

COURT OF APPEAL FOR ONTARIO

CITATION: Howell v. Sun Life Assurance Company of Canada, 2025 ONCA 740

DATE: 20251029

DOCKET: COA-24-CV-0900

Huscroft, Coroza and Monahan JJ.A.

BETWEEN

Joseph Todd Howell

Plaintiff (Appellant)

and

Sun Life Assurance Company of Canada, Attorney General of Canada
(Transport Canada)* and Francois Collins*

Defendants (Respondents*)

Daria A. Strachan, for the appellant

Bahaa I. Sunallah and Heather Kennedy, for the respondents Attorney General of
Canada and Francois Collins

Heard: October 21, 2025

On appeal from the order of Justice Narissa Somji of the Superior Court of Justice,
dated July 15, 2024.

REASONS FOR DECISION

[1] The appellant appeals from the order of the motion judge striking his claim against the respondents Transport Canada and Francois Collins under r. 21.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, without leave to amend.

The motion judge struck the claim because she found that the subject matter of the claim, in its essential character, related to the terms and conditions of the appellant's employment. The claim was grievable under s. 208 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 ("*FPSLRA*") and therefore outside the court's jurisdiction under s. 236.

[2] The appellant argues that the motion judge erred in striking the claim because he was no longer an employee within the meaning of s. 206 of the *FPSLRA*, and, as a result, the grievance procedure was not available to him. In addition, the appellant argues that the grievance process was unavailable to him as the subject matter of his claim, concerning alleged misrepresentations made by his employer to his insurer, Sun Life Assurance Company of Canada, did not relate to a term or condition of employment within the meaning of s. 208 of the *FPSLRA*. Finally, the appellant argues that the motion judge denied procedural fairness by failing to provide him with an opportunity to respond to the supplementary motion record the respondents were permitted to file and by relying on a legal argument that had been abandoned at the outset of the motion.

[3] We do not accept these arguments.

[4] It is not contested that some of the alleged misrepresentations were made by the respondents on July 18, 2022, prior to the appellant's termination on July 25, 2022. It was open to the motion judge to find that the essential character

of the dispute was employer misconduct in making the alleged misrepresentations that affected the terms and conditions of the appellant's employment. She made no error in concluding that this was grievable under s. 208 and, as a result, that the court's jurisdiction is ousted by s. 236 of the *FPSLRA*.

[5] There is no basis to conclude that this court has jurisdiction over the claim because the grievance process would be ineffective or that remedies are unavailable.

[6] Given that the motion judge properly concluded that the court lacked jurisdiction to hear the claim, the motion judge did not err in refusing leave to amend the claim.

[7] The motion judge did not deny the appellant procedural fairness. The appellant filed brief additional submissions in response to the motion judge's request to the parties. The respondents filed lengthier submissions, to which the appellant objected, but the appellant did not request leave to make reply submissions. The motion judge found that the respondents' materials focused on the questions asked and did not require a response from the appellant in any event. That was her call to make in managing the motion and there is nothing before this court that would permit us to interfere with it.

[8] Finally, the motion judge did not deny procedural fairness by permitting the respondents to rely on an argument they had abandoned. The respondents had

originally relied on both subsections (a) and (d) of r. 21.01(3), before abandoning their argument under subsection (d). It is clear that the action was stayed under r. 21.01(3)(a) despite the motion judge's reference to subsection (d).

[9] The appeal is dismissed. The respondents are entitled to costs in the agreed amount of \$6,000, all inclusive.

"Grant Huscroft J.A."

"S. Coroza J.A."

"P.J. Monahan J.A."