

Court File No. CV-20-00082562-00CP

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

GIULIA BELEC

Plaintiff

- and -

SUN LIFE ASSURANCE COMPANY OF CANADA

Defendant

PROCEEDING UNDER THE *CLASS PROCEEDINGS ACT, 1992*

STATEMENT OF DEFENCE

1. The Defendant, Sun Life Assurance Company of Canada (“**Sun Life**”), denies all of the allegations made in the Amended Statement of Claim, except as expressly admitted below.
2. Sun Life admits the allegations contained in paragraphs 3, 4, 12, 13, 19, and 20 of the Amended Statement of Claim.
3. Sun Life has no knowledge in respect of the allegations contained in paragraph 2 of the Amended Statement of Claim.

The Parties

4. Sun Life is a federally-regulated insurance company that provides life and disability insurance to Canadians.
5. The Plaintiff, Giulia Bélec, is insured as a plan member under a group disability insurance policy bearing policy number 12500-G (the “**Policy**”), entered into between Sun Life

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and Her Majesty the Queen in Right of Canada represented by the President of the Treasury Board (“**Treasury Board**”). Sun Life underwrites and administers the Policy for Treasury Board, which is the policyholder.

6. Sun Life approved Ms. Bélec to receive monthly long-term disability (“**LTD**”) benefits under the Policy effective December 21, 2006. She has been receiving LTD benefits in the amount to which she is entitled under the Policy since then.

Overview

7. Contrary to Ms. Bélec’s complaint, Sun Life has paid the appropriate cost-of-living adjustment (“**COLA**”) to Ms. Bélec and all proposed class members.

8. The Policy contains an “Indexation” or COLA provision, which states that the “Monthly Benefit,” as defined in the Policy, will be increased on January 1st of each year to reflect any increase provided by the escalation provisions of the federal *Public Service Superannuation Act* (“**PSSA**”), subject to a maximum increase of 3% per annum.

9. The Policy expressly provides that the COLA is to be applied to the Monthly Benefit. The Policy defines the Monthly Benefit as the amount derived by subtracting specified income Ms. Bélec receives in the month from 70% of her insured pre-disability monthly earnings.

10. The Policy expressly provides that the COLA is to be applied to this net amount. That is what Sun Life does. There is no legal or factual basis for Ms. Bélec’s claim to the contrary. Neither she nor any other member of the proposed class is entitled to a greater benefit than what is provided for in the Policy. This action is devoid of merit.

The Policy

Monthly Benefit Provision

11. The Policy provides that a “Monthly Benefit,” as defined in the Policy, will be paid to eligible plan members. This is the monthly LTD benefit that Ms. Bélec has been receiving since December 21, 2006. She continues to receive her Monthly Benefit today.

12. Contrary to the allegations at paragraphs 16, 23, and 24 of the Amended Statement of Claim, the Policy makes no reference to a “gross” monthly disability benefit. Rather, the Policy defines the Monthly Benefit as the amount payable to the plan member after all specified deductions under the Policy have been applied (i.e., a net amount). Specifically, the Policy states that “the Monthly Benefit shall be:

- (a) 70% of Insured Earnings, as at the date of completion of the Elimination Period, divided by 12, less
- (b) all Other Income earned in or attributable to a particular month.”

13. “Insured Earnings,” for full-time employees like Ms. Bélec, is defined as the employee’s current annual salary, at the relevant date, rounded up to the next highest multiple of \$250.

14. The definition of “Other Income” lists six forms of other income that a plan member may receive from other sources, including, for example, employment income and disability benefits payable under the Canada Pension Plan (“**CPP**”) and the PSSA.

Indexation Provision

15. When it procured the Policy, Treasury Board directed that the COLA be calculated on the net amount payable to the plan member after all specified deductions are applied. That is what the Policy does.

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16. Each year, eligible plan members like Ms. Bélec receive a COLA to their Monthly Benefit pursuant to the Indexation provision in the Policy. The Indexation provision of the Policy states:

While benefits are payable, the Monthly Benefit will be increased on January 1st of each year to reflect any increase which is provided by the escalation provisions of the Public Service Superannuation Act. In no event, will any increase exceed 3%.

Sun Life Disclosed How It Calculated COLA to Ms. Bélec and the Proposed Class Members

17. At all material times, Ms. Bélec and all of the proposed class members knew or ought to have known how Sun Life calculated and paid COLA to them.

18. A 1998 Employee Booklet issued to plan members by Treasury Board states:

Your net benefit (i.e. the amount payable to you after offsets have been applied) will be increased in relation to the cost of living, up to a maximum of 3 per cent. For example, if the cost of living were to rise by 2 per cent, your net monthly DI benefit of \$1,125 would be increased by 2 per cent on the January 1 following the effective commencement date of your benefits to become \$1,147.50. If the cost of living were to rise by more than 3 per cent per year, your net monthly DI benefit of \$1,125 would be increased by 3 per cent on the January 1 following the effective commencement date of your benefits, to become \$1,158.75...

19. The current member booklet published online by Treasury Board states:

Your net benefit (i.e. the amount payable to you after offsets have been applied) will be increased in relation to the cost of living, up to a maximum of 3 per cent. ...

20. The Policy itself has been available for review by plan members at all times since its inception.

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21. Sun Life has repeatedly sent letters to Ms. Bélec, dating back to at least 2010, informing her that the COLA was being applied to her Monthly Benefit, in accordance with the terms of the Policy.

No Breach of Contract

22. There is no breach of contract.

23. The Amended Statement of Claim pleads no term of the Policy that Sun Life is alleged to have breached, and pleads no facts capable of supporting a finding of a breach.

24. At all material times, Sun Life paid COLA in accordance with the terms of the Policy.

25. At all material times, the Plaintiff and all other proposed class members received the full and correct COLA amounts to which they were entitled under the Policy.

26. At all material times, the COLA amounts calculated by Sun Life for Ms. Bélec and all other proposed class members were in accordance with the Policy.

No Misrepresentation

27. Sun Life has consistently and accurately represented to Ms. Bélec and all proposed class members that it calculates the COLA based on the Monthly Benefit as the Policy requires.

28. The Plaintiff has not pleaded any specific misrepresentation.

Claims Are Statute-Barred

29. The claims advanced by Ms. Bélec and the proposed class members are statute-barred.

30. Ms. Bélec discovered or ought reasonably to have discovered her claim more than 2 years before this action was commenced.

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31. Sun Life and Treasury Board specifically informed Ms. Bélec that Sun Life was applying the COLA on the Monthly Benefit in, among other things:

- (a) the letters from Sun Life to Ms. Bélec that identified that the COLA applicable to her LTD benefits was applied to the amount payable to her after offsets have been applied;
- (b) the Employee Booklets and Member Booklets that were available to Ms. Bélec at all times while she was a federal government employee that have consistently explained the application of the COLA to the amount payable to her after offsets have been applied;
- (c) the dollar amounts of Ms. Bélec's Monthly Benefit payments, which reflected the application of the COLA to the amount payable to her after offsets have been applied; and
- (d) the Policy itself, which expressly states that the COLA is applied to the Monthly Benefit, being the amount payable to her after offsets have been applied.

32. For the same reasons, any claim by any proposed class member who began receiving LTD benefits more than two years (if the limitations legislation of Ontario, British Columbia, Alberta, Saskatchewan, Nova Scotia, New Brunswick, or Newfoundland and Labrador applies to the claim), three years (if the limitations legislation of Québec applies to the claim), or six years (if the limitations legislation of Manitoba, Prince Edward Island, Yukon, the Northwest Territories, or Nunavut applies to the claim) prior to the commencement of this action is likewise statute-barred, since this action was commenced after the expiry of the applicable limitation period. At all material times, based on the information made available to them by Sun Life and

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Treasury Board, all eligible plan members receiving LTD benefits under the Policy knew or ought reasonably to have discovered that Sun Life was calculating the COLA on the amount payable after offsets have been applied.

33. In any event, the proposed class period (which is proposed to include persons receiving LTD benefits since April 30, 1997) extends far beyond both the 15-year ultimate limitation period prescribed by the applicable legislation in Ontario, British Columbia, Saskatchewan, Nova Scotia, and New Brunswick and the 10-year ultimate limitation period prescribed by the applicable legislation in Alberta and Newfoundland and Labrador. Based on the January 20, 2020 commencement date of this action, all claims subject of the limitations legislation of these provinces that pre-date January 20, 2005 or January 20, 2010 (as the case may be) are barred by the ultimate limitation period.

No Damages

34. Neither Ms. Bélec nor any proposed class member has suffered damages. They received the COLA amounts to which they were entitled under the Policy.

No Basis for Punitive or Exemplary Damages

35. Sun Life has breached no duty to Ms. Bélec or any proposed class member in connection with COLA under the Policy. The claim for punitive and exemplary damages is baseless.

Class Proceeding

36. Sun Life denies that a class proceeding would be the preferable procedure for the prosecution of the claims in this action.

37. Sun Life denies that the Plaintiff has any claim against Sun Life or can act as a representative plaintiff in this proposed class action.

38. Sun Life denies that the proposed class definition is reasonable or appropriate since, among other things, it would include statute-barred claims.

39. Sun Life reserves the right to further defend the claims of the proposed class and to amend this statement of defence in the event that this action is certified as a class action.

40. Sun Life pleads and relies upon all pertinent statutes and regulations, including the *Class Proceedings Act*, 1992, S.O. 1992, c. 6, as amended, the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, the *Limitation Act*, S.B.C. 2012, c. 13, the *Limitations Act*, R.S.A. 2000, c. L-12, the *Limitations Act*, S.S. 2004, c. L-16.1, *The Limitation of Actions Act*, C.C.S.M., c. L150, the *Limitation of Actions Act*, S.N.S. 2014, c. 35, the *Limitation of Actions Act*, S.N.B. 2009, c. L-8.5, the *Statute of Limitations*, R.S.P.E.I. 1988, c. S-7, the *Limitations Act*, S.N.L. 1995, c. L-16.1, the *Limitation of Actions Act*, R.S.Y. 2002, c. 139, the *Limitation of Actions Act*, R.S.N.W.T. 1988, c. L-8, the *Limitation of Actions Act*, R.S.N.W.T. (Nu.) 1988, c. L-8, and the *Civil Code of Québec*, CQLR, c. CCQ-199.

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41. Sun Life requests that this action be dismissed with costs.

November 16, 2020

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Plaintiff Defendant

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Proceeding commenced at OTTAWA

STATEMENT OF DEFENCE

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