Unofficial English Translation of the Judgment of the Court

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| Compagnie d'assurance vie RBC c. O.C. | | | | | 2022 QCCA 1142 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTREAL | | |
| No.: | 500-09-029299-211 | | | | |
| (500-17-104277-184) | | | | | |
|  | | | | | |
| DATE: | August 23, 2022 | | | | |
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| CORAM: | | THE HONOURABLE | | MARK SCHRAGER, J.A.  MARIE-JOSÉE HOGUE, J.A.  STÉPHANE SANSFAÇON, J.A. | |
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| RBC LIFE INSURANCE COMPANY | | | | | |
| APPELLANT – defendant | | | | | |
| v. | | | | | |
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| O. C. | | | | | |
| RESPONDENT – plaintiff | | | | | |
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| JUDGMENT | | | | | |
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**WARNING: An order under article 12 C.C.P. is issued to protect the respondent’s anonymity and to prohibit his identification other than by his initials.**

1. The appellant appeals from a judgment of the Superior Court, District of Montreal, rendered on December 15, 2020 (the Honourable Michel Déziel), granting in part the respondent’s originating application, declaring him totally disabled within the meaning of the disability insurance policy purchased from the appellant, ordering the appellant to pay the difference between the value of the disability benefits he was paid and those it should have paid him for the period between June 30, 2015, and July 31, 2017, with interest at the legal rate and the additional indemnity set out in article 1619 C.C.Q., as of the date each benefit was due, and for the future, to pay the him monthly total disability benefits to which the respondent is entitled as long as the total disability lasts or until the insurance policy expires, whichever occurs first, and condemning the appellant to legal costs.
2. For the reasons of Hogue J.A., with which Schrager and Sansfaçon JJ.A. agree, **THE COURT**:
3. **RENDERS** an order under article 12 of the *Code of Civil Procedure* to protect the respondent’s anonymity and to prohibit his identification other than by his initials;
4. **ALLOWS** the appeal;
5. **REVERSES** the trial judgment;
6. **DISMISSES** the respondent’s originating application;
7. **THE WHOLE**, with legal costs at trial and on appeal.

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|  | | MARK SCHRAGER, J.A. |
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|  | | MARIE-JOSÉE HOGUE, J.A. |
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|  | | STÉPHANE SANSFAÇON, J.A. |
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| Mtre Guy Pratte | | |
| Mtre Patrick Plante | | |
| Mtre Anaïs Bussières-McNicoll | | |
| BORDEN LADNER GERVAIS | | |
| Mtre Élisabeth Laroche, legal advisor | | |
| ROBINSON SHEPPARD SHAPIRO | | |
| For the appellant | | |
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| Mtre Michel Gilbert | | |
| MMGC | | |
| For the respondent | | |
|  | | |
| Date of hearing: | February 9, 2022 | |

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| REASONS OF HOGUE J.A. |
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1. The respondent entered medical school in 2003 and graduated in 2013, after completing a specialization in orthopedic surgery. He has suffered from anxiety since childhood and encountered some difficulty during his studies, but ultimately completed them brilliantly and received many awards as well as the highest marks in his class.
2. On November 28, 2012, he was granted orthopedic privileges in the orthopedic surgery department by the board of directors of the Centre hospitalier régional de Lanaudière (the “CHRDL”) for two years. He started his career there in August 2013. While the on-call shifts and surgeries caused his anxiety to resurface, he managed to perform all the duties required of him. In June 2014, the department head recommended that his privileges be renewed, which they were for an additional two years until November 27, 2016.
3. The summer of 2014 proved difficult, however. The respondent’s anxiety disorder increased during his vacation, and he extended his leave. He nonetheless resumed his professional activities in August 2014 and again performed all his duties until March 2015, when he felt he could no longer do so. His attending physician diagnosed him with depression and declared that he was unable to perform on-call shifts or surgery but was fit to carry out consultations, to work in the outpatient clinic, and to perform minor operations under local anesthetic (he would later add that he was also able to assist during surgery).
4. The respondent had a disability insurance policy issued by the appellant and filed a claim for benefits in April 2015. He stated that his last day of work was March 28, 2015, and that he expected to return to work part time on April 15, 2015.
5. The appellant required additional information and asked him to undergo a medical examination by Dr. Paul-André Lafleur. The doctor examined him and concluded that he was unable to perform his work as orthopedic surgeon in the surgery department, whether it involved on-call shifts or surgery, but he found that he was still able to work in a private office, consult at the hospital, perform minor surgery, teach, and conduct medico-legal assessments.
6. In the meantime, the respondent in fact returned to work as planned, but no longer did on-call shifts or worked in the surgery department. He saw and assessed new patients, performed local surgery in the outpatient clinic, and did post-operative follow-up. Given these constraints and the orthopedic team’s desire to have a fully functioning orthopedic surgeon to perform all the tasks related to the specialty, he was granted only temporary privileges in April 2017. He resigned in May 2017.
7. After considering his claim for disability benefits, the appellant informed the respondent that he was entitled to partial or residual disability benefits as of April 1, 2015, because he was able to perform some important duties of his occupation.
8. The respondent relied on a rider in his insurance policy that amended the usual definition of total disability and argued that the appellant should instead recognize a total disability because he was no longer able to perform the important duties of his occupation at the time he became disabled.
9. In March 2016, the appellant sent him a cheque for $43,819.07, representing the residual disability benefits it felt he was entitled to for the period ending on December 31, 2015. It then paid him monthly benefits, still calculated on that basis, until July 31, 2017. On that date, the appellant considered that the respondent no longer met the definition of residual disability because his annual income exceeded what it was in April 2015 and closed the file. It informed him by letter dated August 7, 2018, that he could reapply for benefits in the event of a relapse. His disability would then be considered a new disability, not a continuation of his previous disability.
10. Dissatisfied with the appellant’s refusal to pay him total disability benefits, the respondent instituted legal proceedings in June 2016.
11. In October 2017, he joined Sainte-Justine Hospital, where he was granted temporary privileges in the [translation] “outpatient clinic, in patient care in ambulatory clinics, and in surgery assistance, without admitting privileges”. Since then the same privileges have always been renewed.
12. Therefore, at the time of the trial hearing, the respondent was practising at Sainte‑Justine Hospital but not doing on-call shifts or surgery as the primary surgeon. He works in the outpatient clinic (fractures, scoliosis, general orthopedic clinic, and sport clinic), closed reduction fractures, assists during surgery, and teaches. The fact that he does not do on-call shifts or surgery does not appear to be an issue because it is a university hospital with a team of a dozen orthopedic surgeons. The respondent works full time and earns a very good living. His income is now higher that it was when he was practising at the CHRDL and became unable to perform some of his duties. He is functioning well and has recovered a certain quality of life since he stopped doing on-call shifts.
13. The trial was held in November 2020 and lasted four days. On December 15, 2020, the Superior Court granted his application in part.[[1]](#footnote-1) It declared that he has been totally disabled since April 1, 2015, within the meaning of the rider and that he has been entitled to the monthly disability benefits provided for such cases since June 30, 2015. It therefore ordered the appellant to pay him the difference between those benefits and the ones he was paid as well as the monthly total disability benefits as long as the disability lasted or until the contract expired.

#### Judgment under appeal

1. After reviewing the facts, including the uncontested fact that the respondent was no longer able to act as primary surgeon in the surgery department or do on-call shifts, the trial judge turned to the definitions in the insurance policy, more particularly the terms of the *Rider*. He noted first that it removed the notion of total disability in the original policy and replaced it with a definition that does not include the requirement that the insured no longer engage in any gainful occupation; he could earn an income and nevertheless be entitled to permanent disability benefits. The judge wrote that [translation] “the [appellant] can therefore no longer rely on the fact that the [respondent] earns other income to consider the claim from the perspective of residual disability without first considering it from the perspective of total disability...”[[2]](#footnote-2)
2. The judge then considered the respondent’s claim from this perspective and found that [translation] “the parties’ common intention, by virtue of the “Own Occupation” rider, is to consider the insured’s total disability solely in relation to the insured’s ability to perform the important duties of his occupation, regardless of whether he is engaging in any gainful occupation”.[[3]](#footnote-3)
3. The parties disagree on the notion of occupation. The appellant submitted that it is that of orthopedic surgeon in general, while the respondent was of the view that it is the function of orthopedic surgeon as he engaged in it at the CHRDL on April 1, 2015. The judge determined the issue and found that it was the occupation as engaged in by the respondent at the CHRDL.
4. That being so, the judge continued his analysis and considered whether the respondent was able to perform the essential duties of that occupation. He reviewed the case law and noted from *Sucharov*[[4]](#footnote-4) that the purpose of a disability policy is to compensate insured who are completely unable to engage in their regular occupation, thus to perform the material duties of that position. He also drew parallels with *Hobeila c. Paul Revere Insurance Company*,[[5]](#footnote-5) where the Superior Court had to consider the same insurance policy and found that an urologist who could no longer perform surgery (which constituted 25% of his duties) was completely disabled. He then referred to *Cadrin c. Transamerica Vie Canada*,[[6]](#footnote-6) where an “internist” who could no longer perform surgery and invasive procedures but who had developed a consulting practice was considered totally unable to engage in his occupation because he could no longer perform his essential duties. It was also confirmed that the identification of the insured’s occupation and its related duties must be done *in concreto* rather than *in abstracto*.
5. Interpreting the total disability clause in the insurance policy, the judge first rejected the appellant’s argument that it should construed in light of the definitions of partial disability and residual disability, and reiterated that total disability should not be considered from the perspective of the definition of residual disability. In the judge’s view, if the appellant wanted the income a totally disabled insured might still be able to earn to be taken into account, it should have included it in its insurance policy.
6. The judge concluded from the evidence that surgery is an important part of an orthopedic surgeon’s work and that this was the case at the hospital where the respondent was working when he became disabled. He also concluded that the respondent is now working as an orthopedic surgeon but not doing on-call shifts or surgery, that he is working five days a week whereas an orthopedist normally works two to three days a week depending on operating room availability, and that he is earning $600,000 a year but was earning $305,000 at the time of his disability. The judge concluded that he is not performing the important duties of the occupation of orthopedic surgeon at Sainte-Justine Hospital in the same way he engaged in that occupation at the CHRDL. He added that because the appellant’s position at Sainte-Justine Hospital is precarious and the respondent is not guaranteed a position until retirement, the appellant’s status is very different from the one he had at the CHRDL.
7. He therefore granted his application in part and declared that he was totally disabled within the meaning of the insurance policy.

#### GROUNDS OF APPEAL

1. The appellant now appeals from that judgment and raises four grounds in its notice of appeal and its brief:
2. the judge erred in law when assessing the legal principles applicable to the notion of disability;
3. the judge erred in law by finding that the insurance contract clauses should not be read in relation to each other, and that this caused him to rewrite the total disability clause, thereby rendering the partial and residual disability clauses meaningless;
4. the judge erred in law by introducing into the definition of total disability a consideration that it does not contain, i.e., precarity of employment;
5. the judge committed a palpable and overriding error in his assessment of the occupation engaged in regularly by the respondent prior to April 1, 2015.
6. At the hearing, the appellant reformulated these grounds and instead argued that the judge’s fundamental error was to have accepted and applied a non-existent interpretation principle to the insurance contract, i.e., the principle that this contract should not be read as a whole, in other words, by taking all of its clauses into account. The appellant argues that this error led the judge to assess the disability in light of an important duty of the respondent’s occupation rather than in light of his important duties, and as such, the disability arises from a decision that may be made by the institution where the respondent was practising.
7. The respondent submits that he was engaging in the occupation of orthopedic surgeon primarily as a surgeon when he became disabled. The insurance contract was unambiguous and the judge was correct to assess his disability in light of the definition of total disability without regard to the definitions of partial disability and residual disability, and to conclude that he was totally disabled because he was no longer able to perform surgery (other than minor surgery). The respondent also argues that the interpretation of the contract is a question of mixed fact and law and that the Court should not intervene absent a palpable error.
8. Let us consider.

#### ANALYSIS

1. The applicable standard of review is correctness because the insurance policy to be interpreted is a standard form contract (the Court must also determine another appeal in a case where the judge interpreted the same provisions in a disability insurance policy issued by the same insurer differently),[[7]](#footnote-7) the interpretation at issue is of precedential value, and there is no meaningful factual matrix specific to the particular parties.[[8]](#footnote-8)
2. That said, I would conclude similarly even if the insurance contract was not a standard form contract because I find that the judge committed a reviewable error by disregarding the principle that a contract should be construed in light of all of its provisions.
3. Having established that, I will now review the original text of the relevant provisions followed by the text as amended by the rider.
4. The original insurance policy defined occupation and the various types of disability thus:

1.18 **“Your Occupation**” means the occupation or occupations in which You are regularly engaged at the time You become disabled.

1.19 **“Total Disability**” means that:

a. Due directly to Injury or Sickness You are unable to perform the important duties of Your Occupation; and

b. You are not engaged in any gainful occupation; and

c. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1.20 “**Partial Disability**” means that:

a. You are not Totally Disabled; and

b. You are engaged in Your occupation or any gainful occupation; and

c. Due directly to continuing Injury or Sickness, You are unable to perform either:

i. one or more important duties of Your Occupation; or

ii. the important duties of Your Occupation at least one-half of the time normally required; and

d. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1.21 **“Residual Disability**” means that:

            a. You are not Totally Disabled; and

b. You are engaged in Your Occupation or any gainful occupation; and

c. Due directly to Injury or Sickness, You are unable to earn more than 80% of Your Prior Earnings; and

d. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1. The rider reads:

[translation]

RIDER - DISABILITY IN YOUR OWN OCCUPATION BENEFIT

This Rider amends the Policy to which it is attached. The definition of “Total Disability” is removed and replaced with:

**“Total Disability**” means that:

a. Due directly to Injury or Sickness You are unable to perform the important duties of Your Occupation; and

b. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

This Rider ends on the earliest of the following dates:

            1. the date this policy terminates or

            2. your 65th birthday.

All the definitions in Your Policy apply to this Rider. The provisions of Your Policy that have not been amended by this Rider remain the same.

When this Rider expires, the premium payment ends. The Rider Premium appears under the special policy conditions.

If the Rider is established after Your Policy, its effective date appears in the Rider amending the policy. Otherwise, its effective date is the same as Your Policy’s effective date.

1. Therefore, sections 1.19 to 1.21 of the insurance policy should now read:

1.19 **“Total Disability**” means that:

a. Due directly to Injury or Sickness You are unable to perform the important duties of Your Occupation; and

b. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1.20 “**Partial Disability**” means that:

a. You are not Totally Disabled; and

b. You are engaged in Your Occupation or any gainful occupation; and

c. Due directly to continuing Injury or Sickness, You are unable to perform either:

i. one or more important duties of Your Occupation; or

ii. the important duties of Your Occupation at least one-half of the time normally required; and

d. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1.21 **“Residual Disability**” means that:

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c. Due directly to Injury or Sickness, You are unable to earn more than 80% of Your Prior Earnings; and

d. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1. Subject to some of its own rules (that are not at issue here), an insurance policy is subject to the same rules of interpretation as any other contract. Accordingly, clear language should be given effect, whereas the general rules of interpretation apply to ambiguous language. That said, contrary to what the respondent argues, like any other contract, an insurance policy must be read in light of its language as a whole, whether or not the language of the provision at issue is ambiguous:

[21] Principles of insurance policy interpretation have been canvassed by this Court many times and I do not intend to give a comprehensive review here (see, e.g., *Co‑operators Life Insurance Co. v. Gibbens*,2009 SCC 59, [2009] 3 S.C.R. 605, at paras. 20-28; *Jesuit Fathers*, at paras. 27-30; *Scalera*, at paras. 67-71; *Brissette Estate v. Westbury Life Insurance Co.*, [1992] 3 S.C.R. 87, at pp. 92-93; *Consolidated‑Bathurst Export Ltd. v. Mutual Boiler and Machinery Insurance Co.*, [1980] 1 S.C.R. 888, at pp. 899-902). However, a brief review of the relevant principles may be a useful introduction to the interpretation of the CGL policies that follow.

[22] The primary interpretive principle is that when the language of the policy is **unambiguous**, the court should give effect to clear language, reading the contract **as a whole** (*Scalera*, at para. 71).[[9]](#footnote-9)

[Emphasis added.]

1. Whether a provision is ambiguous is determined only by taking into account the terms of the contract as a whole because a clause that appears unambiguous may become ambiguous when the contract is read as a whole.
2. The trial judge therefore erred in law by refusing to interpret the notion of total disability by taking into account the definitions of partial and residual disability.
3. That being so, the clauses in an insurance policy relating to disability are not the same in different insurance policies and each policy has to be considered on its own.[[10]](#footnote-10) The Court must now conduct this interpretation applying the proper principles.
4. For convenience, the exact terms used to define the three types of disability covered by the insurance policy purchased by the respondent, as amended by the rider, are reproduced below:

1.19 **“Total Disability**” means that:

a. Due directly to Injury or Sickness You are unable to perform the important duties of Your Occupation; and

b. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1.20 “**Partial Disability**” means that:

a. You are not Totally Disabled; and

b. You are engaged in Your occupation or any gainful occupation; and

c. Due directly to continuing Injury or Sickness, You are unable to perform either:

i. one or more important duties of Your Occupation; or

ii. the important duties of Your Occupation at least one-half of the time normally required; and

d. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1.21 **“Residual Disability**” means that:

a. You are not Totally Disabled; and

b. You are engaged in Your Occupation or any gainful occupation; and

c. Due directly to Injury or Sickness, You are unable to earn more than 80% of Your Prior Earnings; and

d. You are receiving Physician’s Care. We may waive this requirement from time to time if We receive written proof acceptable to Us that further Physician’s Care would be of no benefit to You.

1. As can be seen, these definitions apply to three separate situations. The first, characterized as total disability, refers to an insured who is unable to perform **the important duties of his occupation**. The second, which involves partial disability, is where the insured is unable to perform **one or more important duties of his occupation** or even **the important duties of his occupation at least one-half of the time normally required**. Finally, the last situation is where the insured **is not totally disabled** but is unable to **earn more than 80% of his prior earnings**. In principle, the insured in these three situations should be receiving physician’s care. However, the insured may engage in any gainful occupation and it is expressly permitted that it be his occupation in the case of partial and residual disability. Nothing appears in this regard, however, in the definition of total disability.
2. In my opinion, a simple reading of these definitions, giving the words their ordinary meaning, supports the conclusion that the insured must be unable to perform all of the important duties of his occupation to be declared totally disabled. In fact, the insured must be unable to perform **the** duties of his occupation, not **several**, **certain**, **most**, or even merely **some**.By using the expression **the** duties, I find that the insurer has clearly expressed the idea that the insured must be unable to perform all of the important duties of his occupation to be declared totally disabled, not only some of them.
3. The respondent submits that the definition of occupation in the insurance policy means that reference should be made to the occupation as he engaged in it at the CHRDL to determine whether he is totally disabled within the policy’s meaning. This argument is of little use. In April 2015, the respondent was engaging in the occupation of orthopedic surgeon. As such, he performed many duties that should be characterized as important, including surgery and on-call shifts, but he also saw and assessed new patients in the outpatient clinic and performed local surgery and post-operative follow-up, and nothing in the record suggests that these duties were different from those generally performed by an orthopedic surgeon. There was nothing particular about his privileges and they contain no unusual restriction. Thus, the conclusion is the same whether reference is to the occupation engaged in by the respondent *in concreto* or *in abstracto*.
4. The respondent appears to suggest that the fact that he spent the majority of his time working on-call shifts and performing surgery should be taken into consideration. In my opinion, this observation is no more determinative. On-call shifts and surgery are part of the important duties, whether they occupy 20, 30, or 50% of an orthopedic surgeon’s time. The policy’s definition of total disability does not state that the insured must be unable to perform the duties on which he spent the majority of his time, but rather the important duties of his occupation.
5. The conclusion might be different had the evidence established that the respondent spent all his time in surgery at the time he became disabled, or if the fact that he could not perform major surgery on his own prevented him from practising as an orthopedic surgeon, but that is not the situation here.
6. Does this interpretation deprive the rider of the desired effect? In my view, it does not.
7. According to the initial wording (before the rider), the insured had to be unable to perform the important duties of his occupation and could not engage in any gainful occupation to be totally disabled. It was clearly unnecessary to provide that he could not engage in his occupation because it constitutes a gainful occupation.
8. The rider essentially reproduces the same definition but removes the requirement not to engage in any gainful occupation. Henceforth, the insured will be totally disabled if unable to perform the important duties of his occupation, even when engaging in a gainful occupation. The trial judge’s analysis was correct on this point.
9. It cannot be said, however, that by removing the requirement that the insured not engage in any gainful occupation, the insurer intended to allow him to engage in his occupation. Engaging in a gainful occupation does not mean that it actually is his occupation. While engaging in the occupation is engaging in a gainful occupation, the reverse is not true. Engaging in a gainful occupation is not necessarily engaging in the occupation. Therefore, the only effect of the rider is to allow the insured to receive total disability benefits even if engaging in a gainful occupation that, in my view, cannot be his occupation because the insured’s engaging in his occupation is irreconcilable with his inability to perform its important duties. Moreover, this is consistent with the definition of “total disability”, which does not state that the insured may engage in his occupation while being totally disabled, contrary to the definitions of partial disability and residual disability, where it is expressly stipulated.
10. In my view, to accept the respondent’s position would also remove the usefulness of part of the definition of partial disability, which applies precisely when the insured **is** **unable to perform one or more important duties of his occupation**. One wonders in what circumstances an insured will be partially disabled if the insured must be recognized as totally disabled once he or she is unable to perform important duties of his or her occupation.
11. In short, in my view, to be totally disabled an insured must be unable to perform all the important duties of his or her occupation, which is incompatible with the idea that he or she can practise it.
12. The respondent raised a number of decisions in support of his position, and in concluding, I find it necessary to review them briefly. Therefore, I will deal with the judgments rendered in *Sucharov*, *Hobeila*, and *Cadrin* one by one.
13. The insured in *Sucharov* was the owner-manager of a general insurance brokerage business who argued that he could no longer manage his business. According to Laskin C.J., his policy defined total disability and partial disability as follows:[[11]](#footnote-11)

[Total disability] … as a result of such injury or sickness, the Insured is completely unable to engage in his regular occupation; however, after Monthly Indemnity has been payable hereunder during any continuous period of disability to the Insured’s fifty fifth birthday or for a period of sixty months, whichever is the longer, then during the remainder, if any, of the period for which Monthly Indemnity is payable, “total disability” shall mean complete inability of the Insured as a result of such injury or sickness to engage in any gainful occupation for which he is reasonably fitted by education, training or experience, giving due consideration to his economic status at the beginning of disability.

[Partial disability]… the inability of the Insured to perform the regular daily duties of his occupation at least one-half of the time usually required in that occupation or the inability to perform one or more of the important regular duties of his occupation.

1. The insurer argued that Mr. Sucharov was not totally disabled because he admitted that he was able to perform certain duties individually, and even several duties but individually, while stating that he was unable to perform all of them collectively, which an owner-manager must be able to do.
2. The issue was whether Mr. Sucharov was completely unable to engage in his regular occupation as owner-manager despite being able to perform these duties individually. That question was very different from the one in this case.
3. Like that of occupation, the definition of total disability in the insurance policy at issue in *Hobeila* was very similar to the one in this case:[[12]](#footnote-12)

[translation]

“Total disability” means that because of Injury or Sickness:

1. , You are unable to perform the important duties of Your Occupation; and
2. You are under the regular and personal care of a Physician.

…

“Your occupation” means the occupation in which You are regularly engaged at the time You become Disabled.

1. That insurance policy had been sent to Dr. Hobeila along with a letter from the insurer stating that he was eligible for total disability benefits if he was no longer unable to perform the essential duties of a urologist, even though he could perform other duties in the medical field.
2. On the recommendation of the physicians who treated him during a heart attack, however, Dr. Hobeila had completely stopped practising as a urologist and was instead working as the director of a palliative care unit in the institution where he had previously practised. The reasons of the Superior Court are to be read and understood in this very different context, taking into account the letter.
3. In the last case, *Cadrin*, an internist purchased a disability insurance policy that contained the following definitions:[[13]](#footnote-13)

[TRANSLATION]

“Regular Profession” means the profession you practised immediately before the start of your disability.

“Total disability” means your inability to perform most of the duties of your regular profession further to an injury or an illness that forces you to be followed by a physician.

“Residual loss of income” means that:

1. you are not totally disabled;
2. you engage in gainful employment;
3. you sustain a loss of income of 20% or more, solely as a result of an injury or illness that occurred while the rider is in effect.

The injury or illness must subsist and you must be followed by a physician during the grace period only.

1. The insurer in that case had also sent a letter in reply to the one Mr. Cadrin sent describing the duties of his practice that he considered to be essential. The insurer’s letter was to clarify the definition of total disability in the insurance policy and informed him that [translation] “... As a medical specialist in internal medicine, working in a short-term care hospital, whose availability to see to on-call services in internal medicine and whose responsibility for the care dispensed in intensive care, emergency care and cardiopulmonary resuscitation units are essential duties in the practice of your regular profession, a total disability benefit will be paid to you if you are unable to perform those duties”.[[14]](#footnote-14)
2. Because Dr. Cadrin’s head and hands trembled, he had stopped performing many duties, including all those described in the insurer’s letters, and he spent his time performing other duties in the medical field. As a result, the trial judge wrote that [translation] “... due to his illness, he was no longer able to perform the duties that the insurer, in its letter of November 19, 2003, described as essential to the work of an internist in an acute care hospital.Nor was he able to perform the more important duties of his regular occupation immediately before he became disabled”.[[15]](#footnote-15)
3. Here again the facts are different because, in its letter, the insurer had expressly identified the essential duties of the occupation engaged in by Dr. Cadrin at the time he became disabled. This element is determinative and distinguishes that case from the one at bar. I further note that each insurance policy must be read in light of its provisions, which must themselves be applied to the facts of the case.
4. The insured here is unable to perform some important duties of his occupation, but he is able to perform others. Indeed, he still engages in his occupation of orthopedic surgeon and he has the privileges required to do so. The fact that he might lose them one day is irrelevant. If his limitations cause him to lose his privileges one day and prevent him from engaging in his occupation, he can file another disability claim and its validity will be assessed.
5. In the circumstances, I find that the respondent does not meet the definition of total disability in his insurance policy and I recommend that the Court allow the appeal, reverse the Superior Court’s judgment, and dismiss his action, with legal costs.

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| MARIE-JOSÉE HOGUE, J.A. |

1. *O.C.* *c.* *Compagnie d'assurance-vie RBC*, 2020 QCCS 4800 [judgment under appeal]. [↑](#footnote-ref-1)
2. Judgment under appeal at para. 47. [↑](#footnote-ref-2)
3. Judgment under appeal at para. 78. [↑](#footnote-ref-3)
4. *Paul Revere Life Insurance Co. v. Sucharov*, [1983 CanLII 168](https://unik.caij.qc.ca/recherche#q=%22Sucharov%22&t=unik&sort=relevancy&f:caij-unik-checkboxes=[Jurisprudence]&m=detailed&i=1&bp=results) at 542 [*Paul Revere Life Insurance*]. [↑](#footnote-ref-4)
5. *Hobeila c. Paul Revere*, *compagnie d'assurance-vie*, [[1996] R.R.A. 491](https://soquij.qc.ca/portail/recherchejuridique/Selection/4849308#AnchorCitateurDistinguee) [*Hobeila*]. [↑](#footnote-ref-5)
6. *Cadrin c. Transamerica Vie Canada*, [2010 QCCS 262](https://unik.caij.qc.ca/recherche#t=unik&sort=relevancy&m=detailed&unikid=%2Ffr%2Fqc%2Fqccs%2Fdoc%2F2010%2F2010qccs262%2F2010qccs262) (aff’d: *Transamerica Vie Canada c. Cadrin*, [2011 QCCA 2397](https://unik.caij.qc.ca/recherche#t=unik&sort=relevancy&m=detailed&unikid=%2Ffr%2Fqc%2Fqcca%2Fdoc%2F2011%2F2011qcca2397%2F2011qcca2397)) [*Cadrin*]. [↑](#footnote-ref-6)
7. *G.C. c. Compagnie d’assurance-vie RBC*, 500-09-029409-216. [↑](#footnote-ref-7)
8. *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance*, [2016] 2 S.C.R. 23 at paras. 46 and 47; *Compagnie d’assurances générales Co-Operators c. Coop fédérée*, 2019 QCCA 1678 at paras. 123 and 140 (rev’d by the SCC, but for other reasons). [↑](#footnote-ref-8)
9. *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada,* 2010 SCC 33 at para. 22; *Non-Marine Underwriters, Lloyd’s of London v. Scalera*, [2000] 1 S.C.R. 551 at para.71. [↑](#footnote-ref-9)
10. *Paul Revere Life Insurance*, *supra* note 4. [↑](#footnote-ref-10)
11. *Paul Revere Life Insurance*, *supra* note 4 at 3. [↑](#footnote-ref-11)
12. *Hobeila*, *supra* note 5 at 9. [↑](#footnote-ref-12)
13. *Cadrin*, *supra* note 6 at para. 6. [↑](#footnote-ref-13)
14. *Cadrin*, *supra* note 6 at para. 7. [↑](#footnote-ref-14)
15. *Cadrin*, *supra* note 6 at para. 67. [↑](#footnote-ref-15)