

## ARMED FORCES

### INCOME SECURITY

Motion requesting that Federal Court determine whether, when calculating long term disability benefits, dismemberment benefits under Canadian Armed Forces Service Income Security Insurance Plan (SISIP) Policy 901102, Division 2, Part III(B), a Class member's allowances in effect on date of their release from Canadian Armed Forces (CAF) (or in case of Class "C" member, when injury incurred or illness contracted) should be included in Class member's monthly pay (Question) — Plaintiff in underlying action claiming defendant breaching terms of Policy by calculating his monthly income benefits based only on his salary, omitting certain allowances from calculation — Action relating to long-term disability (LTD) insurance coverage under Policy, Division 2 of Part III(B), s. 20 of which confers such coverage upon Regular Force members of CAF, Class "C" Reserve Force members of CAF — Plaintiff suffering from number of medical conditions resulting from his service — No longer meeting universal terms of service for CAF, receiving involuntary medical release — Becoming entitled to monthly long-term disability (LTD) benefit upon release under Policy — Three allowances plaintiff receiving prior to his discharge not taken into account in calculation of his LTD benefits — Sole issue herein determination of answer to Question — Principles of contractual interpretation applying to construction of insurance policies — Particular principles also applying to interpretation of contracts of insurance, requiring three-stage analysis: (1) where language of insurance policy unambiguous, effect should be given to that clear meaning, regarding contract as whole; (2) *if* policy ambiguous, general rules of contractual construction should be employed such as reasonable expectations of parties, avoidance of unrealistic results, consistency with interpretations of similar insurance policies; (3) *if* ambiguity remaining, *contra proferentum* to construe policy against insurer should be applied — Defendant taking position, *inter alia*, principle of *contra proferentum* not applying in present circumstances — Submitting that, because premiums for coverage under Policy are all or largely all paid by Treasury Board Secretariat, such coverage can be understood as benefit of insured's employment — Arguing therefore that Policy different from typical contract of adhesion arising in commercial context — Decision in *Manuge v. Canada*, 2012 FC 499 directly applicable authority contrary to defendant's proposition — In *Manuge*, principle of *contra proferentum* applied to resolve any ambiguity of policy in favour of plaintiff — Parties disagreeing on meaning of term "monthly pay" / "taux de rémunération" in Policy — Plaintiff taking position that terms "monthly pay" / "taux de rémunération" having broad meaning that includes not only his salary, but also his allowances — Dictionary definitions can inform interpretation of words used in insurance policy — Sufficient relationship existing between CAF members' service, allowances they receive that meanings of "pay", "rémunération" encompassing allowances — Language in Policy, Part I supporting conclusion that Part I definitions apply throughout Policy — Inclusion of definitions in Policy, Part III(B), when identical definitions are found in Part I, supporting inference that drafter intended Part III(B) to be self-contained, relying on its own General Provisions rather than those found in Part I — Policy is contract where it is intended that specific override general, that General Provisions definitions of "monthly pay" / "solde mensuelle" in Part III(B) apply within Part II(B) without recourse to Part I General Provisions definitions of those terms — Allowances paid on monthly basis reasonably capable of falling within meanings of term "monthly pay" — Court reaching same conclusion in reliance on term "taux de rémunération" — Allowances not on all fours with salary, particularly when they are intended to compensate for expenses — However, expenses may not necessarily be eliminated as result of member's release — Salary representing compensation for performance of services; once CAF member released, no longer basis to provide such compensation — LTD insurance responding as means of

replacing percentage of compensation to which member no longer entitled — Plaintiff's submissions surrounding reasonable expectations of parties more compelling, sufficient to resolve ambiguity resulting from stage 1 of interpretation framework — Therefore, unnecessary here to turn to stage 3 of interpretation framework — Question answered affirmatively but only allowances paid on monthly basis.

LOGAN V. CANADA (T-1358-18, 2020 FC 404, Southcott J., reasons for order dated March 24, 2020, 33 pp.)