Federal Court Cour fédérale

Date: 20260129

Docket: T-1952-25

St. John’s, Newfoundland and Labrador, January 29, 2026

PRESENT: Associate Judge Trent Horne

BETWEEN:

DR. PIERRE OBEID AND
DR. PIERRE OBEID DENTISTRY
PROFESSIONAL CORPORATION

Applicants

and

SUN LIFE ASSURANCE COMPANY OF CANADA
AND
HIS MAJESTY THE KING IN RIGHT OF CANADA
AS REPRESENTED BY
THE MINISTER OF HEALTH (CANADA)

Respondents

ORDER AND REASONS

I. Background

[1] This application for judicial review challenges a decision involving the Canadian Dental Care Plan.

[2] The notice of application states that the applicants are a dentist and his professional corporation that operates a dental clinic.

2026 CanLII 6241 (FC)

[3] Up until 2020, the applicants submitted claims to Sun Life Assurance Company of Canada [Sun Life] for dental care provided to patients who were privately insured by Sun Life. In March 2020, Sun Life advised that it would no longer pay any private claims for services or products provided by the applicants. This delisting arose because Sun Life had concerns that claims for services submitted by the applicants contained codes that were misrepresented. Sun Life's referral of its concerns to the regulatory College did not result in any findings of professional misconduct; Dr Obeid maintains a license to practice dentistry.

2026 CanLII 6241 (FC)

[4] In 2023, the federal government created the Canadian Dental Care Plan [Plan]. The Plan is a federal program designed to improve access to dental care for Canadian residents, covering a portion of the cost of dental care for Canadians below a certain level of income who also lack dental insurance.

[5] The Plan is established under the authority of the *Dental Care Measures Act*, SC 2023, c 26, s 508 [DCMA]. Section 2 of the DCMA states that the Plan is established under the *Department of Health Act*, SC 1996, c 8 [DHA].

[6] Participation in the Plan by dentists is voluntary. In order for dentists to participate in the Plan and bill the Plan for services, they must enter into a billing agreement with Sun Life. It is asserted that many of the applicants' patients are beneficiaries of the Plan.

[7] The applicants claim that they submitted a request to Sun Life to participate in the Plan, and that Sun Life rejected the request on the basis of the 2020 delisting decision. The applicants

assert that Sun Life was "purportedly acting under its authority as the Benefits Administrator of the Plan." This decision was appealed in writing. Sun Life rejected the appeal in an email stating "I have received confirmation that Dr. Obeid's delisting stands insofar as the [Plan] is concerned."

2026 CanLII 6241 (FC)

[8] The notice of application alleges that the decision to exclude the applicants from the Plan is arbitrary, capricious, and constitutes an improper fettering of the Minister's discretion under the DCMA and DHA. It is also alleged that the decision is an abuse of process, amounts to an improper delegation of authority by the Minister of Health [Minister] to Sun Life, and that the decision amounts to an improper abdication of the Minister's oversight role over the Plan. The applicants also claim a breach of procedural fairness, and that the reasons for the decision are inadequate.

[9] The Minister has brought a motion to strike the notice of application without leave to amend on the basis that it does not state a cognizable administrative law claim in that the decision does not affect the applicants' legal rights, impose legal obligations, or directly cause prejudicial effects. The Minister also asserts that the Court does not have jurisdiction to review the decision because it was made by Sun Life, a private corporation that was not acting as a federal board, commission, or other tribunal.

[10] The Minister has not demonstrated that the application is doomed to fail. The motion is dismissed.

II. An Oral Hearing is not Required

[11] The Minister's motion was brought in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106 [Rules]. The applicants object to the disposition of the motion in writing and request an oral hearing. The motion is amenable to disposition in writing, and an oral hearing will not be ordered.

[12] A party bringing a motion has a right to elect whether the motion will be heard orally or in writing. If disposition is writing is selected, that is not determinative. A respondent to such a motion may indicate in its written representations the reasons why the motion should not be disposed of in writing (subrule 369(2)).

[13] Asking for an oral hearing does not mean that one will automatically be granted; the Court has the discretion to adjudicate a motion on the basis of written materials, even when an oral hearing is requested (*Philbert v Canada*, 2023 FC 1503 [*Philbert*] at para 10, citing *Bernard v Canada (Attorney General)*, 2019 FCA 144 at para 14, and subrule 369(4)). When deciding whether to exercise this discretion, relevant considerations "include the nature and complexity of the motion; the nature of the evidence and arguments; whether the Court has questions that could be answered during an oral hearing; whether the motion can be dealt with efficiently and expeditiously in writing; and the risk that conducting an oral hearing will simply increase costs and delay disposition of the matter" (*Philbert* at para 10).

[14] The applicants advance two arguments for an oral hearing. First, it is submitted that the Court would benefit from hearing oral submissions on the jurisprudence "to discern the subtleties

2026 CanLII 6241 (FC)

of the decisions above that may not be conveyable by way of written argument," relying in particular on *Al Omani v Canada*, 2016 FC 317. Each side has filed detailed written submissions on the facts and the law. To the extent the parties have specific submissions in respect of the jurisprudence, they have had an opportunity to do so. The Court can read the cases and argument and fairly resolve the issues on the motion. After reading the parties' motion materials and decisions cited, I do not have questions that require an oral hearing to answer.

2026 CanLII 6241 (FC)

[15] The applicants' second argument in support of an oral hearing is the high stakes for the applicants. The fact that this is a motion to strike, with the possibility of bringing the proceeding to an early end, is not determinative of whether an oral hearing should be granted. If it were, motions to strike would be heard orally almost by default.

[16] While courts do have a duty to act fairly, they nonetheless have the right to control their own procedures and to preserve scarce judicial resources where warranted, as here (*Li v Canada (Citizenship and Immigration)*, 2024 FCA 174 at para 14, citing *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at para 36). Although a moving party may request that the Court deal with their motion in writing, and the responding party may request an oral hearing, it is not for either party to control the process. This ultimately falls to the Court.

[17] The right to be "heard" does not necessarily require an oral hearing. It may be satisfied by the Court's consideration of written submissions alone if the Court is convinced that it can determine the motion fairly without the delay and expense of an oral hearing (*Gagné v Canada*, 2013 FC 331 at para 15, citing *Jones v Canada* (*Minister of Citizenship and Immigration*),

2006 FCA 279 at para 12). Here, I am satisfied that the motion can be determined without an oral hearing.

III. Law on Motions to Strike

[18] The test to strike an application for judicial review is a high one. There must be a “show stopper” or “knockout punch” – an obvious, fatal flaw striking at the root of the Court's power to entertain the application. This is also referred to as the “doomed to fail” standard (*Rahman v Public Service Labour Relations Board*, 2013 FCA 117 at para 7 [*Rahman*]; *Wenham v Canada (Attorney General)*, 2018 FCA 199 at para 33).

[19] Where the issue raised by the moving party as the basis for dismissing the application is determined to be debatable, the circumstances do not warrant dismissal of the application at a preliminary stage. Rather, the issue should be determined by the application judge (*David Suzuki Foundation v Canada (Health)*, 2017 FC 682 at para 7, aff’d 2018 FC 380; *David Bull Laboratories (Canada) Inc v Pharmacia Inc*., [1995] 1 FCJ No 588 (FCA) at para 15 [*David Bull*]; *Apotex Inc v Canada (Minister of Health)*, 2010 FC 1310 at paras 12-13).

[20] Authorities that preceded *Rahman* also articulated a difficult test to meet on a motion to strike a notice of application, requiring that the proceeding be “bereft of all possibility of success” (*LJP Sales Agency Inc v Canada (National Revenue)*, 2007 FCA 114 at para 7) or “bereft of merit” (*Verma v Canada*, 2006 FC 1353 at para 16).

2026 CanLII 6241 (FC)

[21] There are two justifications for such a high threshold. First, the Federal Courts' jurisdiction to strike a notice of application is founded not in the *Federal Courts Rules*, SOR/98-106 [Rules], but in the Courts' plenary jurisdiction to restrain the misuse or abuse of courts' processes (*David Bull* at page 600; see also *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at paras 33-36 re the Courts' plenary powers to investigate, detect and, if necessary, redress abuses of its own processes). Second, applications for judicial review must be brought quickly and must proceed "without delay" and "in a summary way" (*Federal Courts Act*, RSC 1985, c F-7, subsection 18.1(2) and section 18.4). An unmeritorious motion – one that raises matters that should be advanced at the hearing on the merits – frustrates that objective (*Assouline v Canada (Attorney General)*, 2021 FC 458 at para 12).

2026 CanLII 6241 (FC)

IV. Evidence on Motions to Strike

[22] By way of background, the applicants' Rule 306 evidence is an affidavit of Dr. Obeid affirmed July 4, 2025. This evidence was served, and proof of service filed, on July 7, 2025.

[23] The Minister's motion was brought after service of this evidence, and is supported by an affidavit affirmed by a legal assistant employed by the Department of Justice. The affidavit on the motion refers to the Obeid affidavit but does not attach it. The affidavit on the motion does attach as exhibits correspondence between the applicants and Sun Life, pleadings in an action between the applicants and Sun Life in the Ontario Superior Court of Justice, the procurement contract and nine amendments between the Government of Canada [Canada] and Sun Life to administer claims processing for the Plan, and an "Operational Decisions and Information Escalation Form" agreed to between Sun Life and Canada.

[24] In their responding motion materials, the applicants include the July 4, 2025 affidavit of Dr Obeid.

[25] As a general rule, affidavits are not admissible in support of motions to strike applications for judicial review (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*] at para 51).

[26] The Minister argues that there are exceptional circumstances that warrant the admissibility of the affidavit: that the exhibits are either incorporated by reference into the notice of application; or go directly to the question of jurisdiction.

[27] Any contract between the Minister and Sun Life is neither referred to nor relied on in the notice of application. The notice of application does make allegations as to the relationship between the Minister and Sun Life relating to the Plan. It is asserted that Sun Life is acting under its authority as the Plan's Benefits Administrator, ostensibly on behalf of Canada, and that the decision amounts to an improper delegation of authority by the Minister, and an abdication of the Minister's oversight role. It is claimed that there is nothing in the DCMA or DHA which permits the Minister to expressly or impliedly delegate the Minister's authority to Sun Life to exclude the applicants from the Plan, and that the Minister has failed to provide Sun Life with rules or standards to guide the decision-making process to exclude applicants from the Plan.

[28] The starting point on a motion to strike is that the facts alleged in the notice of application are taken to be true (*Chrysler Canada Inc v Canada*, 2008 FC 727 at para 20, aff'd

2026 CanLII 6241 (FC)

2008 FC 1049). A party bringing a motion to strike must identify an obvious and fatal flaw in the notice of application, *i.e.* one apparent on the face of it. A flaw that can be shown only with the assistance of an affidavit is not obvious (*JP Morgan* at para 52).

2026 CanLII 6241 (FC)

[29] I am not satisfied that, by pleading a relationship between the Minister and Sun Life, and raising allegations of improper delegation, the applicants have “referred to or incorporated by reference” in their notice of application the contract between the Minister and Sun Life. It is not clear whether the applicants even saw these documents before this motion.

[30] Pleading improper delegation does not open a door for the adverse party to lead evidence on a motion to strike as to the specifics of the contractual relationship. In essence, the Minister’s motion more closely resembles a motion for summary judgment and seeks to do the very thing that cases like *JP Morgan* instruct against – using a motion to strike as a vehicle to file a detailed evidentiary record and invite a decision on the merits. It would have been far more efficient for the Minister to file the same evidence and make the same arguments at the hearing of the judicial review.

[31] For the same reasons, I am also unable to accept the Minister’s argument that the evidence is admissible because it speaks to the Court’s jurisdiction. The fact that jurisdiction is an issue on a motion to strike is not an exception to the general rule that affidavits are not admissible (see *JP Morgan* at para 63).

[32] I am also not satisfied that the Rule 306 affidavit of Dr Obeid is properly before me. I have therefore disregarded the parties' affidavit evidence in considering this motion.

V. Analysis

2026 CanLII 6241 (FC)

[33] The Minister's first argument is that the notice of application does not state a cognizable administrative law claim that is amenable to judicial review because the decision to exclude the applicants from the Plan does not affect the applicants' legal rights, impose legal obligations, or directly cause prejudicial effects.

[34] The Minister correctly notes that the DCMA does not set out an entitlement for the applicants or anyone else to participate in the Plan as oral care providers. The terms and conditions for provider eligibility are not set out in the DCMA.

[35] The Minister relies on *Mital v Canada (Health)*, 2015 FC 571 [*Mital*], which is not of assistance. *Mital* involved a dentist who wanted to participate in a Health Canada program benefiting certain First Nations and Inuit persons. Health Canada refused his enrolment because of earlier billing irregularities. The Minister relies on paragraph 28 of *Mital*, where it is noted that Dr Mital had no right to participate in the program, and that the program presented more of a business opportunity. His rights to work as a dentist were unaffected. This part of the decision is within the analysis of procedural fairness. It does not stand for the proposition that loss of a business opportunity cannot constitute prejudicial effects for the purpose of determining if a decision is amenable to judicial review.

[36] While the applicants have no legal right to participate in the Plan, and it is not apparent how exclusion from the plan could impose a legal obligation, exclusion from the Plan has an adverse effect on their commercial interests. It is asserted in the notice of application that many of the applicants' patients are beneficiaries of the Plan. I am not satisfied that an argument that the applicants have been prejudiced as a consequence of their exclusion from the Plan is doomed to fail.

2026 CanLII 6241 (FC)

[37] The Minister's second argument is that the Court does not have jurisdiction over the decision to exclude the applicants from the Plan because Sun Life was not acting as a "federal board, commission, or other tribunal."

[38] Judicial review is reserved for state action. The purpose of judicial review is to ensure the legality of state decision making; it is a public law concept that allows section 96 courts to engage in surveillance of lower tribunals in order to ensure that these tribunals respect the rule of law. Judicial review primarily concerns the relationship between the administrative state and the courts. Private parties cannot seek judicial review to solve disputes that may arise between them, for example claims founded in breach of contract. Judicial review is only available where there is an exercise of state authority and where that exercise is of a sufficiently public character (*Highwood Congregation of Jehovah's Witnesses (Judicial Committee) v Wall*, 2018 SCC 26 at paras 12-14).

[39] The Minister argues that, when considering the factors set out in *Air Canada v Toronto Port Authority*, 2011 FCA 347, Sun Life's decision to exclude the applicants from the Plan does not have sufficient public character to make it subject to judicial review.

2026 CanLII 6241 (FC)

[40] The cornerstone of the Minister's arguments in this respect is the contractual nature of Sun Life's involvement with the Plan and the specific terms of that contract. As set out above, the contract is not properly before the Court.

[41] The issue on the motion is not whether the Minister is correct in their assessment of the merits considering all the evidence, rather whether the notice of application suffers from a fatal flaw or is doomed to fail. The applicants have pleaded that there was an improper fettering of discretion under the DCMA and DHA, and that there was an improper delegation of authority. These assertions are presumed to be true, and I am not satisfied that they are incapable of proof.

[42] The Minister's motion to strike the notice of application is therefore dismissed.

[43] As alternative relief, the Minister requests an extension of time to serve Rule 307 evidence, which relief is granted.

[44] Sun Life was served with the parties' motion materials. It sent a letter to the Court on December 4, 2025 stating that it did not intend to file materials with respect to the motion, but supports the position taken by the Minister. There is no motion or informal request for

interlocutory relief in behalf of Sun Life for an extension of time to serve Rule 307 evidence, so no order in this respect will be made.

VI. Costs

[45] The Court has full discretionary power over the amount and allocation of costs (subrule 400(1)).

[46] The applicants request partial indemnity costs in the amount of $28,870.62. A bill of costs was included in the responding motion record, which states that the actual fees associated with responding to the motion, including HST, were $56,282.48. The costs requested in the written representations represent 60% recovery, described as partial indemnity.

[47] The amounts requested by the applicants are far beyond what is recoverable under Tariff B. At the high end of recently revised Column 3, costs for responding motion materials would be about $1,600.00.

[48] While the Minister's motion was unsuccessful, and costs will be awarded to the successful applicants, I am not satisfied that the outcome justifies cost recovery in the range requested by the applicants, and such a departure from the Tariff.

2026 CanLII 6241 (FC)

2026 CanLII 6241 (FC)

ORDER in T-1952-25

THIS COURT ORDERS that:

1. The motion brought by His Majesty the King in right of Canada as represented by the Minister of Health [Minister] to strike the notice of application without leave to amend is dismissed.

2. The Minister shall serve supporting affidavits and documentary exhibits and file proof of service within 30 days of the date of this order.

3. All subsequent deadlines are as set out in the *Federal Courts Rules*, SOR/98-106.

4. Costs of the motion are payable by the Minister to the applicants, fixed at $1,750.00, payable in any event of the cause.

"Trent Horne"
Associate Judge

2026 CanLII 6241 (FC)

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1952-25
STYLE OF CAUSE:	DR. PIERRE OBEID AND DR. PIERRE OBEID DENTISTRY, PROFESSIONAL CORPORATION v SUN LIFE ASSURANCE COMPANY OF CANADA AND HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF HEALTH (CANADA)

MATTER CONSIDERED IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*, WITHOUT THE PERSONAL APPEARANCE OF THE PARTIES

ORDER AND REASONS:	HORNE A.J.
DATED:	JANUARY 29, 2026

WRITTEN REPRESENTATION BY:

Neil M. Abramson Marco P. Falco	FOR THE APPLICANTS
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