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Final Report to Parliament on Actions Arising
from the Auditor General's *Report on the
Office of the Privacy Commissioner of Canada*

Report tabled by the President of the Treasury Board
and the Privacy Commissioner of Canada

April 2004

Canada

Background:

In the Auditor General's report tabled on September 30, 2003, she recommended that:

The Privacy Commissioner, in concert with the President of the Treasury Board, should act immediately to recover all money that was improperly paid. This includes improper cash-outs of vacation leave, performance awards paid improperly, improper payments on retirement, ineligible travel and hospitality expenditures, and advances paid improperly.

She further recommended that:

The President of the Treasury Board and the (interim) Privacy Commissioner should submit to Parliament a report that sets out the actions that will be taken to identify the full amounts owing of money improperly retained, and the steps that will be taken to ensure complete restitution, and the timeframe within which this will be done.

The Treasury Board Secretariat responded:

Agreed. The President and the (interim) Privacy Commissioner will table a report before the end of October outlining actions to be taken. In this regard, it will be necessary to review with the Office of the Auditor General the specific findings of its audit. Once these actions are complete, a final report will be provided to Parliament.

Action Plan:

The following outlines the actions that have been or will be taken with regard to each category of expenditure raised by the AG:

1. Cash out of vacation leave

Initial Report (Oct 31, 2003)

The Auditor General identified four cases in which she believes that vacation leave was cashed out improperly. Full restitution has been made in two of the cases. In the other two cases we are working with the Auditor General's representatives and our legal advisors to determine the exact amount recoverable. Upon completion of that review appropriate recoveries will be made.

Update (April 2004)

We have completed the analysis of the exact amounts recoverable from the other two individuals. In one instance, the entire amount of the vacation leave cashed out was

recovered through offsets against amounts that would have been otherwise owing to this individual and by repayment from the individual of the net balance outstanding. A net reimbursement of amounts owing was paid by the individual to the Crown and as a result this case is now closed. In the second case, that of the former Commissioner, all amounts we have identified as recoverable have been offset against his entitlement for severance payment. As a result, there is no net balance payable to the former Commissioner. He was informed of this in writing by Legal Counsel in March 2004.

2. Performance Awards

Initial Report (Oct 31,2003)

The performance awards will be examined on a case-by-case basis to determine if performance awards were warranted and, if so, what the appropriate awards should have been. Arrangements will then be made to recover excess payments and to ensure the proper accounting of the actual awards.

Update (April 2004)

The analysis of performance awards for the past three years has been completed. Full recovery of awards paid out over that three year period is being made from three senior former employees. In one instance (the same case as noted in section 1 above) the entire amount of the performance awards was recovered through offsets against amounts that would have been otherwise owing to this individual and by repayment from the individual of the net balance outstanding. This case is now closed. In the two other cases we have also offset the full amount of the previous performance awards against amounts that would otherwise be owing by the Office of the Privacy Commissioner to these individuals. However, both these individuals are disputing this and claiming that the full payment of these performance awards should be maintained. These two cases are now being followed up by Legal Counsel on our behalf.

In addition, for several other executives still with the Office of the Privacy Commissioner, partial recovery of past performance awards has been initiated. The total amount outstanding from 2 individuals has been fully recovered. In four other cases we have agreed with the employees that the amounts will be offset against other future entitlements. These amounts will be recovered over a one to three year period, depending on the specifics of each case.

3. Lump sum payment on retirement

Initial Report (Oct 31,2003)

We have sought legal advice as to whether any or all of this payment can be recovered. The legal opinion received indicated that the payment was within the authority of the former Privacy Commissioner and is not recoverable.

Update (April 2004)

No further action required.

4. Claims for travel and hospitality expenses

Initial Report (Oct 31,2003)

- a) The claims and other supporting information for each transaction will be examined. In order to complete this examination as quickly as possible and in a cost-effective manner, the reviewers will have to have access to and full cooperation of the Auditor General's staff.
- b) Based on this review and on legal advice a determination will be made as to the amounts recoverable. The individuals owing money will be presented with demands for repayment.
- c) Appropriate collection action will then be taken. This could include setting off the amounts owing against payments due to the individuals (for example salary, pension, severance and termination benefits) negotiating repayment schedules; and, if necessary, legal action.

Update (April 2004)

The Office of the Auditor General provided us with the required information and the subsequent analysis of transactions has been completed. We have confirmed with our Legal Counsel that certain travel and hospitality amounts highlighted in the Auditor General's report are recoverable and have now finalized our determination of the total amount of travel and hospitality amounts to be recovered. In the case of the former Commissioner, to whom a significant portion of these amounts relate, all amounts we have identified as recoverable have been offset against his severance payment. As a result, as noted in section 1, no payment is being made to the former Commissioner and he was informed of this in writing by Legal Counsel in March 2004. In the case of the other individual to whom a significant portion of these amounts relate, disallowed travel

and hospitality claims are also being offset against amounts that would have been otherwise payable. This is being followed up by Legal Counsel on our behalf.

5. Outstanding advances

Initial Report (Oct 31,2003)

The outstanding advances made to the former Privacy Commissioner will be set off against his termination payment, which has not yet been made.

Update (April 2004)

This has been done. As noted above, all amounts we have identified as recoverable have been offset against the former Privacy Commissioner's severance payment. As a result no payment is being made to the former Commissioner and he was informed of this in writing by Legal Counsel in March 2004.

Summary

To date a total of \$199,656 has either been directly repaid by individuals or the individuals involved have agreed to make repayment, either by offsets against amounts that would otherwise be owing to them or through agreed-upon repayment schedules. A further \$155,059 of identified amounts owing to the Crown from three individuals is being contested. We have offset these amounts against entitlements that would otherwise be owing to these individuals. The completion dates for these cases cannot be forecast at this time.