Agreement**”.

Which Phoenix grievances use the Board's accelerated adjudication processes?


Only grievances claiming damages for severe impacts and other demonstrable cases under the two damages agreements:

- **2019 Damages Agreement (non-PSAC members):** paragraphs 21 (a) to (l)
- **2020 Damages Agreement (PSAC members):** sub-clauses 24 (a) to (l)
- \$1,500 threshold for severe impacts claims, unless otherwise stated
- Damages from 4 fiscal years: 2016/17, 2017/18, 2018/19, 2019/20

Which Phoenix grievances use the Board's accelerated adjudication processes?

Remember:

- A severe impacts claim must have been filed for severe impacts and other demonstrable cases under one of the damages agreements for a grievor to use the accelerated adjudication processes
- \$1500 threshold for claims, unless otherwise stated
- The Phoenix Claims Office issues a decision on the severe impacts claim

 Government of Canada / Gouvernement du Canada Protected B when completed

Claim Form for Compensation for Damages for Severe Impacts and Other Demonstrable Cases Caused by the Phoenix Pay System

Purpose

This form is for current and former employees filing a claim under the Phoenix Damages Agreement (Agreement) for compensation for severe impacts attributed to issues with the Phoenix pay system. Former employees are eligible only if they were employed either on an indeterminate basis or for a term of more than 3 months between April 1, 2016 and March 31, 2020 in a position represented by one of the bargaining agents who have signed on to the [Phoenix Damages Agreement](#)¹.

Severe impacts could include:

- financial costs or lost investment income due to delays in pay attributed to Phoenix;
- leave taken because of health issues related to Phoenix; or
- severe damages and personal hardship because of Phoenix issues.

Claims on behalf of the estate of a deceased employee or of a former or current employee who is not capable of making a claim themselves may be filed by a legal representative. Documentation verifying eligibility to act on a claimant's behalf must be provided.

This claim form is for the purposes of applying for damages under the Agreement and is governed by the Agreement's terms and conditions. It is not intended to amend or modify the Agreement. In case of a discrepancy between the claim form and the Agreement, the terms and conditions of the Agreement will prevail.

Important information for claimants

- In order to be eligible to file a claim, you must have incurred damages **between April 1, 2016 and**

Accelerated adjudication: Information required from the bargaining agent on referral

Accelerated adjudication, 2019 Damages Agreement (non-PSAC)	Accelerated adjudication, 2020 Damages Agreement (PSAC)
<ul style="list-style-type: none"> ✓ File the Notice of Reference to Adjudication of an Individual Grievance form in the E-Filing portal ✓ You must indicate on the form “referral to accelerated adjudication of a Phoenix claim” ✓ Indicate if you are interested in mediation ✓ Identify whether the grievance falls under paragraphs 21(a) to (f) or (g) to (l) of the 2019 Damages Agreement ✓ Include the employer’s decision on the severe impacts claim 	<ul style="list-style-type: none"> ✓ File the Notice of Reference to Adjudication of an Individual Grievance form filed in the E-Filing portal ✓ You must indicate on the form “referral of a Phoenix severe impact claim grievance” ✓ You must indicate your choice of adjudication process: formal or accelerated ✓ Indicate if you are interested in mediation ✓ Identify which sub-clause(s) [24(a) to (l)] of the 2020 Damages Agreement the grievance falls under ✓ Include the employer’s decision on the severe impacts claim

Accelerated adjudication, 2019 Damages Agreement (non-PSAC): e-filing requirements

Important – include this information when you file a severe impacts claim grievance under this agreement:

- Select “Phoenix Claim” from the dropdown menu under s. 209(1)(a)
- Check “Pay System Related”
- Write “referral to accelerated adjudication of a Phoenix claim”
- Identify whether the grievance falls within paragraphs 21(a) to (f) or 21(g) to (l) of the 2019 Damages Agreement
- Indicate if interested in mediation
- Include the employer’s decision on the severe impacts claim

Please indicate the type of grievance being referred and additional relevant details. (required)
(Only one option per form may be selected. This form must be completed again for each type of matter)

The interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award - s. 209(1)(a)

Phoenix Claim

Pay System Related

A disciplinary action resulting in termination, demotion, suspension or financial penalty - s. 209(1)(b)

In the case of an employee in the core public administration, a demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct - s. 209(1)(c)(i)

In the case of an employee in the core public administration, deployment under the *Public Service Employment Act* without the employee’s consent where consent is required - s. 209(1)(c)(ii)

Demotion or termination of an employee of a separate agency designated under subsection 209(3) for any reason that does not relate to a breach of discipline or misconduct - s. 209(1)(d)

Date on which the grievance was presented at the FIRST level of the grievance process:

December 24, 2021

Date on which the grievance was presented at the FINAL level of the grievance process: (required)

December 24, 2021

Date on which the employer provided its decision at the final level of the grievance process (if applicable):

October 29, 2024

Please provide a factual description of the events, circumstances, or actions giving rise to the grievance (maximum 20000 characters). A detailed description is crucial to the evaluation of the grievance. (required)

This is a referral to accelerated adjudication of a Phoenix claim. The grievance falls under paragraphs (a) to (f) of the 2019 Damages Agreement.

19855 characters left

Accelerated adjudication, 2020 Damages Agreement (PSAC): e-filing requirements

Important - include this information when you file a severe impacts claim grievance under this agreement:

- Select “Phoenix Claim” from the dropdown menu under s. 209(1)a)
- Check “Pay System Related”
- Indicate whether it is to be a **formal** or **accelerated** adjudication process
- Identify the contested sub-clause(s) 24(a) to (l) of the 2020 Damages Agreement
- Indicate if interested in mediation
- Include the employer’s decision on the severe impacts claim

Please indicate the type of grievance being referred and additional relevant details. (required)
(Only one option per form may be selected. This form must be completed again for each type of matter)

The interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award - s. 209(1)a)

Phoenix Claim

Pay System Related

A disciplinary action resulting in termination, demotion, suspension or financial penalty - s. 209(1)b)

In the case of an employee in the core public administration, a demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct - s. 209(1)c)(i)

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Demotion or termination of an employee of a separate agency designated under subsection 209(3) for any reason that does not relate to a breach of discipline or misconduct - s. 209(1)d)

Date on which the grievance was presented at the FIRST level of the grievance process:

December 24, 2021

Date on which the grievance was presented at the FINAL level of the grievance process: (required)

December 24, 2021

Date on which the employer provided its decision at the final level of the grievance process (if applicable):

October 29, 2024

Please provide a factual description of the events, circumstances, or actions giving rise to the grievance (maximum 20000 characters). A detailed description is crucial to the resolution of the grievance. (required)

This is a referral to adjudication of a Phoenix severe impact claim grievance. We choose the accelerated process. The grievance falls under sub-clauses 24(a) and (f) of the 2020 Damages Agreement.

Accelerated adjudication, 2019 Damages Agreement (non-PSAC)

Accelerated adjudication, 2020 Damages Agreement (PSAC)

- All grievances follow the accelerated process

- Choice of process: formal or accelerated

Proceedings in writing

- Grievances under **paragraphs 21(a) to (f)** of the 2019 Damages Agreement
 - are decided based on an agreed statement of facts, agreed documents, and written submissions
 - the Board has the discretion to order an oral hearing

Proceedings in writing

- Grievances under **sub-clauses 24(a) to (c) and (f)** of the 2020 Damages Agreement
 - are decided based on an agreed statement of facts, agreed documents, and written submissions
 - the Board has the discretion to order an oral hearing

Oral hearing

- Grievances under **paragraphs 21(g) to (l)** of the 2019 Damages Agreement
 - heard by videoconference or in person
 - the parties are to file an agreed statement of facts and relevant documents before the hearing

Oral hearing

- Grievances under **sub-clauses 24(d), (e), and (g) to (k)** of the 2020 Damages Agreement
 - heard by videoconference or in person
 - the parties are to file an agreed statement of facts and relevant documents before the hearing

The Board determines the hearing type:

- Grievances under **sub-clause 24(l)** can be decided in writing or by an oral hearing, at the Board's discretion

Accelerated Adjudication: Final decision

- The Board will issue its decision within **40 working days**, unless:
 - The parties consent to a longer period, or
 - The Board determines that circumstances warrant a longer period.
- The Board's decision is final and binding on all parties.
- Decisions are only to be relied on by the parties in other severe impacts claim grievances that follow the accelerated adjudication process

When the Overpayment Recovery Adjudication Process (ORAP) applies

- In effect from December 2, 2025, until the Board's Chairperson revokes it.
- For grievances against the employer's **recovery of (or attempts to recover) salary overpayments from Phoenix errors.**
 - Only overpayments caused by Phoenix errors – not other errors (e.g., manager input of incorrect information, overpayment of entitlements...)
- The bargaining agent **must indicate on the form** that it is an overpayment recovery grievance (**Pay-Recovery**)
- **The Board creates a list of overpayment recovery grievances.**
 - The initial list was sent to the parties on December 15, 2025.
 - The parties can make submissions if they want a case held in abeyance or advanced in priority.
- Quarterly, the Board will send a list of the grievances to be dealt with under the ORAP for that quarter.

ORAP e-filing portal requirements

Important – include this information when you file an overpayment recovery grievance:

- Under s. 209(1)(a), select “Pay - Recovery”
- Check “Pay System Related”

The screenshot shows the 'Federal Public Sector Labour Relations and Employment Board' logo and the text 'EN | FR'. The main heading is 'Please indicate the type of grievance being referred and additional relevant details. (required)'. Below this, a note states '(Only one option per form may be selected. This form must be completed again for each type of matter)'. The form contains several radio button options: 'The interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award - s. 209(1)a', 'Pay System Related' (checked), 'A disciplinary action resulting in termination, demotion, suspension or financial penalty - s. 209(1)b', 'In the case of an employee in the core public administration, a demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct - s. 209(1)(c)(i)', 'In the case of an employee in the core public administration, deployment under the Public Service Employment Act without the employee's consent where consent is required - s. 209(1)(c)(ii)', and 'Demotion or termination of an employee of a separate agency designated under subsection 209(3) for any reason that does not relate to a breach of discipline or misconduct - s. 209(1)(d)'. A yellow oval highlights the first option and the 'Pay System Related' checkbox. Below the options are three date pickers for 'Date on which the grievance was presented at the FIRST level of the grievance process:', 'Date on which the grievance was presented at the FINAL level of the grievance process: (required)', and 'Date on which the employer provided its decision at the final level of the grievance process (if applicable):'. At the bottom, there are two text areas: 'Please provide a factual description of the events, circumstances, or actions giving rise to the grievance (maximum 20000 characters). A detailed description is crucial to the evaluation of the grievance. (required)' and 'What corrective action is being sought? (maximum 500 characters) (required)'. The page number '14' is visible in the bottom right corner.

ORAP submissions and disclosures

Within 35 calendar days of notice that a grievance is on the quarterly list, the employer provides:

1. A statement of the basis of the overpayment.
2. Documents.

Within 35 calendar days of receiving the employer's submissions and disclosure, the bargaining agent provides:

1. A written outline of the basis of the grievance.
2. Documents.
3. A statement under solemn affirmation.

Within 35 calendar days of receiving the grievor's submissions and disclosure, the employer provides:

1. A written outline of its position.
2. Documents that it will rely on that have not already been provided.

ORAP adjudication formats

The Board member may order the type of proceeding: written, hybrid, or another process.

Written proceedings

- The documents filed earlier will be deemed to form the evidence before the Board.
- At the Board member's discretion, the parties may ask for and receive leave to file supplemental evidence in writing or through an agreed statement of facts.

Hybrid proceedings

- The documents filed earlier, except for the grievor's statement, will be deemed to form the evidence before the Board.
- Written statement of evidence are exchanged, under solemn affirmation.
- An oral hearing is held, typically for one day, either in person or by videoconference.

The Board member renders a formal written decision that is then published on the Board's website.

Other Phoenix-related grievances

If the grievance is about a grievor's pay or the Phoenix Pay System but is **not related** to any of these:

1. a severe impacts claim under s. 21 of the 2019 Damages Agreement (non-PSAC),
2. a severe impacts claim under s. 24 of the 2020 Damages Agreement (PSAC), or
3. the recovery of, or an attempt to recover, an overpayment from a Phoenix error,

then it is referred to the Board and **follows the formal adjudication process**, even if it involves the Phoenix Pay System.

Other Phoenix-related grievances: E-filing

Important – include this information when you file other Phoenix-related grievances:

- Under s. 209(1)(a), select “Pay” or another subject
- Check “Pay System Related”

Do not select “Phoenix Claim”

- “Phoenix Claims” applies only to grievances under the severe impact claims process described in the two damages agreements

Please indicate the type of grievance being referred and additional relevant details. **(required)**
(Only one option per form may be selected. This form must be completed again for each type of matter)

The interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award - s. 209(1)a

Pay

Pay System Related


A disciplinary action resulting in termination, demotion, suspension or financial penalty - s. 209(1)b

In the case of an employee in the core public administration, a demotion or termination under paragraph 12(1)(d) of the *Financial Administration Act* for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct - s. 209(1)c(i)


In the case of an employee in the core public administration, deployment under the *Public Service Employment Act* without the employee's consent where consent is required - s. 209(1)c(ii)

Demotion or termination of an employee of a separate agency designated under subsection 209(3) for any reason that does not relate to a breach of discipline or misconduct - s. 209(1)d

Date on which the grievance was presented at the FIRST level of the grievance process:



Date on which the grievance was presented at the FINAL level of the grievance process: **(required)**



Date on which the employer provided its decision at the final level of the grievance process (if applicable):

Mediation and settlement conferences

Accelerated adjudication of severe impacts grievances

Mediation

- Send mutual requests for mediation services to mdrs-smrd@fpslreb-crtespf.gc.ca.
- Any applicable time limits are suspended during mediation.

Settlement conferences

- The Board may convene one at anytime before the decision is rendered, or at the request of one or both parties.

ORAP

Mediation

- Send mutual requests for mediation services to mdrs-smrd@fpslreb-crtespf.gc.ca for a mediator or an early resolution officer.
- Time limits may be suspended.

Settlement conferences

- The Board may convene one at anytime before the decision is rendered, or at the request of one or both parties.

The Board's usual procedure for grievances

Mediation

- The parties may agree to participate in mediation at any time during the proceedings. The parties may jointly request to have the matter referred to MDRS.
- Time limits may be placed in abeyance.

Settlement conferences

- The Board may convene one at anytime before the decision is rendered, or at the request of one or both parties.

Relevant documents

- [Phoenix pay system damages agreement \(2019\)](#) (applies to non-PSAC members)
- [Procedural guide for the accelerated adjudication of grievances filed in accordance with the Phoenix pay system damages agreement \(2019\)](#)
- [Phoenix pay system damages agreement \(2020\)](#) (applies to PSAC members)
- [Procedural guide for the accelerated adjudication of grievances filed in accordance with the memorandum of agreement on damages caused by the Phoenix pay system \(2020\)](#)
- Overpayment recovery adjudication process