

Federal Court



Cour fédérale

**Date: 20110831**

**Docket: 11-T-12**

**[ENGLISH TRANSLATION]**

**Citation: 2011 FC 1029**

**Montréal, Quebec, August 31, 2011**

**PRESENT: The Honourable Mr. Justice Shore**

**BETWEEN:**

**FRANCE PONTBRIAND  
AND RAYMOND MALO**

**Applicants**

**and**

**FEDERAL PUBLIC SERVICE HEALTH CARE  
PLAN ADMINISTRATION AUTHORITY  
AND  
SUN LIFE ASSURANCE COMPANY OF  
CANADA**

**Respondents**

**REASONS FOR JUDGMENT AND JUDGMENT**

**I. Preliminary**

[1] In order for a court to act, it must have the jurisdiction to do so. Without jurisdiction, this court cannot undertake any action. In law, as in life, knowing where to turn allows us to find our way towards a final destination.

## II. Introduction

[2] The Federal Court is a statutory court whose jurisdiction cannot be presumed, unlike provincial superior courts, whose jurisdiction is both general and inherent. There must be a statutory basis for the Federal Court to have jurisdiction in a given case (*DRL Vacations Ltd. v. Halifax Port Authority*, 2005 FC 860, [2006] 3 FCR 516 at para 6).

[3] The *Federal Courts Act*, RSC, 1985, c F-7, defines “federal board, commission or other tribunal” as follows:

<p>“federal board, commission or other tribunal” means any body, person or persons having, exercising or purporting to <u>exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown</u>, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the <i>Constitution Act, 1867</i>; [Emphasis added.]</p>	<p>;« office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé <u>exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d’une prérogative royale</u>, à l’exclusion de la Cour canadienne de l’impôt et ses juges, d’un organisme constitué sous le régime d’une loi provinciale ou d’une personne ou d’un groupe de personnes nommées aux termes d’une loi provinciale ou de l’article 96 de la <i>Loi constitutionnelle de 1867</i>.</p>
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[4] The summary of principles established by the Federal Court in *DRL Vacations*, above, has been reiterated by the Federal Court on several occasions:

[48] From this review of the jurisprudence, the following principles can be distilled:

1. The phrase “powers conferred by or under an Act of Parliament” found in the definition of a “federal board, commission or other tribunal” in subsection 2(1) of the *Federal Courts Act* is “particularly broad” and should be given a liberal interpretation: *Gestion Complexe Cousineau (1989) Inc.*;
2. The “powers” referred to in subsection 2(1) of the *Federal Courts Act* are not confined to those powers that have to be exercised on a judicial or quasi-judicial basis. However the phrase “jurisdiction or powers” refers to jurisdiction or powers of a public character: *Thomas W. Wilcox*;
3. The powers referred to in subsection 2(1) do not include the private powers exercisable by an ordinary corporation created under a federal statute which are merely incidents of its legal personality or authorized business: *Thomas W. Wilcox*;
4. Although the character of the institution is significant to the analysis, it is the character of the powers being exercised that determines whether the decision maker is a federal board, commission or other tribunal for the purposes of section 18.1 of the *Federal Courts Act*: *Aeric*;
5. The fact that an institution was created to be at arm’s length from the government, the discretion conferred on the institution to manage its business, and the government’s lack of control over the finances of the institution are all indicators that the institution is not a “federal board, commission or other tribunal”: *Toronto Independent Dance Enterprise*;
6. The fact that the institution was created by government is not, by itself, determinative of the question: *Toronto Independent Dance Enterprise*;
7. The mere exercise of statutory powers alone is not sufficient to bring an institution under subsection 2(1) of the *Federal Courts Act*. All of the circumstances of the case have to be considered in order to determine whether, in exercising the powers in issue, the institution was acting as a “federal board, commission or other tribunal”: *Cairns*;
8. While an organization may be a “federal board, commission or other tribunal” for some purposes, it is not necessarily so for all purposes. In determining whether an organization is a “federal board, commission or other tribunal” in a given situation, it is necessary to have regard to the nature of the powers being exercised: *Jackson*.

### III. Facts

[5] The respondent, the Federal Public Service Health Care Plan Administration Authority (Authority), was created by letters patent of incorporation issued by the President of the Treasury Board pursuant to subsection 7.2(1) of the *Financial Administration Act*, RSC 1985, c F-11.

[6] Subsection 7.2(4) of the *Financial Administration Act* sets out that these letters patent are not regulations within the meaning of the *Statutory Instruments Act*, RSC 1985, c S-22. However, they are published in the *Canada Gazette*.

[7] The Authority is a corporation without share capital and is tasked with overseeing the administration of the Public Service Health Care Plan (PSHCP).

[8] The PSHCP is a health care plan offered to employees and retirees of the federal public service that was established by the Treasury Board in accordance with subsection 7.1(1) of the *Financial Administration Act*, which provides that:

**7.1** (1) The Treasury Board may establish or modify any group insurance or other benefit programs for employees of the federal public administration and any other persons or classes of persons it may designate to be members of those programs, may take any measure necessary for that purpose, including contracting for services, may set any terms and conditions in respect of those programs, including those relating to premiums, contributions, benefits, management, control and expenditures and may audit and

**7.1** (1) Le Conseil du Trésor peut établir ou modifier des programmes d'assurances collectives ou des programmes accordant d'autres avantages pour les employés de l'administration publique fédérale et les autres personnes qu'il désigne comme cotisants, individuellement ou au titre de leur appartenance à telle catégorie de personnes, prendre toute mesure nécessaire à cette fin, notamment conclure des contrats pour la prestation de services, fixer les conditions et modalités qui sont applicables aux programmes, notamment en

make payments in respect of those programs, including payments relating to premiums, contributions, benefits and other expenditures.

ce qui concerne les primes et cotisations à verser, les prestations et les dépenses à effectuer ainsi que la gestion, le contrôle et la vérification des programmes, et faire des paiements, notamment à l'égard des primes, cotisations, prestations et autres dépenses y afférentes.

[9] The Treasury Board (the employer), seventeen National Joint Council (NJC) bargaining agents and the Federal Superannuates National Association adopted a Memorandum of Understanding on December 1, 1999, that set out the long-term financial and management framework for the PSHCP (Exhibit D-2).

[10] This Memorandum of Understanding was amended on January 13, 2006 (Exhibit D-3).

[11] On April 1, 2006, the Treasury Board Secretariat adopted the Public Service Health Care Plan Directive ([Directive], Exhibit R-14) to implement the Memorandum of Understanding.

[12] This Directive is considered to be an integral part of the collective agreements signed by the Treasury Board and the NJC bargaining agents (Exhibit R-14).

[13] The Directive called for the PSHCP to be managed by a trust, having trustees appointed by the three PSHCP parties (Exhibit R-14).

[14] Effective May 1, 2007, that trust was replaced by the Authority (Exhibit D-1).

[15] In addition, the Directive provides that the Administrator is responsible for the consistent adjudication and payment of eligible claims in accordance with the Plan Document, and for providing services. The organization currently selected to do this is Sun Life.

[16] The Authority is an entity at arm's length from the government (Exhibit D-4).

[17] Furthermore, it is neither a Crown corporation nor an agent of Her Majesty, as set out in subsection 7.2(6) of the *Financial Administration Act*.

[18] The Authority reports and is accountable to a Partners Committee composed of employer representatives, bargaining agents of the NJC and a representative from the Federal Superannuates National Association.

[19] The Authority has all the powers of a natural person, but it cannot, according to section 3.5 of the letters patent (Exhibit D-1):

- a. Borrow or lend monies;
- b. Acquire real property, but may enter into leases for terms not exceeding ten years;
- c. Amend the PSHCP.

[20] Pursuant to section 4 of the letters patent (Exhibit D-1) and section 7.3 of the *Financial Administration Act*, the Authority is headed by a Board of Directors that consists of ten directors:

- a. Four appointed by the President of the Treasury Board (employer);

- b. Four appointed by the NJC bargaining agents;
- c. One appointed by the Federal Superannuates National Association;
- d. One chairperson appointed by the Treasury Board on the recommendation of the bargaining agents.

[21] The Authority's administrators and directors are governed by a Code of Conduct which is found at Annex A of Exhibit D-1 and they must act honestly and in good faith (duty of care), pursuant to section 4.14 of the letters patent D-1.

[22] The Authority is tasked with a number of responsibilities including considering, where requested by a PSHCP member, an appeal of a decision of the Plan Administrator regarding a specific benefit entitlement.

[23] In fact, the Treasury Board, with the concurrence of the bargaining agents, ruled out a grievance arbitration process (Directive, Exhibit R-14) and instead opted for a flexible, informal and rapid process to deal with claims for reimbursement (see para. 35 of the Court of Appeal's decision, Exhibit R-6).

[24] The appeal process is set out in the Directive (Exhibit R-14) as follows:

Where a member does not agree with a decision of the Administrator and wishes a review of their case, a submission may be made to the Trustees. The Trustees have the discretion to reach a decision that embodies due consideration

Lorsque le souscripteur n'accepte pas une décision de l'administrateur et souhaite une révision de son dossier, il peut la demander aux fiduciaires, qui ont l'entière discrétion de prendre une décision tenant dûment compte des

for individual circumstances and Plan provisions. Members should endeavour to exhaust all avenues of review with the Administrator before submitting an appeal to the Trustees. The Trustees reserve the right to refuse to reconsider their decision on an appeal. The appeal process is the final review level under the PSHCP.

An appeal must be submitted within one year of the Administrator's mailing of an Explanation of Benefits regarding the claim.

circonstances de l'affaire et des dispositions du Régime. Cela dit, les souscripteurs devraient s'efforcer d'épuiser tous les recours avec l'administrateur avant d'en appeler aux fiduciaires, car ceux-ci se réservent le droit de refuser de revenir sur leur décision en cas d'appel. La procédure d'appel est le dernier niveau de révision du PSHCP.

Les appels doivent être soumis dans un délai d'un an suivant l'envoi par l'administrateur d'une explication des prestations payables en règlement de la demande.

[25] The Authority therefore has discretion when it renders a decision on appeal.

[26] It is under no obligation to provide reasons for its decisions.

[27] All appeals are final and binding (Exhibit R-14).

[28] The appeal process is as follows:

- a. Appeal requests are sent, in writing, to the Authority;
- b. When they are received, the requests are stamped and an appeal number is assigned;
- c. The request is assigned to an analyst for review. If additional information is required, the analyst will contact the administrator (Sun Life) or the appellant;
- d. If additional information is received, the analyst reviews the file to ensure that it is complete;



- e. The analyst prepares a summary of the file for the meeting of the Appeals Committee;
- f. The Appeals Committee is comprised of five directors, including two representing the employer, two representing the bargaining agent and one representing retired employees. A quorum is necessary in order for the Committee to be properly constituted;
- g. Each case is reviewed individually by the Appeals Committee and minutes of the meeting are kept;
- h. In cases where the directors are unable to reach a unanimous decision, the file is referred to the Board of Directors to be decided;
- i. The minutes are sent to the Board of Directors for ratification;
- j. Following a decision by the Appeals Committee or Board of Directors, the Authority contacts the Administrator if adjustments or reimbursements are needed;
- k. The file is then closed.

[29] On September 23, 2007, the applicant, Raymond Malo, submitted a request for an appeal to the Authority following an unfavourable decision by the Administrator, Sun Life.

[30] On May 28, 2008, after careful consideration, the Authority rejected the applicant's appeal (Exhibit R-1).

[31] As with any decision by the Appeals Committee, the decision was final and not subject to appeal.

[32] On June 23, 2008, the applicants sent a letter to the Authority (R-11), requesting the documents on which the Plan Administrator based its decision and seeking an explanation of how much weight was given to the expertise of Dr. Jeanne Teitelbaum.

[33] On August 5, 2008, Adèle Gervais, a benefits analyst, forwarded the requested documentation to the applicants (Exhibit R-11).

[34] On August 15, 2008, Adèle Gervais sent a second letter explaining how much weight was given to Dr. Teitelbaum's expertise (Exhibit R-11).

[35] Between August 15, 2008, and June 23, 2009, there was no correspondence between the applicants and the Authority.

[36] On June 23, 2009, the applicants filed a motion to institute proceedings for damages with the Superior Court of Quebec against the respondents (Exhibit R-2).

[37] This motion did not seek to have the decision made by the Authority on appeal annulled, but instead sought damages based on an assessment of the respondents' contractual obligations by the Court.

[38] The Authority objected to this kind of proceeding and filed a motion for declinatory exception on August 17, 2009 (Exhibit D-5).

[39] In September 2009, the applicants filed an amended motion to institute proceedings, adding conclusions seeking to have the Authority's decision annulled (R-3) in accordance with articles 947 *et seq.* of the *Code of Civil Procedure*, RSQ c C-25.

[40] The Authority subsequently filed a re-amended motion for declinatory exception and dismissal seeking the dismissal of that amendment on the ground that it in fact instituted a new motion that was manifestly statute-barred (Exhibit R-4).

[41] On December 2, 2009, the Superior Court granted the Authority's motion for declinatory exception and dismissal and notably found that the motion for annulment was statute-barred (Exhibit R-5).

[42] On January 31, 2011, the Court of Appeal overturned the Superior Court's decision but did not make a determination on whether the motion for annulment was statute-barred (Exhibit R-6).

[43] In its decision, the Court of Appeal ruled that a PSHCP beneficiary could not bring an action before a court of justice following the denial of a claim for medical expenses and that the only possible legal recourse was through judicial review (Exhibit R-6).

#### IV. Analysis

##### **1) With regard to determining the Federal Court's jurisdiction**

[44] The Court is in full agreement with the respondents' position. The Authority is not a federal board, commission or other tribunal within the meaning of section 2 of the *Federal Courts Act*, and, as a consequence, the Federal Court does not have the necessary jurisdiction to hear a motion for an extension of time to file an application for judicial review of the Authority's decisions under section 18.1 of the *Federal Courts Act*.

[45] The Authority was not acting as a federal board, commission or other tribunal when it rendered its decision dismissing the appeal of the applicant, Mr. Malo.

[46] The Federal Court is a statutory court whose jurisdiction cannot be presumed, unlike provincial superior courts, whose jurisdiction is both general and inherent. There must be a statutory basis for the Federal Court to have jurisdiction in a given case (*DRL Vacations*, above).

[47] The *Federal Courts Act* defines "federal board, commission or other tribunal" as follows:

<p>“federal board, commission or other tribunal” means any body, person or persons having, exercising or purporting to <u>exercise jurisdiction or powers conferred by or under an Act of Parliament or by or under an order made pursuant to a prerogative of the Crown</u>, other than the Tax Court of Canada or any of its judges, any such body constituted or established by or under a law of a province or any such person or persons appointed under or in accordance with a law of a province or under section 96 of the <i>Constitution Act, 1867</i>;</p>	<p>« office fédéral » Conseil, bureau, commission ou autre organisme, ou personne ou groupe de personnes, ayant, exerçant ou censé <u>exercer une compétence ou des pouvoirs prévus par une loi fédérale ou par une ordonnance prise en vertu d'une prérogative royale</u>, à l'exclusion de la Cour canadienne de l'impôt et ses juges, d'un organisme constitué sous le régime d'une loi provinciale ou d'une personne ou d'un groupe de personnes nommées aux termes d'une loi provinciale ou de l'article 96 de la <i>Loi constitutionnelle de 1867</i>.</p>
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[Emphasis added.]

[48] The summary of principles established by the Federal Court in *DRL Vacations*, above, has been reiterated by the Federal Court on several occasions:

[48] From this review of the jurisprudence, the following principles can be distilled:

1. The phrase “powers conferred by or under an Act of Parliament” found in the definition of “federal board, commission or other tribunal” in subsection 2(1) of the *Federal Courts Act* is “particularly broad” and should be given a liberal interpretation: *Gestion Complexe Cousineau (1989) Inc.*;
2. The “powers” referred to in subsection 2(1) of the *Federal Courts Act* are not confined to those powers that have to be exercised on a judicial or quasi-judicial basis. However the phrase “jurisdiction or powers” refers to jurisdiction or powers of a public character: *Thomas W. Wilcox*;
3. The powers referred to in subsection 2(1) do not include the private powers exercisable by an ordinary corporation created under a federal statute which are merely incidents of its legal personality or authorized business: *Thomas W. Wilcox*;
4. Although the character of the institution is significant to the analysis, it is the character of the powers being exercised that determines whether the decision maker is a federal board, commission or other tribunal for the purposes of section 18.1 of the *Federal Courts Act*: *Aeric*;
5. The fact that an institution was created to be at arm’s length from the government, the discretion conferred on the institution to manage its business, and the government’s lack of control over the finances of the institution are all indicators that the institution is not a “federal board, commission or other tribunal”: *Toronto Independent Dance Enterprise*;
6. The fact that the institution was created by the government is not, by itself, determinative of the question: *Toronto Independent Dance Enterprise*;
7. The mere exercise of statutory powers alone is not sufficient to bring an institution under subsection 2(1) of the *Federal Courts Act*. All of the circumstances of the case have to be considered in order to determine whether, in exercising the powers in issue, the institution was acting as a “federal board, commission or other tribunal”: *Cairns*;
8. While an organization may be a “federal board, commission or other tribunal” for some purposes, it is not necessarily so for all purposes. In determining

whether an organization is a “federal board, commission or other tribunal” in a given situation, it is necessary to have regard to the nature of the powers being exercised: *Jackson*.

[49] In this case, the Authority was created by letters patent, which are not regulations within the meaning of the *Statutory Instruments Act* (Exhibit D-1).

[50] These letters patent were issued by the Treasury Board on the recommendation of the National Joint Council of the Public Service, in accordance with subsection 7.2(1) of the *Financial Administration Act*.

[51] The letters patent specify certain elements whose responsibilities must be assumed by the Authority.

[52] Among these responsibilities, it is stipulated that the Authority must consider the request for an appeal of the decision of the Plan Administrator (see paragraph 3.2(c) of the letters patent D-1).

[53] However, the exercise of this responsibility is not spelled out or defined in detail.

[54] At first blush, a mere consideration of these factors might lead one to believe that the Authority is a federal board, commission or other tribunal, thereby falling under the Federal Court’s jurisdiction pursuant to sections 2 and 18.1 of the *Federal Courts Act*.

[55] It is necessary to analyze the nature of the power exercised by the Authority and the circumstances surrounding its creation in order to determine its true nature.

[56] The fact that the Authority was created by the Treasury Board is not, by itself, determinative: *Toronto Independent Dance Enterprise v. Canada Council*, [1989] 3 FC 516.

[57] The Authority is at arm's length from the government.

[58] The only power exercised by the Treasury Board in relation to the Authority is the appointment of directors to the Board of Directors, in accordance with section 7.3 of the *Financial Administration Act*.

[59] However, when the Board makes such appointments, it does so as an employer with whom the bargaining agents have come to an agreement for the implementation of the PSHCP.

[60] Moreover, the other members of the Board of Directors are appointed by the bargaining agents.

[61] In addition, the Authority does not report to the government, but reports and is accountable to the Partners Committee composed of employer representatives, bargaining agents of the NJC and a representative from the Federal Superannuates National Association.

[62] The Authority has all the powers of a natural person, except for the limitations set out at section 3.5 of the letters patent (D-1). Among other things, it may take legal action, but it may not:

- a. Borrow or lend monies;

- b. Acquire real property, but may enter into leases for terms not exceeding ten years;
- c. Amend the PSHCP.

[63] It is therefore free to organize the management of its corporation and has complete discretion in managing its affairs.

[64] The fact that the Authority is at arm's length from the government and that it enjoys complete discretion in the management of its affairs are factors which argue in favour of the view that the Authority is not a federal board, commission or other tribunal (*Toronto Independent Dance Enterprise*, above).

[65] On another note, subsection 7.2(6) of the *Financial Administration Act* explicitly provides that the Authority is neither a Crown corporation nor an agent of Her Majesty.

[66] Nor is it a "departmental corporation" within the meaning of section 2 of the *Financial Administration Act* as it is not named in Schedule II to the said Act.

[67] In addition, it is not a "division or branch of the federal public administration", pursuant to paragraph 3(1)(a) of the *Financial Administration Act*, as it not named in Schedule I.1 to the said Act.



[68] Lastly, it does not perform administrative, research, supervisory, advisory or regulatory functions of a governmental nature, pursuant to paragraph 3(1)(a.1) of the *Financial Administration Act*, as it is not named in Schedule II.

[69] Thus, the Authority is merely a corporation without share capital, an entity with a legal personality that is distinct from the government, which is not its agent. This is an analysis factor which indicates that the Authority is therefore not a “federal board, commission or other tribunal”.

[70] As well, the Authority was created in order to administer a health care plan which is a program established by the Treasury Board in accordance with subsection 7.1(1) of the *Financial Administration Act*.

[71] This program was developed in collaboration with the bargaining agents and the representative of retired employees.

[72] In fact, on December 1, 1999, the three parties signed a Memorandum of Understanding to establish a long-term financial and management framework for the PSHCP.

[73] On January 13, 2006, the Memorandum was modified in order to provide for, among other things, the winding-up of the trust that had previously managed the PSHCP and the setting-up of the corporation, namely, the Authority.

[74] The Treasury Board developed a Directive with the help of the NJC bargaining agents to implement the Memorandum of Understanding (Exhibit R-14 at p. 1).

[75] This Directive explains the purpose, management, eligibility and workings of the health care plan (Exhibit R-14).

[76] It also provides for an appeals procedure (Exhibit R-14 at p. 2).

[77] The Directive is administrative, not legislative, in nature and is not an “Act of Parliament” within the meaning of section 2 of the *Federal Courts Act* (*Mercier v. Canada (Correctional Service)*, 2010 FCA 167 (application for leave to appeal dismissed, [2010] SCCA No. 331); *Martineau v. Matsqui Institution Inmate Disciplinary Board*, [1978] 1 SCR 118).

[78] Consequently, when the Authority acts under the Directive, it is not exercising a power conferred by an Act of Parliament.

[79] Moreover, neither the Directive (R-14) nor the *Financial Administration Act* nor the letters patent (Exhibit D-1) govern the appeals procedure, which is an indication that the institution is not a federal board, commission or other tribunal within the meaning of *Cairns v. Farm Credit Corp.*, [1992] 2 FC 115.

[80] Furthermore, the Treasury Board does not instruct the Authority with regard to the manner in which it performs its duties.

[81] The government has no control over the decisions made by the Authority on appeal.

[82] It is expressly provided that the Authority would have complete discretion when it made a decision following a request for appeal and that the appeal would be final and binding (Directive, Exhibit R-14).

[83] In short, the Authority, when it interprets the wording of the Directive, is therefore exercising the discretion to interpret a text that is not an Act of Parliament.

[84] It is not a power of public interest or of interpretation of an Act of Parliament which should be subject to review by the Federal Court.

[85] In summary, the Authority is an independent body established by the parties, namely, the bargaining agents and the Treasury Board, to arbitrate disputes arising in connection with the administration of a health care program, among other things. The true nature of the Authority and its powers show that it is not a federal board, commission or other tribunal and we submit that the decisions of the Authority do not fall under federal jurisdiction.

**2) With regard to the applicants' application for an extension of time, which is moot, the Court does not have jurisdiction over this matter, as was explained above**

[86] Even though the Court does not have jurisdiction, and even if it were to have jurisdiction, the extension of time to file an application for judicial review under subsection 18.1(2) of the *Federal Courts Act* would not have been granted to the applicants under the current circumstances.

[87] The Court considers four factors when assessing an application for an extension of time, as set out by the Federal Court of Appeal in *Canada (Attorney General) v. Hennelly* (1999), 244 NR 399, 89 ACWS (3d) 376, which was cited by the applicants:

- 1) a continuing intention to pursue his or her application;
- 2) that the application has some merit;
- 3) that no prejudice to the respondent arises from the delay; and
- 4) that a reasonable explanation for the delay exists.

Lack of continuing intention by the applicant

[88] It was not until June 23, 2009, that the applicants filed a motion for damages with the Superior Court of Quebec.

[89] In this motion, the applicants asked the Superior Court to interpret the health care plan, to declare that they were entitled to receive certain insurance benefits and to order payment thereof.

[90] The applicants also tried to circumvent the final decision of the Authority's Appeals Committee by asking the Superior Court to undertake an assessment of the contractual obligations, without requesting that the decision of the Appeals Committee be annulled.

[91] It was only after the Authority filed its motion for dismissal that the applicants requested that the Authority's decision be annulled, in accordance with articles 947 *et seq.* of the *Code of Civil Procedure*.

[92] On another note, the Court of Appeal's decision restored the parties to the situation they were in before.

[93] The applicants' motion to institute proceedings was filed one year after the Authority's decision.

[94] The applicants would therefore have been precluded from filing their application for judicial review with the Federal Court or the provincial superior court, as it was time-barred, although I would not wish to speak for the Quebec Superior Court.

The lack of a reasonable explanation for the applicant's delay

[95] In Federal Court, the party requesting an extension of time must be able to provide an explanation for the delay incurred for the entire period in question (*Arteaga v. Canada (Minister of Citizenship and Immigration)*, 2010 FC 868).

[96] The applicants argue that if there was any error on their part, it would be attributable to their counsel.

[97] In Federal Court, the applicants therefore had to demonstrate the utmost diligence in exercising their rights.

merit

[98] In the present case, this is a specialized field, i.e. the reimbursement of medical expenses, managed by an experienced insurer (Sun Life), which is under the supervision of the respondent's Board of Directors, which includes representatives of the beneficiaries (bargaining agents).

[99] Review of the decision of the Administrator (Sun Life) is an administrative issue and this review must take the circumstances and objectives of the plan into consideration.

[100] The applicants take issue with the interpretation of the facts and argue that there was a breach of the principles of natural justice.

[101] Essentially, what emerges from the applicants' submissions is that they disagree with the Authority's decision.

[102] Except to the extent there are statutory provisions or regulations having the force of law to the contrary, there is no requirement to conform to any particular procedure or to abide by the rules of evidence generally applicable to judicial or quasi-judicial tribunals or adversary proceedings (*Ross v. Canada*, 2003 FCA 296).

[103] The applicants were able to assert their point of view within the framework provided to that effect.

### Prejudice

[104] Time limits for filing applications for judicial review are mandatory, unless a court grants an extension.

[105] In this case, the applicants filed their originating motion over a year after the decision of the Appeals Committee.

[106] In light of the circumstances surrounding the case and the context in which the applicants find themselves, the Court reiterates that, in the present case, the Court of Appeal's decision restored the parties to the situation they were in before and, furthermore, the Court notes that the case law has recognized that thirty days was a reasonable time limit, except under exceptional circumstances, as the Court of Appeal held in the oft-cited *Loyer v. Québec (Commission des affaires sociales)*, above.

**JUDGMENT**

Following the applicants' arguments, the Federal Court concurs with the respondents' position with regard to the Federal Court's jurisdiction, or, rather, its lack thereof in the present case;

After having considered the documents filed with the Court and the submissions of the parties;

Given that this does not involve the interpretation of an Act of Parliament which would be subject to review by the Federal Court, the Federal Court does not have the requisite jurisdiction to entertain the matter in question.

**ACCORDINGLY, THE COURT ORDERS** that the applicants' application is dismissed.

**OBITER**

Ms. Pontbriand and Mr. Malo are seeking redress without knowing where to turn in the aftermath of the stroke Mr. Malo suffered abroad for which the elderly couple had to pay one hundred and forty thousand dollars (\$140,000) for the medical care he received. The couple is trying to find the right door to approach to assert their rights in order to resolve the personal crisis they are going through.

“Michel M.J. Shore”

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Judge



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** 11-T-12

**STYLE OF CAUSE:** FRANCE PONTBRIAND AND RAYMOND MALO  
v.  
FEDERAL PUBLIC SERVICE HEALTH CARE PLAN  
ADMINISTRATION AUTHORITY  
AND  
SUN LIFE ASSURANCE COMPANY OF CANADA

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** August 31, 2011

**REASONS FOR JUDGMENT  
AND JUDGMENT:** SHORE J.

**DATED:** August 31, 2011

**APPEARANCES:**

Jean Tremblay  
Dominique Giguère

FOR THE APPLICANTS

Claude Tardif

FOR THE RESPONDENTS

**SOLICITORS OF RECORD:**

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FOR THE APPLICANTS

Rivest, Schmidt  
Montréal, Quebec

FOR THE RESPONDENTS