

ONTARIO  
SUPERIOR COURT OF JUSTICE

**JOHN RUFFOLO and NICOLE LEPAGE**

Plaintiffs

- and -

**SUN LIFE ASSURANCE COMPANY OF CANADA**

Defendant

Proceeding under the *Class Proceedings Act, 1992*

**AMENDED STATEMENT OF CLAIM**  
**(NOTICE OF ACTION ISSUED ON DECEMBER 23, 2003)**

August 6, 2004  
AMENDED THIS PURSUANT TO  
MODIFIÉ CE CONFORMÉMENT A  
RÈGLE/LA RÈGLE 26.02 (b)  
BETWEEN:  
THE ORDER OF L'ORDONNANCE DU  
DATED / FAIT LE  
M. Brenta Greffier  
REGISTRAR SUPERIOR COURT OF JUSTICE  
GREFFIER COUR SUPÉRIEURE DE JUSTICE

1. The Plaintiff claims:
  - (a) damages for breach of contract in the amount of \$10,000,000.00;
  - (b) for a declaration and determination that the defendant is prohibited from deducting Canada Pension Plan Child Benefits from disability benefits pursuant to its group disability insurance policies;
  - (c) punitive damages in the amount of \$1,000,000.00, by reason of the defendant's breach of duty, bad faith and misconduct pleaded below;
  - (d) prejudgment and postjudgment interest on the above sum pursuant to the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
  - (e) its costs of this action on a substantial indemnity basis; and
  - (f) any further and other relief this court deems just and appropriate in the circumstances.

## THE PARTIES

2. The defendant, Sun Life Assurance Co. ("Sun Life"), is an insurance company incorporated pursuant to the laws of Canada and is engaged in the business of providing group disability insurance policies throughout Canada. At all material times, Sun Life was the insurer who provided group disability insurance for the benefit of the Plaintiff John Ruffolo. The group insurance was provided through Group Policy Numbers HO60881 and 71170-DIV (the "Ruffolo Policy"). At all material times, Sun Life was the insurer who provided group disability insurance for the benefit of the Plaintiff Nicole Lepage. The group insurance policy was provided through Group Policy Number 37013-000, Contract Number 22637 (the "Lepage Policy").
3. The plaintiff, John Ruffolo ("Ruffolo") is an individual residing in the Town of Kitchener, in the Province of Ontario. At all material times, Ruffolo was party to a group disability plan sponsored by Sun Life, formerly carrying on business as Prudential Life Assurance Company of England (Canada).
4. Ruffolo is a 48 year old brain injured man. He is permanently disabled and therefore receives monthly disability benefits from Sun Life pursuant to the terms of the Policy. As a result of his disability, Ruffolo also receives monthly disability benefits from the *Canada Pension Plan*, R.S.C. 1985, c. C-8 ("CPP") in addition to a monthly CPP child benefits amount in respect of his 2 children, ages 12 and 17 (the "CPP Child Benefit"). Sun Life has been deducting Ruffolo's CPP Child Benefit from his monthly disability entitlement under the Ruffolo Policy since March of 1992.
5. The plaintiff, Nicole Lepage ("Lepage") is an individual residing in the City of Lavigne, in the Province of Ontario. At all material times, Lepage was party to a group disability plan sponsored by Sun Life, formerly carrying on business as Mutual Group.
6. Lepage is a 45 year old woman suffering from degenerative disc disease, scoliosis and spinal stenosis. She is totally disabled and therefore receives monthly disability benefits from Sun Life pursuant to the terms of the Lepage Policy. As a result of her disability, Lepage also

receives monthly disability benefits from the CPP in addition to a monthly CPP Child Benefit amount in respect of her 3 children ages 9, 11 and 13.

## THE CLASS

7. The plaintiffs bring this action pursuant to the *Class Proceedings Act, 1992*, on behalf of the following class, (collectively referred to as the "Class"):

- (a) All persons in Canada who are entitled to and in fact receive monthly disability benefits pursuant to a Sun Life group disability insurance policy, from which Sun Life takes into account the amount of their respective monthly CPP Child Benefits, wherein the integration of benefits provision provides that the insured's disability benefits are to be "offset in all events by all sources specified in the group policy" and the deduction of CPP Child Benefits is not provided for as a "source specified in the group policy" ("Class A");
- (b) All persons in Canada who are entitled to and in fact receive monthly disability benefits pursuant to a Sun Life group disability insurance policy, from which Sun Life takes into account the amount of their respective monthly CPP Child Benefits, wherein the integration of benefits provision provides that the insured's disability benefits are to be "offset in all events, by all sources specified in the group policy except for any dependent disability benefits payable under the Canada/Quebec Pension Plan" ("Class B");
- (c) All persons in Canada who are entitled to and in fact receive monthly disability benefits pursuant to a Sun Life group disability insurance policy, from which Sun Life takes into account the amount of their respective monthly CPP Child Benefits, wherein the integration of benefits provision provides that the insured's disability benefits are to be "offset in all events, by any primary and dependent disability benefits payable under the Canada/Quebec Pension Plan" ("Class C");

- (d) All persons in Canada who are entitled to and in fact receive monthly disability benefits pursuant to a Sun Life group disability insurance policy, from which Sun Life takes into account the amount of their respective monthly CPP Child Benefits, wherein the integration of benefits provision provides that the insured's disability benefits are to be "offset by all benefit sources listed in the group policy, but only to the extent necessary so that Total Benefits From All Sources do not exceed 85% of Pre-disability Income" ("Class D");
  
- (e) All persons in Canada who are entitled to and in fact receive monthly disability benefits pursuant to a Sun Life group disability insurance policy, from which Sun Life takes into account the amount of their respective monthly CPP Child Benefits, wherein the integration of benefits provision provides that the insured's disability benefits are to be offset by any income provided to the insured under any government sponsored plan, including amounts payable on behalf of a dependent ("Class E"); and
  
- (f) All persons in Canada who are entitled to and in fact receive monthly disability benefits pursuant to a Sun Life group disability insurance policy, from which Sun Life takes into account the amount of their respective monthly CPP Child Benefits, wherein the integration of benefits provision provides that the insured's disability benefits are to be offset by all "other disability income" and any amount of income received by the person and/or his dependant by reason of his disability pursuant to "the legislation of any government" constitutes "other disability income" ("Class F").

## **BACKGROUND**

### **A. JOHN RUFFOLO**

8. On or around July 25, 1990, Ruffolo entered into a contract of group insurance, the Policy, through his employer, Royal Plastics Limited. The contract was with Constellation Assurance Company/The Prudential Life Assurance Company of England (Canada), currently carrying on business as Sun Life. The Policy provided coverage with respect to extended health insurance, long term disability insurance, life insurance and dental insurance.

9. On or around November 19, 1991, Ruffolo became totally disabled as a result of sickness or injury within the meaning of the Policy. Ruffolo was covered under the Policy as evidenced by Certificate Number 449475128, which was in full force and effect in respect of Ruffolo's disability. Ruffolo has continued to be totally disabled since November 1991.

10. In March 1992, Sun Life began making monthly disability payments of \$2,223.33 to Ruffolo. Shortly thereafter, Sun Life began deducting Ruffolo's CPP Child Benefit amounts from his monthly disability entitlements, purportedly pursuant to the Policy. As such, while Ruffolo is entitled to the COLA adjusted sum (including offset of the CPP disability benefit of \$682.66) of \$1,930.00 per month under the terms of the Policy, after Sun Life makes its improper deduction of CPP Child Benefit, Ruffolo only receives the sum of \$1,661.05 per month.

11. Sun Life continues to make deductions for CPP Child Benefit from Ruffolo's monthly disability entitlement.

### **B. NICOLE LEPAGE**

12. On or around June 1991, Lepage entered into a contract of group insurance, the Lepage Policy, through her former employer, West Nipissing Association for Community Living. The contract was with Mutual Group, who currently carries on business as Sun Life. The Lepage Policy provided coverage with respect to extended health insurance, long term disability insurance, life insurance and dental insurance.

13. In May 1997, Lepage became totally disabled as a result of a degenerative disc disease, scoliosis and spinal stenosis. At that time, Lepage was covered under the Lepage Policy which was in full force and effect in respect of Lepage's disability. Lepage has continued to be totally disabled since May 1997. As a result, Lepage has not been employed on a full-time basis since June 1997.
  
14. Accordingly, pursuant to the terms of the Lepage Policy, in November 1997, Sun Life began making monthly disability payments of \$1,888.00 to Lepage. While Lepage was also entitled to receive monthly CPP Child Benefits with respect to her three (3) children, pursuant to the CPP, she did not inform Human Resources Development Canada, federal Income Security Program ("HRDC"), of her disabled status until September 2003. As such, during the period of May 1997 through September 2003, despite her disabled status, Lepage did not receive any disability benefit whatsoever, including CPP Child Benefits, pursuant to the CPP.
  
15. In September 2003, HRDC informed Lepage that two (2) types of CPP disability arrears entitlements were owing to her for the period of November 1997 through September 2003: (a) CPP disability benefits in the amount of \$58,566.26; and (b) CPP Child's Benefit in the amount of \$38,511.68.
  
16. As the terms of the Lepage Policy provide for the integration of the CPP disability benefit, HRDC made a payment of \$58,566.26 to Sun Life directly, reflecting disability entitlements in arrears during the period of November 1997 through September 2003. However, as amounts owing pursuant to the CPP Child's Benefit are income in the hands of the child, and not taxable in the hands of the disabled custodial parent, HRDC reimbursed Lepage directly for outstanding CPP Child's Benefit arrears in the amount of \$38,511.68.
  
17. Sun Life alleges that Lepage owes it the amount of \$32,059.47 which represents the arrears she received with respect to the CPP Child's Benefit.

**DEDUCTION OF CPP BENEFITS & WITHHOLDING OF DISABILITY PAYMENTS**

**A. JOHN RUFFOLO**

18. Shortly after Ruffolo became disabled, he also began receiving monthly disability benefit payments pursuant to the terms of the CPP. Pursuant to Ruffolo's entitlements under the CPP, he received two monthly payments: (a) disability benefits in accordance with section 44 of the CPP; and (b) child benefits in accordance with section 44 of the CPP.

19. Immediately upon Ruffolo's receipt of CPP benefits, (disability and Child Benefits) Sun Life began to deduct both sums from Ruffolo's monthly disability entitlement, purportedly pursuant to the Policy. While the Policy provides for deduction of Ruffolo's CPP disability benefits, it does not make any provision for the deduction of CPP Child Benefits.

20. The monthly amount of the CPP Child Benefit deducted by Sun Life from Ruffolo's monthly disability entitlement is \$226.28.

**B. NICOLE LEPAGE**

21. Shortly after Lepage became disabled, she was also entitled to receive monthly disability benefit payments pursuant to the terms of the CPP. Pursuant to Lepage's entitlements under the CPP, she was eligible to receive two monthly payments: (a) disability benefits in accordance with section 44 of the CPP; and (b) the Child Benefit in accordance with section 44 of the CPP.

22. Immediately upon learning of Lepage's entitlement to CPP benefits (disability and Child Benefits), Sun Life claimed it was entitled to the arrears amounts.

23. The arrears payment for CPP disability benefit amounts was made directly to Sun Life from HRDC as the Lepage Policy provided for integration of such benefits. However, as the CPP does not provide for integration or deduction of CPP Child's Benefits, HRDC reimbursed Lepage directly for arrears owing to her with respect to the CPP Child's Benefits.

24. Shortly after receiving the amounts for CPP Child Benefit arrears from HRDC, in October 2003, Sun Life informed Lepage that it would begin deducting her CPP Child's Benefit from her monthly disability entitlements pursuant to the Lepage Policy. Sun Life stated that it had decreased Lepage's monthly entitlements of \$1,888.00 to \$598.26, retroactively effective November 1, 1997.
25. In addition to deducting Lepage's CPP Child's benefit from her monthly entitlements pursuant to the Lepage Policy, Sun Life further alleged that Lepage owed it the amount of \$32,059.47 for overpayment of the CPP Child's Benefit between the period of November 1, 1997 and September 8, 2003. In fact, the amount of \$32,059.47 represented arrears amounts owing to Lepage from HRDC with respect to the CPP Child's Benefit.
26. As Sun Life is not entitled to such amounts and Lepage is unemployed and impecunious, she did not pay Sun Life the alleged amounts owing. Nevertheless, in February 2004, Sun Life informed Lepage that it would cease her monthly disability entitlements pursuant to the Lepage Policy until it had recovered the alleged overpayment with respect to her CPP Child's Benefit plus interest.
27. Sun Life actually ceased making disability payments to Lepage in November 2003, contrary to the terms of the Lepage Policy.
28. If the Lepage Policy provided for the deduction of the CPP Child's Benefit, the provision is of no force and effect as it contravenes section 44(1)(e) of the CPP and is unconscionable. Further, a provision which permits for the deduction of the CPP Child's Benefit does not reflect the reasonable expectations of the parties in entering into such an insurance contract.
29. Accordingly, any benefits payable under section 44(1)(e) of the CPP are to be excluded in calculating "All Source Maximum Benefits", "Income from all other sources", "any income provided to an insured under a government sponsored plan including amounts payable on behalf of a dependent", or monthly disability entitlements payable by Sun Life to class members.



**TERMS OF THE RUFFOLO POLICY OF INSURANCE**

30. In terms of the integration of these benefits with Ruffolo's entitlements under the Policy, Section V, Clause 2, of the Ruffolo Policy provided the following:

The scheduled monthly benefits [disability] of an insured employee will be reduced by any of the following sources applicable on the basis of the integration method specified in the master application:

- (a) Disability benefits paid or which may become payable under any plan or arrangement which is either sponsored or provided by any governmental or regulatory body, including the Canada Pension Plan, ...
- (b) Income or other payments received from any employer during continuance of total disability;
- (c) Retirement benefits provided by a retirement plan contributed to by an employer;
- (d) Disability benefits under any other plan underwritten on a group basis;
- (e) Any automobile insurance plan provided on a no-fault basis. ("All Sources Specified in the Group Policy").

31. The reference to the "Master Application" in Section V, Clause 2, refers to No.11, entitled "Integration", of the application for group insurance which provides for the following options of categories for deductions:

- (a) Immediately offset in all events by all sources specified in the group policy;

- (b) Immediately offset in all events, by all sources specified in the group policy except for any dependent disability benefits payable under the Canada/Quebec Pension Plan.
- (c) Immediately offset in all events, by any primary and dependent disability benefits payable under the Canada/Quebec Pension Plan. In addition, the remaining benefit sources listed in the group policy will be offset but only to the extent necessary so that Total Benefits From All Sources do not exceed 85% of Pre-disability income.
- (d) Immediately offset in all events by any primary benefits payable under The Canada/Quebec Pension Plan. In addition, the remaining benefit sources listed in the group policy, except defendant disability benefits payable under The Canada/Quebec Pension Plan will be offset but only to the extent necessary so that Total Benefits From All Sources do not exceed 85% of Pre-Disability Income.
- (e) Offset by all benefit sources listed in the group policy, but only to the extent necessary so that Total Benefits From All Sources do not exceed 85% of Pre-disability Income.
- (f) Other (Specify).

32. In Ruffolo's case, subclause (a) was marked and accordingly, any disability benefits he was entitled to receive pursuant to the Policy were to be "immediately offset in all events, by all sources specified in the group policy". The meaning of All Source Specified in the Group Policy is defined as above and does not include any reference to CPP Child Benefits.

33. In any event, in or around March 1992, Sun Life began to make monthly deductions from Ruffolo's disability benefits under the Policy for the CPP Child Benefit he received which was, at the time approximately \$226.28.

34. In breach of the terms of the Ruffolo Policy and of its duty to act in the utmost of good faith, Sun Life has continued to deduct Ruffolo's CPP Child Benefit payment from his monthly disability benefit entitlement pursuant to the terms of the Ruffolo Policy.

35. Despite repeated requests by Ruffolo that Sun Life discontinue its wrongful monthly deduction of the CPP Child Benefit, Sun Life has ignored these requests and continued to make the deductions.

#### TERMS OF THE LEPAGE POLICY OF INSURANCE

36. In terms of the integration of benefits with Lepage's entitlements under the Lepage Policy, the Lepage Policy provided, amongst other things, the following:

...

We subtract any income provided to you:

For the same or a subsequent disability under any government-sponsored plan, including amounts payable on behalf of a dependent, but excluding employment insurance benefits and automatic cost-of-living increases under any government-sponsored plan that occur after benefits begin.

...

If you are eligible for any of the income amounts above and do not apply for them, we will still consider them as part of your income. We can estimate those benefits and use those amounts when we calculate your payments.

...

37. In breach of its duty to act in the utmost of good faith, Sun Life terminated Lepage's monthly disability entitlements to allegedly recover amounts representing Lepage's entitlement to the CPP Child's and offset those amounts against her monthly disability entitlements pursuant to the Lepage Policy.

38. Any terms or provisions of the Lepage Policy on which Sun Life relies to base its deduction or off-setting of the CPP Child's Benefit are void and unenforceable as such would be in violation and breach of a federal statute, the CPP. Moreover, any such provision is unconscionable in the circumstances and is therefore of no force or effect.

39. In any event, in October 2003, Sun Life Sun Life stated that it would decrease Lepage's monthly entitlements of \$1,888.00 to \$598.26, retroactively effective November 1, 1997.

40. In breach of its duty to act in the utmost of good faith and in reliance on an unconscionable contractual provision, Sun Life has terminated Lepage's monthly disability benefit, alleging that it is owed amounts representing Lepage's CPP Child's Benefit entitlements.

41. Despite repeated requests by Lepage that Sun Life discontinue its wrongful allegations and reinstate her contractual disability benefits, Sun Life has ignored these requests and terminated her monthly payments in breach of the Lepage Policy.

#### **LIABILITY AND DAMAGES**

42. Sun Life, including its employees, negligently and in breach of the contract of insurance with Ruffolo and Lepage, deducted monthly CPP Child Benefits from Ruffolo's and Lepage's lawful disability entitlements under the Policies.

43. As Ruffolo and Lepage's group insurer, Sun Life owed Ruffolo and Lepage, and other insured members under the Policies, a duty to act reasonably and to fulfill its obligations to pay benefits as required under the Policies. Sun Life knew that any failure on its part to do so, would cause substantial harm to Ruffolo and Lepage, and cause them to suffer further aggravated losses, in addition to the unpaid/deducted benefits under the Policies.

44. In deducting CPP Child Benefits from Ruffolo and Lepage's monthly disability benefits, Sun Life breached its duty of care to Ruffolo and Lepage to act in good faith and as a

reasonable group disability insurer. Such breach was intentional, or in the alternative, negligent and makes Sun Life liable in damages as pleaded herein.

45. Further, the CPP specifically provides the following:

44(1) Subject to this Part ...

(e) a disabled contributor's child's benefit shall be paid to each child of a disabled contributor who

(i) has made contributions for not less than the minimum qualifying period...

75 Where a disabled contributor's child's benefit is payable to a child of a disabled contributor ... payment thereof shall, if the child or orphan has not reached eighteen years of age, be made to the person ... having custody and control of the child.

46. Accordingly, Sun Life also acted in contravention of the CPP by allegedly calculating Ruffolo and Lepage's monthly CPP Child Benefit as part of his household income: the CPP Child Benefit is that of the disabled's minor children and therefore, may not be taxed at the hands of the disabled contributor. The purpose behind the CPP Child's Benefit was to provide additional income support to assist families where the contributor or provider has become disabled and otherwise unable to maintain gainful employment. By wrongfully deducting this benefit, Sun Life treated the sum as "earnings replacement" rather than "income support" in accordance with the statute. As such, even if the Policies did provide for the deduction of the CPP Child's Benefit, such provisions are of no force and effect as they contravene section 44(1)(e) of the CPP and are unconscionable.

47. Sun Life, throughout, failed to act in good faith and to deal with Ruffolo and Lepage in a fair and reasonable manner, contrary to the duties it owed of the utmost good faith. Sun Life's purported deductions of CPP Child Benefits from Ruffolo and Lepage's monthly disability benefits were based on its own self-interest to avoid paying Ruffolo and Lepage's legitimate claims and was intended to and in fact did cause grievous harm and aggravated Ruffolo and Lepage's damages.

48. In addition, or in the alternative, Sun Life's wrongful deductions from disability entitlements was as a result of Sun Life's fault and negligence, including the following:

- (a) Sun Life failed to exercise the skill, knowledge and judgment of the ordinary and prudent insurance service provider;
- (b) Sun Life failed to meet the minimum standards of practice for the provision of disability benefits as a group insurer;
- (c) Sun Life failed to properly investigate the wrongful deduction of CPP Child Benefits from its insureds' monthly disability entitlements; and
- (d) Sun Life failed, in contravention of the *Insurance Act*, R.S.O. c. I-8, to set forth, in the provisions of the Policies, every exception or reduction affecting the amount payable under the contract.

49. Further particulars of the negligence and breach of contract of Sun Life are within the knowledge of Defendant.

50. Sun Life's conduct towards Ruffolo and Lepage was callous and high-handed and therefore deserving of the sanction of this Honourable Court by an award of punitive damages. Sun Life conducted its affairs with wanton and callous disregard for Ruffolo's, Lepage's and class members' lawful entitlements of benefits as disabled persons. Sun Life's duty of utmost good faith owed to Ruffolo, Lepage and other class members was breached in the circumstances.

51. Ruffolo and Lepage plead and rely upon the provisions of the *Insurance Act*, R.S.O. c. I-8, and the *Canada Pension Plan*, R.S.C. 1985, c. C-8.

52. The plaintiffs propose that the trial of this action be held in the City of Toronto.

January 9, 2004

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