

**SUPREME COURT OF CANADA**

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| **Citation:** Régie des rentes du Québec *v.* Canada Bread Company Ltd., 2013 SCC 46, [2013] 3 S.C.R. 125 | **Date:** 20130913  **Docket:** 34505 |

**Between:**

**Régie des rentes du Québec**

Appellant

and

**Canada Bread Company Ltd., Sean Kelly, in his capacity as trustee of the Bakery and Confectionery Union and Industry Canadian Pension Fund, Multi-Marques Inc., Multi-Marques Distribution Inc. and Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 468**

Respondents

- and -

**Attorney General of Quebec, Robert Thauvette and**

**Administrative Tribunal of Québec**

Interveners

**Coram:** McLachlin C.J. and Fish, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

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| **Reasons for Judgment:**  (paras. 1 to 49)  **Dissenting Reasons:**  (paras. 50 to 73) | Wagner J. (Abella, Rothstein, Cromwell and Karakatsanis JJ. concurring)  McLachlin C.J. (Fish J. concurring) |

Régie des rentes du Québec *v.* Canada Bread Company Ltd., 2013 SCC 46, [2013] 3 S.C.R. 125

Régie des rentes du Québec Appellant

v.

Canada Bread Company Ltd.,

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Confectionery Union and Industry Canadian Pension Fund,

Multi‑Marques Inc., Multi‑Marques Distribution Inc. and

Bakery, Confectionery, Tobacco Workers and

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2013 SCC 46

File No.: 34505.

2013:  April 17; 2013:  September 13.

Present: McLachlin C.J. and Fish, Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.

on appeal from the court of appeal for quebec

*Legislation — Retroactivity — Declaratory provisions — Régie des rentes du Québec effecting partial termination of pension plan — Legislation amending Supplemental Pension Plans Act coming into force after Court of Appeal set aside Régie’s decision and remitted case to Régie for redetermination — New declaratory provisions applying to pending cases — Whether dispute between parties was pending when provisions came into force — Whether Court of Appeal’s judgment fully and definitively adjudicated rights and obligations of parties that resulted from partial termination of pension plan — Whether Régie was entitled to give effect to declaratory provisions in resolving dispute between parties — An Act to amend the Supplemental Pension Plans Act, the Act respecting the Québec Pension Plan and other legislative provisions, S.Q. 2008, c. 21 — Supplemental Pension Plans Act,* *R.S.Q., c. R‑15.1, ss. 14.1, 228.1, 319.1.*

*Administrative law — Boards and tribunals — Jurisdiction — Régie des rentes du Québec effecting partial termination of pension plan — Legislation amending Supplemental Pension Plans Act coming into force after Court of Appeal set aside Régie’s decision and remitted case to Régie for redetermination — Whether it was open to Régie to take new statutory provisions into consideration in determining outcome of case — An Act to amend the Supplemental Pension Plans Act, the Act respecting the Québec Pension Plan and other legislative provisions, S.Q. 2008, c. 21 — Supplemental Pension Plans Act,* *R.S.Q., c. R‑15.1, ss. 14.1, 228.1, 319.1.*

As a result of the closure of two divisions of the employer, Multi‑Marques, the Régie des rentes du Québec issued two decisions under Quebec’s *Supplemental Pension Plans Act* (“*SPPA*”) to effect the partial termination of the pension plan of the divisions’ employees. Multi‑Marques challenged the manner in which the termination was carried out, arguing that under ss. 9.12 and 9.13 of the plan’s rules, employee benefits should be reduced if employer contributions were insufficient to pay the pension fund’s shortfall. A review committee convened by the Régie decided that ss. 9.12 and 9.13 were incompatible with the *SPPA*, which provides that where the assets of a pension plan are insufficient to satisfy the rights of the plan’s members and beneficiaries, the amount of the deficiency constitutes a debt of the employer. This decision was subsequently affirmed by the Administrative Tribunal of Québec (“ATQ”) and by the Superior Court, but the Court of Appeal found that ss. 9.12 and 9.13 were not incompatible with the *SPPA* and accordingly remitted the matter to the Régie, ordering the latter to review its initial decisions in conformity with the Court of Appeal’s judgment.

While an application for leave to appeal from the Court of Appeal’s decision was pending in this Court, the *SPPA* was amended by adding ss. 14.1 and 228.1. In these provisions, the legislature essentially adopted the Régie’s approach to the application of ss. 9.12 and 9.13 of the plan’s rules and rejected the approach taken by the Court of Appeal. After the application for leave to appeal had been dismissed, the Régie undertook to complete the partial termination of the pension plan. Instead of following the Court of Appeal’s directions, the Régie’s review committee applied the new provisions of the *SPPA*, and accordingly refused to apply ss. 9.12 and 9.13 and confirmed its initial decisions. The ATQ upheld the Régie’s decision. On judicial review, the Superior Court set aside the ATQ’s decision. The Court of Appeal dismissed the Régie’s appeal on the ground that, once the application for leave to appeal had been dismissed, the Court of Appeal’s initial judgment had acquired the authority of a final judgment and should have been followed by the Régie.

*Held* (McLachlin C.J. and Fish J. dissenting): The appeal should be allowed.

*Per* Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ.: The principle of *res judicata*, which precludes parties from relitigating an issue in respect of which a final determination has been made as between them, does not preclude the legislature from negating the effects of such a determination. It is within the prerogative of the legislature to enter the domain of the courts and offer a binding interpretation of its own law by enacting declaratory legislation. Such legislation has an immediate effect on pending cases, and is therefore an exception to the general rule that legislation is prospective. Section 319.1 of the *SPPA*, which was enacted at the same time as ss. 14.1 and 228.1, expressly provides that these provisions are declaratory. In addition to this unambiguous language, the circumstances of their enactment show that the legislature intended them to be declaratory. It can be seen from the debate that led up to their enactment that the legislature’s objective was to overrule the Court of Appeal’s decision in order to protect the plan’s members and beneficiaries and to ensure that the decision in question would not become a precedent that would be binding on the courts in pending and future cases.

The concept of the final judgment that does not ultimately determine the rights and obligations of the parties is the basis for distinguishing pending cases from those that are not pending. Here, when the declaratory provisions came into force, the case between the parties was still pending. The Court of Appeal’s decision resulted in a final determination only on the question of law relating to the interpretation of certain provisions of the pension plan’s rules and their compatibility with the *SPPA*. The court remitted the question of the parties’ substantive rights in light of this interpretation to the Régie for determination. The terms of the partial termination of the fund had yet to be determined. Because the Court of Appeal had remitted the matter to it, the Régie was a competent authority properly charged with resolving a pending case when the declaratory provisions came into force. It was therefore open to the Régie to take them into consideration in determining the outcome of that case. Where an administrative decision‑maker has a duty to follow the directions of a reviewing court, it is on the basis of *stare decisis*. It is therefore obligated to follow such directions, but only insofar as they remain good law. In the instant case, the declaratory legislation is not ambiguous, and the National Assembly decided unanimously to counter the effect of the Court of Appeal’s decision by enabling the Régie to interpret the *SPPA* in a manner consistent with what the legislature considered to be the Act’s true objectives. As a result of the legislature’s intervention, the Court of Appeal’s directions became bad law. Accordingly, the Régie was not only entitled to interpret the *SPPA* in light of the declaratory provisions, it was obligated to do so.

*Per* McLachlin C.J.and Fish J. (dissenting): When a retroactive law comes into force while a case is being appealed, it falls to be applied by whatever level of appellate court is seized of the matter at that time. In the present case, only the Supreme Court of Canada, before which an application for leave to appeal was pending at the time of the coming into force of the retroactive provisions, had the jurisdiction to apply the provisions to resolve the dispute between Multi‑Marques and the pension beneficiaries. Once it denied leave to appeal, all avenues of appeal were exhausted. Consequently, the Quebec Court of Appeal’s judgment acquired the authority of *res judicata* between the parties with respect to the issue of whether the employer’s funding obligations could be limited by clauses 9.12 and 9.13 of the pension plan’s rules.

The precise monetary liability of the employer was not determined by the Court of Appeal’s disposition, and the matter was remitted back to the Régie for a computation of that liability. However, the fact that this remained in issue does not make the declaratory provisions applicable to this dispute. There is no principled basis on which to conclude that declaratory laws apply to judicial determinations for which all avenues of appeal have been exhausted, but which fall short of determining every issue in dispute. This runs counter to the principle that declaratory provisions must be interpreted and applied restrictively, and to the correlative principle that clear statutory language is required to extinguish the effects of a judgment as between the parties. The declaratory law in this case does not contain such language. It follows that the Court of Appeal’s judgment was final and binding.

There was no authority for the Régie’s purported jurisdiction to determine afresh whether Multi‑Marques’ funding obligations were limited by clauses 9.12 and 9.13 of the pension plan’s rules. The Court of Appeal’s directions did not instruct the Régie to determine the matter afresh. Nor does the Régie’s enabling statute contain any provisions that allow it to review a matter on which a higher court has passed judgment. The Régie had to fulfill the task for which the case had been remitted to it, i.e. compute the precise monetary liability that resulted from the substantive rights and obligations determined by the Court of Appeal. By failing to do so, the Régie effectively circumvented the process of judicial review and reinstated its original decision without having the jurisdiction to do so.

**Cases Cited**

By Wagner J.

**Considered:** *Western Minerals Ltd. v. Gaumont*, [1953] 1 S.C.R. 345; **referred to:** *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460; *Zadvorny v. Saskatchewan Government Insurance* (1985), 38 Sask. R. 59; *Canada (Commissioner of Competition) v. Superior Propane Inc.*, 2003 FCA 53, [2003] 3 F.C. 529.

By McLachlin C.J. (dissenting)

*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190; *Barbour v. University of British Columbia*, 2010 BCCA 63, 282 B.C.A.C. 270, leave to appeal refused, [2010] 1 S.C.R. vi; *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473; *Société canadienne de métaux Reynolds ltée v. Québec (Sous‑ministre du Revenu)*, [2004] R.D.F.Q. 45; *Western Minerals Ltd. v. Gaumont*, [1953] 1 S.C.R. 345; *CNG Producing Co. v. Alberta (Provincial Treasurer)*, 2002 ABCA 207, 317 A.R. 171; *Roberge v. Bolduc*, [1991] 1 S.C.R. 374; *Woods Manufacturing Co. v. The King*, [1951] S.C.R. 504; *Zadvorny v. Saskatchewan Government Insurance* (1985), 38 Sask. R. 59; *Hornby Island Trust Ctee. v. Stormwell* (1988), 30 B.C.L.R. (2d) 383; *Shuchuk v. Workers’ Compensation Board Appeals Commission (Alta.)*, 2012 ABCA 50, 522 A.R. 336; *Canada (Commissioner of Competition) v. Superior Propane Inc.*, 2003 FCA 53, [2003] 3 F.C. 529.

**Statutes and Regulations Cited**

*Act respecting the Québec Pension Plan*, R.S.Q., c. R‑9, s. 26.

*Act to amend the Supplemental Pension Plans Act, the Act respecting the Québec Pension Plan and other legislative provisions*, S.Q. 2008, c. 21 (Bill 68).

*Civil Code of Québec*, S.Q. 1991, c. 64, art. 2848.

*Supplemental Pension Plans Act*, R.S.Q., c. R‑15.1, ss. 5, 14.1, 202, 203, 211, 228, 228.1, 319.1.

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APPEAL from a judgment of the Quebec Court of Appeal (Thibault, Rochette and Kasirer JJ.A.), 2011 QCCA 1518, [2011] R.J.Q. 1540, [2011] R.J.D.T. 747, 93 C.C.P.B. 1, 29 Admin. L.R. (5th) 291, [2011] J.Q. no 10713 (QL), 2011 CarswellQue 8758, SOQUIJ AZ‑50781009, affirming a decision of Grenier J., 2010 QCCS 6104, [2011] R.J.Q. 122, [2011] R.J.D.T. 35, 87 C.C.P.B. 23, 17 Admin. L.R. (5th) 264, [2010] J.Q. no 13476 (QL), 2010 CarswellQue 13421, SOQUIJ AZ‑50699375, setting aside a decision of the Administrative Tribunal of Québec, 2010 QCTAQ 04423, [2010] R.J.D.T. 796, 83 C.C.P.B. 111, 2010 LNQCTAQ 5 (QL), 2010 CarswellQue 3608, SOQUIJ AZ‑50632060. Appeal allowed, McLachlin C.J. and Fish J. dissenting.

*Sheila York* and *Carole Arav*, for the appellant.

*Éric Mongeau*, *Patrick Girard* and *Michel Legendre*, for the respondents the Canada Bread Company Ltd., Multi‑Marques Inc. and Multi‑Marques Distribution Inc.

*Natalie Bussière* and *Sophie Tremblay*, for the respondent Sean Kelly, in his capacity as trustee of the Bakery and Confectionery Union and Industry Canadian Pension Fund.

No one appeared for the respondent the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union, Local 468.

*Stéphane Rochette* and *Jean‑Yves Bernard*, for the intervener the Attorney General of Quebec.

No one appeared for the interveners Robert Thauvette and the Administrative Tribunal of Québec.

The judgment of Abella, Rothstein, Cromwell, Karakatsanis and Wagner JJ. was delivered by

Wagner J. —

I. Overview

1. A criticism often levelled against retroactive legislation is that it thwarts settled expectations. This case concerns expectations relating to the interpretation of certain provisions of Quebec’s *Supplemental Pension Plans Act*, R.S.Q., c. R-15.1(“*SPPA*”). It confirms that the legislature may disrupt these expectations by enacting declaratory provisions, and that such provisions apply to any ongoing dispute in which a final judgment on the merits has not yet been handed down.
2. When a legislature enacts a declaratory provision that has retrospective effect, it is presumed to have weighed the need for the interpretive clarity the provision would bring against the disruption and unfairness that might result from its retroactive nature. The courts therefore owe deference to a decision by the legislature to enact such legislation.
3. In the case at bar, a final judicial determination of the rights and obligations of the parties had not yet been made. As a result, the declaratory provisions passed by the Quebec legislature to aid in the interpretation of the *SPPA* were applicable.

II. Facts

1. The dispute between the parties to this appeal has passed before decision-makers and judges at various levels not once, but twice.
2. The appellant, the Régie des rentes du Québec (“Régie”), is a government agency that is responsible for the application of the *SPPA*. The respondents Multi-Marques Inc. and Multi-Marques Distribution Inc. (referred to collectively as « Multi-Marques »), and Canada Bread Company Ltd. are contributing employers of the Bakery and Confectionery Union and Industry Canadian Pension Fund (“Fund”). Sean Kelly represents the trustees of the Fund.
3. In 1992 and 1994, the employees of the Gailuron and Durivage divisions of Multi-Marques joined the Fund. The trustees granted pension credits to the employees of the two divisions to reflect the years of service they had accumulated before Multi-Marques joined the Fund. The granting of these credits created a deficit, which Multi-Marques was to remedy by making payments to the Fund over a 15-year period. Before that period expired, Multi-Marques decided to shut down its Gailuron and Durivage divisions in 1996 and 1997, respectively.
4. As a result of the closures, the Régie issued, on May 16, 2002, two essentially identical decisions to effect the partial termination of the Fund for the employees of the Gailuron and Durivage divisions of Multi-Marques. The closures also created a solvency deficiency of approximately $5 million that was needed to cover the pension credits granted to the employees of the two divisions for prior service. Both of the Régie’s decisions required that the actuarial reports to be filed upon termination indicate the amounts to be paid by the employer to rectify the Fund’s solvency deficiency in order to ensure that the benefits of the plan members affected by the termination would be paid in full.
5. Although the partial termination of the Fund was not contested by any of the parties, the employer challenged the manner in which it was carried out. Multi-Marques argued that under ss. 9.12 and 9.13 of the Fund’s Rules and Regulations (“Rules”), benefits could be reduced in response to certain extrinsic factors and that employee benefits should accordingly be reduced if employer contributions were insufficient to pay the Fund’s shortfall. Thus, the Rules limited the employer’s funding obligations to contributions it had already made. To respond to this challenge, the Régie convened a review committee to determine whether ss. 9.12 and 9.13 of the Rules were compatible with the *SPPA*.
6. Sections 9.12 and 9.13 of the Rules read as follows:

**Section 9.12 — Limitation of Liability**

The Plan has been established on the basis of an actuarial calculation which has established, to the extent possible, that the contributions will, if continued, be sufficient to maintain the Plan on a permanent basis, fulfilling the funding requirements of the Act. Except for liabilities which may result from provisions of the Act, nothing in this Plan shall be construed to impose any obligation to contribute beyond the obligation of the Contributing Employer to make contributions as stipulated in its Collective Agreement with the Union or Local Union.

There shall be no liability upon the Trustees individually, or collectively, or upon the Union or Local Union to provide the benefits established by this Plan, if the Fund does not have assets to make such payments.

**Section 9.13 — Limitation of Liability for Pension Benefits**

(a) Any provisions in the Plan to the contrary notwithstanding, if a Contributing Employer ceases to be a Contributing Employer (hereinafter referred to as a Withdrawing Employer) for any reason, the assets in respect of the Withdrawing Employer, which consist of the total contributions made by the Withdrawing Employer together with interest, less benefit payments already made, shall be allocated to provide for benefits, to the extent they are funded, in respect of service with that Withdrawing Employer, subject to the following:

(i) For purposes of this Section only, each Participant’s accrued benefit shall be determined as if the Participant has satisfied the eligibility conditions for vesting.

(ii) If the Plan is fully funded on a going concern basis on the date the Withdrawing Employer terminates participation, benefits shall be reduced only to the extent that the actuarial liabilities that are established for benefits in respect of Past Service Credit, have not been fully funded by the Withdrawing Employer’s assets.

(iii) If the Plan is not fully funded on a going concern basis on the date the Withdrawing Employer terminates participation, benefits shall be reduced to the extent they are not funded and, in any event, benefits in respect of Past Service Credit shall be reduced to the extent they are not fully funded by the Withdrawing Employer’s assets.

(iv) Notwithstanding anything contained in this Section to the contrary, the allocation of the Withdrawing Employer’s assets shall be in accordance with the applicable Act.

(b) If a group of Contributing Employers with Collective Agreements with any one Local Union shall cease to be Contributing Employers with respect to the members of that Local Union, on approximately the same date, the Trustees shall have the right to apply the above subsection (a) as though said Employers were one Contributing Employer. In any such case, the calculations shall include all Contributing Employers of the group having had Collective Agreements with such Local Union. [A.R., vol. I, at pp. 160-62]

1. In its decision of April 14, 2003, the review committee decided that ss. 9.12 and 9.13 of the Rules were incompatible with s. 211 of the *SPPA*, which entitles the plan’s members to the full value of their pensions, and s. 228 of the *SPPA*, which provides that where the assets of a pension plan are insufficient to satisfy the rights of the plan’s members and beneficiaries, the amount of the deficiency constitutes a debt of the employer. Because ss. 9.12 and 9.13 of the Rules were incompatible with the *SPPA*, they were, pursuant to s. 5 of the *SPPA*, without effect. They could not therefore be applied in the actuarial reports required to conclude the partial termination. This decision was subsequently affirmed by the Administrative Tribunal of Québec (“ATQ”) on June 15, 2004, and again on judicial review by the Quebec Superior Court on July 20, 2006. Multi-Marques, Sean Kelly and Canada Bread Company Ltd. appealed the Superior Court’s decision to the Quebec Court of Appeal.
2. On April 2, 2008, the Court of Appeal allowed the appeals: 2008 QCCA 597, [2008] R.J.Q. 853. It found that ss. 9.12 and 9.13 were not incompatible with the *SPPA* and that full effect should be given to them in the actuarial reports prepared in the context of the partial termination of the Fund. Accordingly, it set aside the decisions of the Superior Court, the ATQ and the Régie’s review committee, and remitted the matter to the Régie, ordering the latter to review its initial decisions in conformity with the Court of Appeal’s judgment. For ease of reference, I reproduce the Court of Appeal’s orders here:

[translation] Allowsthe appeals, with costs both in the Superior Court and in the Court of Appeal;

Sets aside the decision of the Superior Court dated July 20, 2006;

Sets aside the decision of the Administrative Tribunal of Québec dated June 15, 2004;

Sets aside the decision of the review committee of the Régie des rentes du Québec dated April 14, 2003;

Refersthe matter back to the Régie des rentes du Québec to review its decisions D-41130-001 and D-41130-02 dated May 16, 2002 in conformity with this decision;

AuthorizesKelly to file termination actuarial reports that apply clauses 9.12 and 9.13 of the pension plan in light of the partial terminations resulting from the withdrawal from the plan of the employees of the Gailuron and Durivage divisions of Multi-Marques. [Emphasis added; paras. 104-9.]

1. On May 29, 2008, the Régie filed an application for leave to appeal to this Court.
2. On the same day that the Court of Appeal rendered its judgment, the Quebec National Assembly introduced Bill 68, *An* *Act to amend the Supplemental Pension Plans Act, the Act respecting the Québec Pension Plan and other legislative provisions* (*Journal des débats*, vol. 40, No. 65, 1st Sess., 38th Leg., April 2, 2008). In the debate at the committee stage, the Minister of Employment and Social Solidarity, Sam Hamad, made it clear that this amending legislation was motivated by the Court of Appeal’s decision and by the need to protect the Multi-Marques pensioners:

[translation] So the purpose of this amendment is to counter the effects of the judgment rendered by the Quebec Court of Appeal on April 2, 2008, in the case of *Multi-Marques Distribution Inc. v. Régie des rentes du Québec*. . . . With respect for the court, that judgment is based on an interpretation of the *Supplemental Pension Plans Act* that is incompatible with the Act’s objectives.  [Emphasis added.]

(National Assembly, *Journal des débats de la Commission des affaires sociales*, vol. 40, No. 52, 1st Sess., 38th Leg., June 3, 2008)

1. This legislation introduced ss. 14.1 and 228.1 into the *SPPA*. In these provisions, the legislature essentially adopted the Régie’s approach to the application of ss. 9.12 and 9.13 of the Rules and rejected the approach taken by the Court of Appeal. As a result of the amendments, no provisions of a pension plan may make benefits due conditional on extrinsic factors such that the obligations of an employer towards the plan are limited or reduced. In addition, the legislature expressly provided, in s. 319.1, that these new sections of the Act were declaratory in nature.
2. The National Assembly passed Bill 68 on June 18, 2008 (S.Q. 2008, c. 21), and this Court dismissed the Régie’s application for leave to appeal on October 16, 2008: [2008] 3 S.C.R. ix.
3. Following this Court’s decision, the Régie undertook to implement the Court of Appeal’s judgment of April 2, 2008 and to complete the partial termination of the Fund. In November 2008, the Régie informed counsel for the parties that a review committee had been formed to implement the Court of Appeal’s judgment, and invited them to submit comments with respect to the implementation. On August 14, 2009, the Régie’s review committee released the decision which is the subject of this appeal.
4. Instead of following the Court of Appeal’s approach, according to which ss. 9.12 and 9.13 of the Rules were to be considered in establishing the obligations of Multi-Marques resulting from the partial termination, the Régie applied the new provisions of the *SPPA*. It accordingly refused to apply the clauses of the Rules that allowed for the reduction of benefits payable to the plan’s members and beneficiaries, and confirmed its initial decisions of May 16, 2002. Sean Kelly, Canada Bread Company Ltd. and Multi-Marques contested the Régie’s decision before the ATQ.

III. Judicial History

A. *Administrative Tribunal of Québec, 2010 QCTAQ 04423, [2010] R.J.D.T. 796 (Judges Cormier and Lévesque)*

1. The ATQ addressed three issues in its decision: (1) whether the Régie had erred in law by establishing a committee to review its initial decisions; (2) whether the review committee had breached the rules of natural justice by failing to send prior notice of its decision and by failing to inform the parties that it was considering applying the amendments that had been made to the *SPPA* after the Court of Appeal had rendered its judgment; and (3) whether the review committee had erred in applying the declaratory provisions of the *SPPA* in this case. Only the third issue remains relevant in this Court.
2. With respect to this third issue, the ATQ upheld the Régie’s position, finding that the Régie was right to apply the declaratory provisions, as the case had still been pending when the declaratory provisions came into force on June 20, 2008.

B. *Quebec Superior Court, 2010 QCCS 6104, [2011] R.J.Q. 122 (Grenier J.)*

1. Both the employers and the representative of the trustees applied to the Superior Court for judicial review of the ATQ’s decision. The Superior Court allowed their application.
2. The application judge held that the standard of review was correctness. In addressing the Régie’s decision, she stated that the issue was whether the Régie had the authority to make the order it did in light of the Court of Appeal’s decision. In her view, the ATQ had erred in holding that it was open to the Régie to apply the declaratory provisions in the specific context of this case. She explained that the case could not have been “pending” in June 2008, and that when the Régie issued its new decision in 2009, the decision of the Court of Appeal had acquired the authority of a final judgment, which meant that the declaratory provisions of the *SPPA* could not apply to the dispute between the parties. As a result, the Régie was obligated to take ss. 9.12 and 9.13 of the Rules into account in its orders respecting the actuarial calculations to be made upon termination.

C. *Quebec Court of Appeal, 2011 QCCA 1518, [2011] R.J.Q. 1540 (Thibault, Rochette and Kasirer JJ.A.)*

1. The Court of Appeal also found that the Régie had erred in applying the declaratory provisions. Thibault J.A., writing for the court, stated that, when the application for leave to appeal was pending before this Court, the Court of Appeal’s judgment had not yet acquired the authority of a final judgment. However, only this Court would have been able to apply the declaratory legislation had it decided to hear the case. Once this Court had dismissed the Régie’s application for leave, the Court of Appeal’s judgment had acquired the authority of a final judgment and should have been followed by the Régie. The Court of Appeal held that although the Régie has the power under *An* *Act respecting the Québec Pension Plan*, R.S.Q., c. R-9, s. 26, to review its decisions, that power of review does not empower it to disregard a final judgment of the Court of Appeal.

IV. Issues

1. The issues in this case are:

1. What is the effect of declaratory legislation?

2. Did the Régie err in applying the declaratory legislation in determining the parties’ rights and obligations?

V. Analysis

1. The principle of *res judicata* precludes parties from relitigating an issue in respect of which a final determination has been made as between them: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 18. However, it does not preclude the legislature from negating the effects of such a determination. In the case at bar, it is clear that the legislature’s intention was not only to deprive the Court of Appeal’s judgment of precedential value, but also to negate its effect of rendering the issue *res judicata* as between the parties. In my view, the legislature attained both these objectives.
2. I have read my colleague’s dissenting reasons. Although they focus on the Régie’s jurisdiction, I firmly believe that the central issue in this appeal relates to the nature and effect of the declaratory legislation.

A. *What Is the Effect of Declaratory Legislation?*

1. It is settled law in Canada that it is within the prerogative of the legislature to enter the domain of the courts and offer a binding interpretation of its own law by enacting declaratory legislation: L.-P. Pigeon, *Drafting and Interpreting Legislation* (1988), at pp. 81-82. As this Court acknowledged in *Western Minerals Ltd. v. Gaumont*, [1953] 1 S.C.R. 345, such forays are usually made where the legislature wishes to correct judicial interpretations that it perceives to be erroneous.
2. In enacting declaratory legislation, the legislature assumes the role of a court and dictates the interpretation of its own law: P.-A. Côté, in collaboration with S. Beaulac and M. Devinat, *The Interpretation of Legislation in Canada* (4th ed. 2011), at p. 562. As a result, declaratory provisions operate less as legislation and more as jurisprudence. They are akin to binding precedents, such as the decision of a court: P. Roubier, *Le droit transitoire: conflits des lois dans le temps* (2nd ed. 1993), at p. 248. Such legislation may overrule a court decision in the same way that a decision of this Court would take precedence over a previous line of lower court judgments on a given question of law.
3. It is also settled law that declaratory provisions have an immediate effect on pending cases, and are therefore an exception to the general rule that legislation is prospective. The interpretation imposed by a declaratory provision stretches back in time to the date when the legislation it purports to interpret first came into force, with the effect that the legislation in question is deemed to have always included this provision. Thus, the interpretation so declared is taken to have always been the law: R. Sullivan, *Sullivan on the Construction of Statutes* (5th ed. 2008), at pp. 682-83.
4. The immediate effect of declaratory legislation is limited, however. In 1953, in *Western Minerals*, this Court endorsed the statement in W. F. Craies, *A Treatise on Statute Law* (4th ed. 1936), that declaratory laws “decide like cases pending when the judgments are given, but do not re-open decided cases”: p. 370, citing Craies, at pp. 341-42. Like a binding precedent, an interpretation the legislature adopts by enacting a declaratory provision is applicable to all future cases as well as to cases that are pending when the provision comes into force, despite the fact that the events that gave rise to any such dispute would have taken place before the provision was enacted. However, declaratory provisions do not reopen cases that have been resolved in a final judgment.
5. Before going further in my analysis, I must highlight a distinction between two concepts that are central to the resolution of this appeal: that of a “final judgment” and that of a “final judgment that ultimately determines the rights and obligations of the parties”. A judgment need not dispose of the litigation in its entirety to be final. If it disposes of any substantive interlocutory *issue*, *res judicata* will apply. On the other hand, *res judicata* will also apply to a final judgment that ultimately determines the rights and obligations of the parties, but it then disposes of the *case* in its entirety and makes any further proceedings unnecessary.
6. This distinction is significant because, in *Western Minerals*, this Court endorsed the proposition that declaratory legislation does not reopen decided *cases*, but it made no mention of the effect of such legislation on decided *issues*. In Canada, there is no definitive case law on the effect of declaratory legislation on decided issues. As a result, I cannot presume that declaratory legislation that is clearly intended to negate final judgments that do not ultimately determine the rights and obligations of the parties does not apply to such a judgment. This conclusion is the only one I can reach in light of the jurisprudence and the relevant legal principles.
7. The concept of the final judgment that does not ultimately determine the rights and obligations of the parties is the basis for distinguishing pending cases from those that are not pending. Pending cases are cases that are currently before a competent tribunal and are awaiting a final and irrevocable determination on the merits. As Cartwright J. explained in *Western Minerals*, such cases include “actions in which, while judgment has been given, an appeal from such judgment is pending at the date of the declaratory act coming into force”: p. 370. Accordingly, only cases in which judgments have definitively determined the parties’ rights and obligations are no longer pending.
8. In the case at bar, the declaratory legislation will therefore apply unless it is found that a *case*, and not merely an *issue*, has been decided.
9. In contrast to my position, the Chief Justice states that clear language is required where the legislature intends to extinguish the effects of any final judgment in which an issue has been decided (paras. 62, 64 and 71). With respect, no support for this proposition can be found in this Court’s case law. The Chief Justice relies solely on the Saskatchewan Court of Appeal’s decision in *Zadvorny v. Saskatchewan Government Insurance* (1985), 38 Sask. R. 59, in support of this principle. For the reasons set out above, I am neither bound nor persuaded by that case. In my view, the Canadian jurisprudence and the relevant legal principles tend in the opposite direction.
10. Furthermore, I find it unnecessary to insist on clear legislative language in a case such as this one where it is not in dispute that the legislature’s intention was to extinguish the effects of the judgment as between the parties. Not only is this proposition unsupported by this Court’s jurisprudence, it would effectively defeat the purpose of the enactment. As can be seen from the record of the legislative committee’s debate, it was clear from the start that the legislature’s objective in enacting the declaratory provisions was to counter the effects of the Court of Appeal’s judgment of April 2, 2008 in order to protect the affected pensioners. With respect, an approach that disregarded this clear intent and instead required clear language would in my view be overly formalistic and would place unnecessary limits on the evidence that can be considered in determining the effects of declaratory legislation.

B. *Did the Régie Err in Applying the Declaratory Legislation?*

(1) Application of the Declaratory Legislation to the Dispute

1. In the instant case, it is common ground that the provisions introduced into the *SPPA* by Bill 68 are declaratory in nature. Section 319.1 of the *SPPA*, which was enacted at the same time as ss. 14.1 and 228.1, expressly provides that these provisions are declaratory. In addition to this unambiguous language, the circumstances of their enactment show that the legislature intended them to be declaratory. It can be seen from the debate that led up to their enactment that the legislature’s objective was to overrule the Court of Appeal’s decision in order to protect the plan’s members and beneficiaries and to ensure that the decision in question would not become a precedent that would be binding on the courts in pending and future cases.
2. Since the declaratory nature of the provisions at issue in this appeal and the implications of that nature are not challenged by any of the parties, the question of the applicability of those provisions hinges on whether the dispute between the parties was pending when they were enacted. Put more simply, what must be determined is whether the appeal concerns a decided case, or merely a decided issue.
3. Given that both the Régie and the intervener Attorney General of Quebec base their argument that this case was pending on the Régie’s 2008 application for leave to appeal to this Court, I should make it clear that that application is not the basis for my finding that the case was pending at the relevant time. Although this Court clearly stated in *Western Minerals* that a case in which a final judgment has been rendered but an appeal from that judgment is pending qualifies as a pending case for the purpose of the application of declaratory legislation, that is not the only way for a case to qualify as one. Rather, as I explained above, the key factor in finding a case to be pending is the absence of a final determination of the rights and obligations of the parties. Like a case that has been appealed, one that has been remitted to a lower court is also a pending case.
4. On June 20, 2008, when the declaratory provisions came into force, the case between the parties was pending. Although the Court of Appeal’s judgment of April 2, 2008 had acquired “[t]he authority of a final judgment (*res judicata*)”in the sense of art. 2848 of the *Civil Code of Québec*, S.Q. 1991, c. 64, it did not fully and definitively adjudicate the rights and obligations of the parties that resulted from the two partial terminations. As I mentioned above, a pending case is one in which a final and irrevocable judgment determining the parties’ rights and obligations has not yet been rendered. A final judgment on an issue in a case that falls short of a resolution of the case on its merits does not preclude an authority responsible for the final determination of the parties’ rights and obligations from applying declaratory legislation that has been enacted since that judgment.
5. In coming to this conclusion, I do not mean to call into question the capital importance of the doctrine of *res judicata* to the administration of justice. The purpose of *res judicata* is to prevent the relitigation of claims that have already been decided by a court of competent jurisdiction. However, it seems to me that a decision to extend this doctrine by applying it to the unique circumstances of this case would encroach unduly upon the legislature’s prerogative to nullify the effects of a final judgment that would otherwise be binding as between the parties. Put more simply, whereas *res judicata* can preclude a party from asking a court to undo the effects of a judgment involving a decided issue, it precludes the *legislature* from undoing the effects of a judgment only if the judgment amounts to a decided case.
6. In light of this Court’s existing jurisprudence, only a final judgment on the merits of the case would preclude the application of an interpretation set out in declaratory legislation.
7. The Court of Appeal’s decision resulted in a final determination only on the question of law relating to the interpretation of certain provisions of the Rules and their compatibility with the *SPPA*. The court remitted the question of the parties’ substantive rights in light of this interpretation to the Régie for determination. As a result, there had been no final resolution of the dispute between the parties as of June 20, 2008. The terms of the partial termination of the Fund had yet to be determined. The case between the parties therefore remained pending when the declaratory provisions came into force, and a competent authority properly charged with resolving the dispute between the parties was entitled to give effect to those provisions in doing so.
8. Because the Court of Appeal had remitted the matter to it, the Régie was a competent authority properly charged with resolving a pending case when the declaratory provisions came into force. It was therefore open to the Régie to take them into consideration in determining the outcome of that case.

(2)Significance of a Decision to Remit a Matter With Directions

1. In its judgment of April 2, 2008, the Court of Appeal remitted the matter to the Régie, ordering it to review its decisions in light of the court’s reasons. Having discussed the issue of *res judicata* that flowed from the Court of Appeal’s decision, I will now turn to the issue of *stare decisis*.
2. Multi-Marques and Sean Kelly argue that because the Court of Appeal had remitted the matter to the Régie together with a direction, the Régie’s jurisdiction was limited and it was bound to apply the law as interpreted by the court regardless of developments subsequent to the court’s decision.
3. This approach is erroneous because it disregards the proper functioning of the principle of *stare decisis*. Where an administrative decision-maker has a duty to follow the directions of a reviewing court, it is on the basis of *stare decisis*: *Canada (Commissioner of Competition) v. Superior Propane Inc.*, 2003 FCA 53, [2003] 3 F.C. 529, at para. 54. It is therefore obligated to follow such directions only insofar as they remain good law.
4. In the case at bar, once the matter had been remitted to the Régie for redetermination, the Régie’s jurisdiction was limited only by the principle of *stare decisis*. It was by virtue of *stare decisis* that the Régie was bound to apply the Court of Appeal’s interpretation to the case before it. When the declaratory legislation came into force, however, it operated as a part of the jurisprudence and overruled the court’s interpretation. This legislation then became the new binding precedent on the question of the interpretation of certain provisions of the *SPPA*. The principle of *stare decisis* dictates, therefore, that changes to the law in the form of declaratory legislation that occur before a final disposition of the litigation will negate the precedential value of directions from the reviewing court that conflict with them. Had the law on this question been changed in the interim by a new precedent from this Court, the Régie would have been bound by this Court’s decision in the same way as it is bound by the legislation in question. In the instant case, the declaratory legislation is not ambiguous, and the National Assembly decided unanimously to counter the effect of the Court of Appeal’s decision by enabling the Régie to interpret the *SPPA* in a manner consistent with what the legislature considered to be the Act’s true objectives. As a result of the legislature’s intervention, the Court of Appeal’s directions became bad law. Accordingly, the Régie was not only entitled to interpret the *SPPA* in light of the declaratory provisions, it was obligated to do so.
5. Finally, it should be noted that under the *SPPA*, the Régie was required to apply the correct law and therefore had to adopt the meaning that, according to the declaratory legislation, the law had always had. Since declaratory legislation applies retroactively, the *SPPA* is deemed to have contained the relevant provisions since it was first enacted. Section 202 of the *SPPA* provides that when an employer withdraws from a multi-employer pension plan, the pension committee must file with the Régie “a report establishing the benefits accrued to each member and beneficiary affected and the value thereof”. Pursuant to s. 203, the Régie may not authorize the withdrawal unless this report is in conformity with the *SPPA*. Although the Régie’s statutory obligation to issue a certificate in conformity with the law is not the main source of its authority to disregard the Court of Appeal’s decision, this obligation certainly lends support to the proposition that the Régie may not apply bad law.

VI. Conclusion

1. For these reasons, I would allow the appeal with costs throughout.

The reasons of McLachlin C.J. and Fish J. were delivered by

The Chief Justice (dissenting) —

I. Introduction

1. In accordance with the rule of law principle, all administrative decision-makers are subject to judicial review by courts of inherent jurisdiction. “The function of judicial review is . . . to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, at para. 28). An administrative decision-maker does not have the power to second-guess the final judgment of a court of inherent jurisdiction regarding the legality of its decisions. This would in effect undermine the process of judicial review, and threaten the rule of law. I am concerned that the reasons of the majority in the present appeal do just that. They allow the Régie des rentes du Québec (“Régie”) to disregard clear instructions from the Quebec Court of Appeal, and to re-visit an issue that — as between the parties to this appeal — had been definitively settled by the courts.
2. I agree with my colleague Wagner J. that the legislature has the power to enact declaratory provisions which have a retroactive effect, and that such provisions apply to all pending cases. However, with respect for the contrary opinion, these propositions do not resolve the present appeal. At the heart of this appeal is the question of whether an administrative decision-maker can ignore the directions of a court that has supervisory jurisdiction over it, and effectively reinstate its original decision after it has been overturned in the course of judicial review. In my view, the answer to this question is no.

II. Facts and Judicial History

1. I rely on my colleague’s apt summary of the facts and judicial history relevant to this appeal.

III. Analysis

A. *The Quebec Court of Appeal Definitively Settled the Legal Issue in Dispute*

1. It is a settled principle that laws can take effect retroactively, so long as the legislature indicates its intention in clear statutory language. In this way, the legislature can change the outcome of a legal dispute, by enacting provisions which apply to a *pending case*. As the British Columbia Court of Appeal stated in *Barbour v. University of British Columbia*, 2010 BCCA 63, 282 B.C.A.C. 270, leave to appeal refused, [2010] 1 S.C.R. vi:

We consider it is clear in Canada that the Legislature may enact legislation that has the effect of retroactively altering the law applicable to a dispute. While a Legislature may not interfere with the Court’s adjudicative role, it may amend the law which the court is required to apply in its adjudication. [para. 32]

(See also *British Columbia v. Imperial Tobacco Canada Ltd.*, 2005 SCC 49, [2005] 2 S.C.R. 473, at paras. 69-72; *Société canadienne de métaux Reynolds ltée* *v. Québec (Sous-ministre du Revenu)*, [2004] R.D.F.Q. 45 (C.A.), at paras. 16-17.)

1. However, retroactive laws do not apply to pending legal disputes of their own force. They fall to be applied by the administrative decision-makers or courts that have jurisdiction to resolve the matters in dispute. When a retroactive law comes into force while a case is being appealed, it falls to be applied by whatever level of appellate court is seized of the matter at that time. This principle was recognized in *Western Minerals Ltd. v. Gaumont*, [1953] 1 S.C.R. 345, where Cartwright J. stated:

. . . I think it clear that the Appellate Division would be bound to give effect to a Statute, passed after the judgment from which the appeal is taken but before the hearing or decision of the appeal, declaring what the law is and always has been and so, of necessity, declaring what it was at the time of the trial. [Emphasis added; p. 369.]

The Alberta Court of Appeal made the same point in *CNG Producing Co. v. Alberta (Provincial Treasurer)*, 2002 ABCA 207, 317 A.R. 171:

Although retroactive legislation applies to pending cases, it does not apply to cases that have reached the stage of an entered judgment. If, however, a judgment has been entered following the trial of an action and the Legislature enacts a retroactive statute prior to the hearing of an appeal, then the outcome of the appeal may turn on the new statute . . . . [Emphasis added; para. 48.]

1. Once all avenues of appeal have been exhausted, the authority of *res judicata* applies to preclude parties from re-litigating an issue that has been decided on the merits. This is so even if the legislature has changed the law retroactively and, as a result, the final judgment now contains an error in law. Indeed, “the authority of *res judicata* exists even when there is an error in the judgment” (*Roberge v. Bolduc*, [1991] 1 S.C.R. 374, at p. 403).
2. In the present case, only the Supreme Court of Canada, before which an application for leave to appeal was pending at the time of the coming into force of the retroactive provisions, had the jurisdiction to apply the provisions to resolve the dispute between Multi-Marques and the pension beneficiaries. Once it denied leave to appeal, all avenues of appeal were exhausted. Consequently, the Quebec Court of Appeal’s judgment acquired the authority of *res judicata* between the parties with respect to the issue of whether the employer’s funding obligations could be limited by clauses 9.12 and 9.13 of the Rules and Regulations for the Bakery and Confectionery Union and Industry Canadian Pension Fund (the “Pension Fund’s Rules”) (2008 QCCA 597, [2008] R.J.Q. 853, leave to appeal refused, [2008] 3 S.C.R. ix).
3. My colleague Wagner J. contends that the declaratory provisions applied to the dispute at hand, because it was a “pending case”. He recognizes that disputes in which there has been a final determination of *all* the rights and obligations of the parties are beyond the reach of declaratory provisions. However, he argues that so long as there remain issues — no matter their nature — to be determined, declaratory provisions will apply to the dispute and may negate any final judgments which have definitively resolved certain of the legal questions at issue.
4. In this appeal, the precise monetary liability of the employer was not determined by the Court of Appeal’s disposition, and the matter was remitted back to the Régie for a computation of that liability. In my colleague’s view, this sufficed for the dispute to remain a “pending case” and for the declaratory provisions to apply.
5. I cannot agree. Courts interpret and apply declaratory laws restrictively. These laws apply to pending cases, but do not reopen decided cases (*Western Minerals*, at p. 370). The application of declaratory laws is closely tied to the appeal process — they do not apply to a dispute once all avenues of appeal have been exhausted. This restrictive interpretation and application of declaratory laws is intended to preserve stability and certainty in the legal system. It recognizes that judicial determinations which have been obtained by parties after a full appeal process should not be lightly disturbed.
6. In my view, the rationale for applying declaratory laws restrictively suggests that my colleague’s distinction between (i) a final judgment, and (ii) a final judgment that definitively determines *all* rights and obligations of the parties (Wagner J., at para. 30), is inappropriate in this context. Nor, in my respectful view, is there any legal authority to support my colleague’s distinction. A judgment which definitively settles a contested legal issue as between the parties is no less worthy of being protected from the retroactive effects of declaratory laws than a judgment which settles all rights and obligations in dispute.
7. The present appeal illustrates this. The Quebec Court of Appeal found that the Pension Fund’s Rules effectively limited the employer’s funding obligations, and the Supreme Court of Canada declined to interfere with that conclusion. Following this conclusive determination, what remained were the rather clerical tasks of collecting actuarial reports and computing the precise monetary liability of the employer — tasks which were left to the Régie, as they fell within its area of specialization. There were no longer any avenues of appeal through which the Quebec Court of Appeal’s conclusions on the employer’s funding obligations could be challenged. The parties had sought a final determination of the issue and had obtained it, running up the appellate ladder in the process. Yet the application of declaratory provisions reopened litigation of a dispute whose core issues had been definitively determined, leading the parties back up the appellate ladder. This is precisely what the well-settled principle of applying declaratory laws restrictively is meant to prevent.
8. My colleague also relies heavily on the intent of the legislature, which he contends was specifically to negate the effects of the Court of Appeal’s judgment as between the parties. I agree that, in theory, the legislature has the power to extinguish all the effects of a judgment. However, to infer that the legislature intended to extinguish the effects of a judgment as between the parties — an extraordinary step — clear language is required. The declaratory law in this case does not contain such language.
9. It is useful to distinguish between the different effects produced by a judgment. One effect of a final judgment is to create a precedent that courts and tribunals must follow. This effect is called *stare decisis*: “. . . a court must follow earlier judicial decisions when the same points arise again in litigation”, unless or until such decisions are revisited or overruled by a higher court (*Black’s Law Dictionary* (9th ed. 2009); *Woods Manufacturing Co. v. The King*, [1951] S.C.R. 504, at p. 515). A second effect of a binding judgment is to fix the rights and obligations of the parties, rendering the issue in dispute *res judicata*.
10. It is sufficient for the legislature to say that a law is “declaratory” in order to deprive contrary jurisprudence of its precedential value. However, it takes more explicit language to infer that the legislature intended to deprive a final judgment of its authority of *res judicata* as between the parties to a dispute where all avenues of appeal have been exhausted. As the Saskatchewan Court of Appeal stated in *Zadvorny v. Saskatchewan Government Insurance* (1985), 38 Sask. R. 59:

To change a law of general application, retroactively, is one thing; to legislate the extinguishment of a judgment is another. To satisfy us that the Legislature intended to deprive the respondent of his judgment . . . would take the clearest of language. [para. 9]

(Cited with approval in *Hornby Island Trust Ctee. v. Stormwell* (1988), 30 B.C.L.R. (2d) 383, at p. 392.)

In the present case, the legislature chose not to use language that specifically provided for the extinguishment of the Court of Appeal’s judgment. In the absence of such language, it is appropriate to construe the provisions restrictively, as only depriving the judgment of its precedential value.

1. In summary, I am of the view that there is no principled basis on which to conclude that declaratory laws apply to judicial determinations for which all avenues of appeal have been exhausted, but which fall short of determining every issue in dispute. This runs counter to the principle that declaratory provisions must be interpreted and applied restrictively, and to the correlative principle that clear statutory language is required to extinguish the effects of a judgment as between the parties. It follows that the Court of Appeal’s judgment was final and binding: the Régie had [translation] “to review its decisions . . . in conformity with” the Court of Appeal determination that clauses 9.12 and 9.13 of the Pension Fund’s Rules operated to limit the employer’s funding obligations (see para. 108 of the Court of Appeal’s reasons).

B. *The Régie Had No Jurisdiction to Overturn the Court of Appeal’s Final Judgment*

1. The Régie had no jurisdiction to revise the Court of Appeal’s decision and apply more recent legal developments to come to a different conclusion. The Régie was only seized of the case again because the Court of Appeal had remitted the matter to it with directions. I am willing to accept — as my colleague Wagner J. appears to argue — that a court’s remission of a matter with directions to a decision-maker may sometimes revive that decision-maker’s original jurisdiction over the matter, which would allow the legal issues in dispute to be considered afresh. However, in my view, this only happens if the substance of the court’s directions *requires* the decision-maker to commence a fresh review of the legal matter. Here, the substance of the Court of Appeal’s directions was that the Régie should compute the employer’s precise monetary liability in light of the principle that the employer’s funding obligations were limited by clauses 9.12 and 9.13 of the Pension Fund’s Rules. The directions did not require the Régie to redetermine the substantive rights and obligations of the employer and of the fund beneficiaries. In so doing, the Régie acted without jurisdiction.
2. Orders remitting a matter to an administrative decision-maker with directions can take many shapes. A court’s directions must be interpreted in light of the totality of their content and of the context in which they were given (*Shuchuk v. Workers’ Compensation Board Appeals Commission (Alta.)*, 2012 ABCA 50, 522 A.R. 336, at para. 23).
3. In *Canada (Commissioner of Competition) v. Superior Propane Inc.*, 2003 FCA 53, [2003] 3 F.C. 529, at para. 54, Rothstein J.A. (as he then was) stated that clarifications of the law contained in a court’s directions bind lower courts and tribunals pursuant to the principle of *stare decisis*. In other words, the directions function as judicial precedents. My colleague Wagner J. infers from this principle that directions can be displaced by any change in the law which renders the legal substance of the directions erroneous.
4. In my view, this conclusion is overbroad and does not apply in all cases of remission with directions. It is important to consider the substance of the directions. In some cases, directions merely clarify the law, and require the tribunal to determine legal matters afresh in accordance with these clarifications (D. J. M. Brown and J. M. Evans, with the assistance of C. E. Deacon, *Judicial Review of Administrative Action in Canada* (loose-leaf), at pp. 5-36 to 5-41). This was the case in *Superior Propane*, where the Federal Court of Appeal had clarified the methodology that the Competition Tribunal should use to determine whether a merger would substantially prevent or lessen competition, and had remitted to the Tribunal the legal matter of whether the merger at issue did in fact prevent or lessen competition. In these cases, the directions function as judicial precedents — it may well be that subsequent changes in the law will render the clarifications erroneous and that the directions will no longer bind the administrative decision-maker.
5. However, in other cases, directions may in fact contain substantive determinations of the rights and obligations of parties, and require the administrative decision-maker to give effect to those rights and obligations. In these cases, the court’s determination of the rights and obligations of the parties attracts the authority of *res judicata*. To conclude otherwise is to deprive the process of judicial review of finality and to put administrative decision-makers on an equal footing with the courts that exercise supervisory jurisdiction over them.
6. In the present case, there was no authority for the Régie’s purported jurisdiction to determine afresh whether Multi-Marques’ funding obligations were limited by clauses 9.12 and 9.13 of the Pension Fund’s Rules. As discussed, the Court of Appeal’s directions did not instruct the Régie to determine the matter afresh. Nor does the Régie’s enabling statute contain any provisions that allow it to review a matter on which a higher court has passed judgment. The Régie points to s. 26 of its enabling statute, which holds that the Régie “may, on its own initiative, revise or cancel any decision” (*An Act respecting the Québec Pension Plan*,R.S.Q., c. R-9). However, this provision merely grants the Régie a plenary jurisdiction, and absent clear legislative language it cannot have been intended to allow the Régie to circumvent the process of judicial review and side-step directions from a higher court (*Shuchuk*, at para. 37).
7. As discussed above, the Court of Appeal’s ruling remained binding. The ruling had lost its precedential value as a result of the declaratory provisions: the Régie would not be bound to follow its interpretation of the law in future cases. However, the authority of *res judicata* applied to it and the Régie could not disturb the Court of Appeal’s definitive resolution of the legal issues as between the parties. It had to fulfill the task for which the case had been remitted to it, i.e. compute the precise monetary liability that resulted from the substantive rights and obligations determined by the Court of Appeal. By failing to do so, the Régie effectively circumvented the process of judicial review and reinstated its original decision without having the jurisdiction to do so. The majority’s reasons endorse this behaviour, and undermine the finality of all judgments that contain a remission with directions to an administrative decision-maker.

IV. Conclusion

1. For these reasons, I would dismiss the appeal and award costs to the respondents.

*Appeal allowed with costs throughout,* McLachlin C.J. *and* Fish J. *dissenting.*

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Solicitors for the respondent Sean Kelly, in his capacity as trustee of the Bakery and Confectionery Union and Industry Canadian Pension Fund:  Blake, Cassels & Graydon, Montréal.

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