Unofficial English Translation of the Judgment of the Court

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| G.C. c. Compagnie d'assurance vie RBC | | | | | 2022 QCCA 1141 |
| COURT OF APPEAL | | | | | |
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| CANADA | | | | | |
| PROVINCE OF QUEBEC | | | | | |
| REGISTRY OF | | | MONTREAL | | |
| No.: | 500-09-029409-216 | | | | |
| (460-17-002441-178) | | | | | |
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| Date: | August 23, 2022 | | | | |
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| CORAM: | | THE HONORABLE | | MARK SCHRAGER, J.A.  MARIE-JOSÉE HOGUE, J.A.  STÉPHANE SANSFAÇON, J.A. | |
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| G.C. | | | | | |
| APPELLANT – plaintiff | | | | | |
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| v. | | | | | |
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| RBC LIFE INSURANCE COMPANY | | | | | |
| RESPONDENT – defendant | | | | | |
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| JUDGMENT | | | | | |
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**WARNING: An order under article 12 C.C.P.is issued to protect the appellant’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 Bedford, rendered on February 9, 2021 (the Honourable Claude Villeneuve), granting in part his amended originating application. The judgment declared that he was not totally disabled within the meaning of his insurance policy with the respondent, except for the period between April 13, 2014, and April 11, 2015. It found that no amount was owing to him for the period prior to February 11, 2015, and accordingly declared that he was entitled to total disability insurance benefits only for the period between February 11 and April 11, 2015, and to residual disability benefits only for the period between April 11, 2015, and February 11, 2016. The judge therefore condemned the respondent to pay the appellant $49,247 in disability benefits and $3,053.44 to reimburse the insurance premiums he paid between February 1, 2015, and February 28, 2016, with interest, the additional indemnity, and 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 appellant’s anonymity and to prohibit his identification other than by his initials;
4. **DISMISSES** the appeal, with legal costs.

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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 Jacqueline Bissonnette | | |
| POUDRIER BRADET, AVOCATS | | |
| For the appellant | | |
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| Mtre René Vallerand | | |
| DONATI MAISONNEUVE | | |
| For the respondent | | |
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| Date of hearing: | February 9, 2022 | |

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| REASONS OF HOGUE, J.A. |
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1. The appellant appeals from a judgment rendered by the Superior Court, District of Bedford, on February 9, 2021 (the Honourable Claude Villeneuve),[[1]](#footnote-1) granting in part his amended originating application and declaring that he was not totally disabled within the meaning of his insurance policy with the respondent.
2. First, I note that this appeal was heard on the same day and by the same panel as the appeal in file 500-09-029299-211, on which judgment is also rendered today, and that the wording of the disability insurance policies and of the rider in question in the two cases is identical and the issues raised are similar. Accordingly, the contract is interpreted the same way in both cases, and I will therefore rely in one judgment on certain reasons set out in the other. Readers are invited to consult the reasons for each of these judgments because to some extent, they complement each other.
3. Because the facts of each case are different and the law must be applied to the facts, I will begin by outlining those of this matter.

#### THE FACTS

1. In 1998, the appellant, who was beginning his career in medicine, purchased a disability insurance policy with a rider amending the policy’s definition of total disability. I will return to this definition in more detail, but essentially, under the rider, the appellant is considered totally disabled if he is no longer able to perform the important duties of his occupation, even if he is working and earning an income. His broker told him that the rider would allow him to receive disability benefits [translation] “if he is no longer a physician, even if he is earning a good income in another field”.
2. He began working as a family physician in the Granby region. He consulted in a clinic and was on duty in the emergency room in a regional hospital. In 2006, he expanded his practice, travelling to the Far North in Quebec every six weeks for a week at a time. He was on a call list and did stints at hospitals primarily in Kuujjuaq and Chisasibi. He says that he likes this part of Quebec because of the Nations that live there, and he sympathizes with the issues they are facing.
3. During these stints, he was responsible for emergency in Kuujjuaq or Chisasibi. Because he was the only physician there, he managed an unpredictable workload. He was also occasionally asked to fly long distances to reach isolated communities. His clinical work varied from one village to another. In Kuujjuaq, he had to coordinate an emergency room, consult, perform surgery when necessary, and do follow-up. He was supported by a team of nurses, who were responsible for almost all the first-line care and helped him greatly in his work. At the time, he earned most of his income there.
4. He became interested in sports medicine around 2008, a field in which he had been cultivating considerable interest for a number of years. He nevertheless continued to work as a family physician in Granby and in the Far North.
5. In March 2009, he obtained a diploma in sports medicine from the Canadian Academy of Sport and Exercise Medicine.
6. In June 2009, he became severely depressed and stopped working. He decided at that point to leave the public sector and resigned from the family medicine group where he had been practising and from the hospital in Granby. He nevertheless hoped to continue working in the Far North, which he in fact did, starting in November 2009.
7. Because he was on medical leave, he applied for total disability benefits from the respondent. The respondent paid him these benefits for the period starting in June 2009 until he returned to work in 2010.
8. During this period, the demand in Kuujjuaq was decreasing and the appellant was called on to work in Chisasibi more frequently. The volume of work was much higher there than in Kuujjuaq, and he received less support. He did 24-hour shifts during which he performed several surgeries and met with a large number of patients.
9. In 2011, because he was still interested in sports medicine and wanted to eventually start and run his own clinic, he updated his skills in musculoskeletal ultrasound.
10. In June 2013, he finally rented an office in Granby and set up his sports medicine clinic. He performed consultations, analyzed imaging results, and followed up with patients.
11. Although this part of his practice was growing, he continued to practise in the Far North, but the number of days he spent there decreased. Because of the events described below, he worked there for the last time during the week of March 11, 2014.
12. On April 13, 2014, the appellant went into cardiac arrest. After experiencing cerebral anoxia, he was placed in an artificial coma and awoke two days later. He remained at the hospital for his convalescence.
13. Fortunately, he recovered fully from his heart problem. However, he claims he was left with residual cognitive issues and fatigue despite his cognitive rehabilitation therapy.
14. Accordingly, on June 18, 2014, he filed a new application for total disability benefits, stating that his last day of work was April 11, 2014, and that the date of his return to work was as yet undetermined, as were any changes that may have to be made to his tasks. He described his occupation as [translation] “general medicine primarily in sports medicine” and stated that his main tasks were [translation] “medical assessments, ultrasounds”.
15. Over the summer of 2014, the parties had discussions and agreed on future compensation terms.
16. On September 15, 2014, the respondent sent a letter to the appellant reiterating the terms of an alleged agreement between them on the payment of disability benefits (“AP&C agreement”). It said that it agreed to pay total disability benefits until December 11, 2014, and partial disability benefits until February 11, 2015 [translation] “in settlement of the benefits due between September 12 and February 11, 2015”. Accordingly, the appellant would receive $30,800. The respondent added that it was closing the claim but could re-open it if the appellant did not return to work full time after February 11, 2015.
17. On October 7, 2014, Dr. Christian Bocti prepared a first report in which he concluded that the appellant was suffering from a persistent and significant amnesic syndrome in episodic verbal memory and a brain injury. Dr. Bocti was of the opinion that the appellant could not work with hospitalized or emergency patients, but that he could return to practice in an outpatient clinic. He added that he would begin cognitive rehabilitation therapy with a neuropsychologist, after which his condition would be re-evaluated.
18. On October 14, 2014, the appellant began gradually resuming his professional activities at his sports medicine clinic. He informed the respondent.
19. On October 16, 2014, neuropsychologist Julie Duval prepared a first report in which she concluded that he suffered from isolated cognitive impairment of his episodic verbal memory. She envisaged three months of cognitive rehabilitation followed by a re-evaluation. She was also of the opinion that he could resume his outpatient clinic work in the meantime.
20. On February 25, 2015, Dr. Bocti prepared a second report in which he concluded that there was no doubt that [translation] “the [appellant’s] current cognitive profile represents a significant deterioration from his pre-morbid level”, but that his rehabilitation was continuing and he would be re-evaluated in March or April. He was allowed to resume work part time, in other words, without doing on-call shifts. However, on April 22, 2015, after certain examinations were performed, Dr. Bocti stated that he could return to work full time.
21. In May 2015, Dr. Bocti wrote in the appellant’s medical record that he [translation] “recommended permanent partial disability (% of income from emergency up North)”.
22. The appellant, for his part, informed the respondent that he could not return to work full time because he was unable to resume his practice in the Far North.
23. On May 30, 2015, neuropsychologist Duval prepared a second report in which she stated that the appellant showed significant improvement. She associated this with learning and the use of compensatory aids, i.e., strategies learned in rehabilitation.
24. Although the X-ray examinations did not provide objective evidence of the injury, Dr. Bocti and Ms. Duval both believed that the appellant could no longer practice on-call or emergency medicine but that he was still able to work in an outpatient clinic.
25. Discussions between the parties ensued to determine whether the appellant was indeed eligible to receive benefits again.
26. On August 29, 2015, the appellant withdrew his name from the list of physicians available to work in the Far North.
27. On December 4, 2015, given the delay in processing his file, the respondent agreed to pay him three months of partial disability benefits.
28. On January 7, 2016, the respondent told him that it considered that there was [translation] “no objective medical evidence supporting a persistent partial disability that would prevent him from resuming work full time after February 11, 2015”.
29. On January 26, 2016, the appellant contested this decision. He told the respondent that he was still unable to resume his duties as a physician in the Far North of Quebec and reminded it that his treatment team had determined, after several months of rehabilitation, that he could not resume his practice as a general practitioner involving intensive work, for example in an emergency room or a hospital.
30. On April 5, 2016, the respondent denied his appeal. On January 19, 2017, the appellant was again unsuccessful in a new internal appeal process.
31. On March 23, 2017, he brought judicial proceedings to be declared totally disabled and to receive disability benefits accordingly. He claimed the difference between the partial disability benefits received between December 12, 2014, and May 11, 2015, and the total disability benefits he claims he is entitled to. He eventually added alternative conclusions to his application, seeking residual disability insurance benefits and the reimbursement of premiums paid between February 2015 and February 2016.
32. In the circumstances, the respondent asked Dr. Claude Paquette to examine the appellant and his medical record and to issue an opinion on his capacity to perform his occupation.
33. Dr. Paquette carried out the requested examinations and concluded that the appellant had no residual cognitive impairment further to his anoxia episode. She found that the appellant’s functioning had been normal since at least April 2015. Her report was filed in the record and she testified at the trial that took place from October 5 to 9 and on October 30, 2020.

#### THE JUDGMENT

1. Judgment was rendered on February 9, 2021, granting in part the appellant’s application but refusing to recognize his total disability beyond April 11, 2015, finding instead that he was entitled to residual disability benefits from that date until February 11, 2016, given his loss of income.
2. Because the respondent argued that the AP&C agreement prevents the appellant from claiming anything in addition to what had been agreed, the trial judge began with an analysis of that agreement. The judge refused to find that the appellant had renounced any claim of benefits beyond February 11, 2015, in the agreement, but, finding that it constituted a transaction, he determined that the appellant could not obtain more than what had been agreed for the period between September 12, 2014, and February 11, 2015,.
3. Then, after dealing with the burden of proof applicable in disability insurance claims, the judge considered how the insurance policy defined the notions of occupation, total disability, partial disability, and residual disability. Focusing his analysis on the appellant’s situation, he found that his occupation was that of [translation] “family physician/general practitioner”, an occupation that includes duties that he performed both at his sports clinic and in the Far North, and that total disability must be analyzed in the sense of a [translation] “substantial” inability to perform the important and regular duties of this occupation.
4. He further added that the fact that the appellant’s activities in the Far North were the most lucrative ones is not relevant to determining whether he is totally disabled, and noted that he is able to perform the important duties of his sports medicine practice, which, he wrote, occupied most of his time when he became disabled in 2014. That being the case, he concluded, in light of the definition of total disability in the insurance policy, that the appellant is not totally disabled because he is not unable to perform the important duties of his occupation.

#### POSITION OF THE APPELLANT

1. Before the Court, the appellant attacks only the conclusion that the AP&C agreement prevents him from claiming an amount greater than what he received for the period between September 2014 and February 2015, and the conclusion that he is not totally disabled within the meaning of the insurance policy.
2. More specifically, he contests the judge’s conclusion that the AP&C agreement constituted a peremptory exception to his application for total disability benefits for the period concerned and alleges that he committed palpable errors in the analysis of his occupation and the assessment of Dr. Paquette’s testimony.
3. The Court will now consider.

#### DISCUSSION

1. First, I note that the AP&C agreement is a contractual agreement between the parties and therefore, according to the applicable standard, the Court may intervene in the judge’s interpretation of it only where it is established that he committed a palpable and overriding error.[[2]](#footnote-2)
2. In this regard, the appellant more specifically faults the judge for failing to take into consideration the testimony of the respondent’s representative whereby the agreement could be revised depending on how his medical condition evolved. He refers to an excerpt that in his view shows that the parties did not intend to definitively settle the issue of the benefits payable until February 2015.
3. With respect, I find that he has not identified any palpable and overriding error by the judge, who found on the basis of the evidence that the parties had settled the issue, and that the testimony to which the appellant refers in no way justifies finding that he committed a palpable error in so doing.
4. I therefore find that this ground should be rejected.
5. That being said, I will now move on to the main ground that the judge erred in refusing to recognize the appellant as totally disabled within the meaning of the insurance policy (as amended by the rider).
6. As I wrote in the judgment also rendered today in file 500-09-029299-211, because the insurance policy is a standard form contract, its interpretation is of precedential value, and there is no meaningful factual matrix specific to the particular parties to assist the interpretation process, the applicable standard of review of the judge’s interpretation of the notion of total disability is that of correctness.[[3]](#footnote-3)
7. The disability insurance policy, as amended by the rider, defines the notion of occupation and the different types of disability:

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

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;

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. This insurance policy, it should be recalled, is subject to the same rules of interpretation as any other contract and consequently must always be read in light of its language as a whole:

[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).[[4]](#footnote-4)

[Emphasis added]

1. It is also well established that the words must be given their ordinary meaning.[[5]](#footnote-5)
2. In this case, the judge noted that the definition of total disability requires that the appellant be unable to perform the important duties of his occupation, but that it does not prevent him from earning income through another occupation. He added that the inability to perform the important duties of his occupation does not mean that he is unable to perform one or several important duties of the occupation; in his view, that would correspond to the definition of partial or residual disability.
3. The appellant, however, argues that he can no longer perform the important duties of the occupation he performed in the Far North and that the judge should have based his analysis on this fact because, at the time he became disabled, his practice in the Far North was the source of most of his income.
4. Clearly, the trial judge understood his submission but did not accept it. According to the judge, the fact that the work performed by the appellant in the Far North is different from what he did in Granby does not mean that he has two occupations within the meaning of the policy. In his view, the appellant performs his occupation in two different locations which admittedly make different demands on him, but that does not change their nature. He also concluded from the evidence that the appellant himself stated on a few occasions that he practised [translation] “general medicine primarily in sports medicine”.
5. In my view, there is no reason for the Court to intervene in this respect. The judge’s conclusion is free of error.
6. That being said, did the judge correctly conclude that the appellant is able to perform the important duties of his occupation? In my opinion, yes.
7. As I wrote in the judgment rendered in file 500-09-029299-211, it is my view that a simple reading of the relevant definitions of the insurance policy, 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, since it is **the** duties of his occupation – not **several**, **certain**, **most** or even **some** of them – that he must be unable to perform. I find that, by using the expression “**the** duties”, the insurance policy clearly expresses the idea that the insured must be unable to perform all of the important duties of his occupation, not only some of them.
8. The inability to perform all of the important duties of an occupation is, in my view, incompatible with practising it.
9. It is true that the appellant can no longer perform the occupation of family physician in the Far North, given his limitations and the demands of that environment, but he is still able to perform it elsewhere, in particular in Granby, which he in fact does at his sports medicine clinic. In these circumstances, it cannot be said that he can no longer perform the important duties of the occupation of family physician, and the trial judge did not err in making this finding.
10. Like the trial judge, I find that, if his inability to perform this occupation in the Far North has caused him to lose income, he is entitled to disability benefits for partial or residual disability, as the case may be.
11. The appellant invokes case law that he believes supports his interpretation of the notion of total disability. With respect, in my view the judgments they identify do not have the significance he ascribes to them. I explain why in detail in the judgment rendered in file 500-09-029299-211.
12. Finally, I note that the appellant’s allegation in relation to Dr. Paquette’s testimony is pointless. Whether or not her testimony or that of Dr. Bocti and neuropsychologist Duval is accepted does not change the fact that he is able to perform his occupation of family physician. Moreover, he admits that since February 11, 2016, the income he has been earning by exercising his occupation represents at least 80% of what he was earning at the time of his cardiac arrest in April 2014.
13. I see no error in how the judge interpreted and then applied the notions of occupation and total disability, and I recommend that the Court dismiss the appeal, with legal costs.

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| MARIE-JOSÉE HOGUE, J.A. |

1. *G.C.* *c.* *Compagnie d'assurance-vie RBC*, 2021 QCCS 322 [judgment under appeal]. [↑](#footnote-ref-1)
2. *Uniprix inc. v. Gestion Gosselin et Bérubé inc*., 2017 SCC 43. [↑](#footnote-ref-2)
3. *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 S.C.C. but for other reasons) [↑](#footnote-ref-3)
4. *Progressive Homes Ltd. v. Lombard General Insurance Co. of Canada*, 2010 SCC 33at para. 22; *Non-Marine Underwriters, Lloyd’s of London v. Scalera*, [2000] 1 S.C.R. 551 at para. 71. [↑](#footnote-ref-4)
5. *Boiler Inspection and Insurance Co. of Canada c. Office municipal d’habitation de Montréal*, [1989] R.R.A. 636 (C.A.). [↑](#footnote-ref-5)