

FEDERAL COURT

B E T W E E N:

PROFESSIONAL ASSOCIATION OF FOREIGN SERVICE OFFICERS

Applicant

- 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.

October 22 , 2024

Issued by: Kadara Thompson
(Registry Officer)

Address of local office: 90 Sparks Street, Ottawa ON

TO: CANADA (TREASURY BOARD)

AND TO: ATTORNEY GENERAL OF CANADA

APPLICATION

This is an application for judicial review, seeking an order of *mandamus* and a declaration, pursuant to sections 18 and 18.1 of the *Federal Courts Act*, RSC, 1985, c F-7, in respect of the Respondent's failure to meet its obligations to provide a functional health care plan to public service employees as required by sections 7, 7.1 and 11.1 of the *Financial Administration Act*, RSC, 1985, c FG-11 ("*FAA*"), and the *Public Service Health Care Plan Directive*.

The Public Service Health Care Plan (the "Plan") is established by the Respondent to provide health coverage for federal public service employees, retired federal public service employees, members of the Canadian Armed Forces, and their dependents. The Plan is self-insured, meaning that claims are paid by the Plan, rather than by an insurer. It is administered by a contractor under an administrative services only contract between the Respondent and the Plan Administrator.

The Applicant, the Professional Association of Foreign Service Officers ("PAFSO"), is the certified bargaining agent for members of Canada's professional foreign service. Its members are employed by the Respondent and enrolled in the Plan, together with their dependents. A large proportion of PAFSO members are posted and work outside Canada. They, and their dependents, are entitled to Comprehensive coverage under the Plan, which is intended to replace the health care services under a provincial or territorial health insurance plan.

From approximately 1996 to 2023, Sun Life was Plan Administrator pursuant to a contract with the Respondent. Sun Life subcontracted out-of-Canada claims processing to Allianz Global Assistance.

On August 31, 2020, the Respondent issued a Request for Proposal for a new Plan Administrator. The Respondent received compliant bids from Sun Life, Greenshield, and Canada Life. On December 1, 2021, the Respondent announced that the contract was awarded to Canada Life, promising a "seamless transition".

On July 1, 2023, administration of the Plan transitioned from Sun Life to Canada Life. Canada Life subcontracted out-of-Canada claims processing to MSH International (“MSH”).

When contracting with Canada Life to administer the Plan, the Respondent agreed not to enforce Service Level Standards for six months, double the period initially included in its Request for Proposals. Further, it did not require Canada Life and its subcontractor MSH to meet all the standards set by Sun Life and its subcontractor Allianz Global Assistance, including direct billing in the United States.

Since the transition to MSH and Canada Life, the Respondent has failed to ensure that the health care plan was functional and meeting the needs of Plan members, has failed to ensure that MSH was adequately prepared to implement the Plan, has failed to supervise MSH’s implementation of the Plan, and has failed to respond in a timely or appropriate manner when issues arose.

The Plan, as administered by MSH particularly, has exhibited ongoing and significant systemic problems for public service employees. These problems include, but are not limited to: interruptions in benefits, long delays – including of over a year – in processing claims and receiving reimbursements, arbitrary and erroneous denials of claims, arbitrary reversals of previously granted claims, arbitrary closure of claims without processing, failure to pay benefits at correct rates, approval of coverage but failure to pay service-providers resulting in collections proceedings against employees, claims lost by MSH following submission, delays in transferring employee files from Canada Life to MSH, failure to provide functional or accessible online portals, consistent inability to reach agents at MSH, long delays in reaching agents, the failure of MSH agents to respond to inquiries, the provision of inaccurate answers and advice to employees by MSH agents, increased administrative burdens on employees, and an ongoing failure to provide Comprehensive coverage consistent with the health care services under provincial or territorial health insurance plans. Because the employees working abroad

rely on the Plan for Comprehensive coverage in order to access all forms of health care, problems with Plan administration pervade all aspects of their ability to access health care. Employees have been forced to choose between carrying thousands of dollars in medical debt and foregoing or delaying treatment.

These ongoing circumstances, which raise concerns that affect employees who work abroad particularly and with unique severity, constitute a breach of the Respondent's legal duty to provide a functional health care plan for public service employees and particularly to provide Comprehensive health care coverage in a timely and accurate manner for employees working outside of Canada, pursuant to the *FAA* and the *Public Service Health Care Plan Directive*.

The Applicant has repeatedly advised the Respondent of its concerns regarding the above issues, emphasizing the prejudicial financial and psychological impact that the systemic dysfunction in the Plan has had on employees, and has requested that the Respondent take all necessary steps to fulfil its health care coverage 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 APPLICANT MAKES APPLICATION FOR:

- (a) An Order allowing this application;
- (b) An Order in the nature of *mandamus*, directing the Respondent to implement a functional health care plan to meet its obligations under the *FAA* and the *Public Service Health Care Plan Directive* within such timeline as counsel may advise and this Honourable Court will permit;
- (c) A declaration that the Respondent is in violation of its legal duty to provide a functional health care plan to public service employees;
- (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 Applicant;
- (g) Its 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:

- (i) The Respondent is under a legal duty to provide a functional health care plan to public service employees, pursuant to the *FAA* and the *Public Service Health Care Plan Directive*, which includes the provision of Comprehensive health care coverage for out-of-Canada claims in a timely and accurate manner, and has failed to fulfill that duty;
- (j) That duty is owed to the Applicant – which is a certified bargaining agent representing employees in the federal public service and particularly employees who work outside of Canada in the foreign service – as the Applicant and its members are directly affected by the Respondent's failure to fulfill its duty;
- (k) In the alternative, the duty is owed to the Applicant since the Applicant has public interest standing. Specifically,
 - i. This matter raises a justiciable issue;
 - ii. The Applicant has a genuine interest in the delivery of a functional health care plan to public service employees, as a certified bargaining agent representing employees in the federal public service, particularly those who work in the foreign service abroad;

- iii. This proposed application is a reasonable and effective way to bring the issues before the courts;
- (l) The Applicant and its members have a clear right to expect performance of the duty;
- (m) The Respondent's delay is unreasonable: it is longer than the nature of the process required; the Applicant has made several demands for the performance of the duty and a reasonable time to comply has passed; the Applicant is not responsible for the delay; and the Respondent has not provided any satisfactory justification for the delay;
- (n) The Applicant has no other adequate remedy available to it;
- (o) The Orders sought by the Applicant will be of practical value and effect;
- (p) There is no equitable bar to this Court granting the Orders sought by the Applicant;
- (q) The balance of convenience favours the granting of the Orders sought by the Applicant, including due to the prejudice the Applicant and its members have experienced in terms of the impact of the delay;
- (r) Further, the Federal Court has the jurisdiction to hear this issue and grant a declaration under sections 18 and 18.1 of the *Federal Courts Act*;
- (s) This dispute is real and not theoretical as the Respondent continues to fail to provide functional health care coverage to federal public service employees, particularly those outside of Canada, which negatively impacts employees financially and in terms of their health and wellbeing;
- (t) The Applicant has a genuine interest in this dispute's resolution as a certified bargaining agent representing employees in the federal public

service, particularly those who work outside Canada in the foreign service;

- (u) Sections 18 and 18.1 of the *Federal Courts Act*;
- (v) Sections 7, 7.1, and 11.1 of the *Financial Administration Act*;
- (w) The *Public Service Health Care Plan Directive*, and;
- (x) 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 a representative of the Applicant 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 22nd day of October, 2024.


Per: Morgan Rowe

RAVENLAW LLP
1600-220 Laurier Avenue West
Ottawa, ON K1P 5Z9

Tel: (613) 567-2901
Fax: (613) 567-2921

Solicitors for the Applicant

I HEREBY CERTIFY that the above document is a true copy of the original filed in the Court./

JE CERTIFIE que le document ci-dessus est une copie conforme À l'original déposé au dossier de la Cour fédérale.

Filing Date
Date de dépôt : Oct 22 2024

Dated
Fait le : Oct 22 2024



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DN: cn=Thompson, Kadara, c=CA,
o=GC, ou=CAS-SATJ,
email=kadara.thompson@cas-
satj.gc.ca
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