

schjerner mediations

eric@schjernermediations.com
416-236-9282

ERIC'S LTD UPDATE

ISSUE 28 – Spring/Summer 2026

Eric Schjerner is a mediator with over 14 years of mediating LTD and other insurance disputes, a former litigator with over 3 decades of LTD trial work, and the author of 3 editions of the book **Disability Insurance Law in Canada**.

To look for available mediation dates or to book a mediation with Eric, visit [Schjerner Mediations](https://www.schjernermediations.com) or simply email Eric at: eric@schjernermediations.com.

Eric Schjerner

Schjerner Mediations Ltd.

What's New at Schjerner Mediations?

Hope you all survived our winter. A rather slow start to the year case law wise. There are however, two cases which curtail the use of summary judgment motions in LTD matters. As usual this update will be posted on my website, where it will join other updates containing all case law since the Third Edition of my book was published. To access the 850 odd cases in *Disability Insurance Law In Canada, Third Edition*, click [here](#).

My mediation booking calendar is that used by members of the Canadian Academy of Distinguished Neutrals. You may book a mediation via my website or simply email me at eric@schjernermediations.com.

INDEX

A) *Eastwood-Fischer v. Equine Canada, SSQ Life Insurance Company et al.*

B) *Madhavaraj v. Sun Life Assurance Company*

C) *Riddle v. Ivori*

D) *Life Insurance: Ontario Insurance Act sections 180 and 184, Scott Trebell v. The Canada Life Assurance Company et al.*

A. Eastwood-Fisher v. Equine Canada et al., 2026 ONSC 2721

Plaintiff was terminated without cause and claimed she was eligible for LTD payments as of her date of termination. According to her affidavit evidence she had become overwhelmed trying to manage her disabilities (caused from a m.v.a.) at work, had ceased to be able to perform her job duties before her notice of termination, had contemplated medical leave, and her employer had been aware of this.

The position of the employer and of SSQ was that Plaintiff's coverage had ended when her employment ceased and that no application for LTD had been perfected prior to coverage ending. Plaintiff brought a motion for summary judgment for LTD benefits since she had become disabled during the notice period.

The Court held in part:

Plaintiff contends that she made an LTD claim within one month of her termination and seeks benefits under the policy or the equivalent of LTD benefits from the employer.

The need to assess credibility or untangle competing evidence is not always a bar to summary judgment but frequently it is. In my view the evidence does not permit me to make the necessary findings with confidence...summary judgment is refused on the question of entitlement to LTD benefits. The question of whether the plaintiff was and remains totally disabled within the meaning of the policy, whether the insurer is obligated to provide benefits, and if not, whether the employer is obligated to provide the equivalent benefits, are remitted to trial.

B. Madhavaraj v. Sun Life Assurance Company, 2026 ONSC 553

The Plaintiff's employment (and with it LTD coverage) ended on December 5, 2023. Plaintiff made a claim for LTD on April 4, 2024 claiming that the anxiety and stress of his work environment and subsequent layoff made him totally disabled and unable to look for work.

Sun Life brought a motion for summary judgment as Plaintiff was not totally disabled on the day he was terminated. Plaintiff opposed Sun Life's motion as inappropriate for summary judgment and brought a "boomerang" motion that summary judgment should be granted for the Plaintiff.

Held: Both motions dismissed.

The Court held in part:

*Sun Life's argument that the plaintiff's claim should be rejected based on the lack of evidence of stress and other health-related symptoms while the plaintiff was employed do not satisfy me that there is no genuine issue requiring a trial. The plaintiff's own evidence of his health while employed, as well as afterwards, and his supporting medical evidence, raise issues as to whether the plaintiff may have been disabled prior to his termination, but was unaware of it at the time...similar to the circumstances in *MacIvor v. Pitney Bowes*. On the other hand, the evidence presented by the plaintiff does not definitively answer the question in his favour either. The medical evidence is based, in part, that he was terminated for poor or "underperformance", which is not consistent with the contemporaneous evidence that he was terminated as part of a restructuring...this raises questions about the credibility and reliability of the plaintiff's evidence...*

Additionally, the medical experts' evidence is to some extent based on information provided to them by the plaintiff, including his explanation of why he was terminated, raising questions about the

reliability of the opinions which in some respects do not appear to be supported by the contemporaneous medical records or other evidence.

In short, the plaintiff's evidence also falls short of satisfying the court that the plaintiff's claim should succeed and that there is no genuine issue requiring a trial.

C. *Riddle v. Ivari*, Supreme Court of Canada 2026 SCC 9

I do not usually comment on Quebec cases but as this is Supreme Court and as a nice summary was provided to me on a platter by Tracey Hamilton I thought “why not?”

The SCC confirmed the lower court decision that a declaratory judgment of death under Quebec law is a rebuttable legal fiction, not a final determination of death. Where credible evidence later shows that the person declared dead is alive, the judgment must yield to reality and may be annulled—even years later and despite significant legal consequences having already flowed.

D. Ontario Insurance Act sections 180 and 184: *Scott Trebell v. The Canada Life Assurance Company et al.*, 2025 ONSC 2884

Concerned the applicability of s. 180 of the *Insurance Act* re a policy not taking effect if there was a change in insurability between the application's completion date and the date of delivery of the policy and the interplay with sections 183 and 184 of the Act. See commentary on this decision in the previous issue of Eric's LTD Update (found on my website).

The appeal of this matter was heard on February 27, 2026 so hopefully we will have the decision for my next LTD Update.

ACKNOWLEDGEMENTS:

This update depends on my receiving case law from counsel and industry claims consultants. For this issue many thanks to Alison Gilmour of Burn, Tucker, Lachaine, Rebecca Grima of Canada Life, and Tracey Hamilton of Beneva.

If you have any questions about LTD law, have a new case you wish to share, or have a mediation you wish to book, please email me at eric@schjernermediations.com.

