COURT OF APPEAL FOR ONTARIO

CITATION: Traders General Insurance Company v. Rumball, 2025 ONCA 656
DATE: 20250923
DOCKET: COA-23-CV-0761

Copeland, Wilson, Rahman JJ.A.

BETWEEN

Traders General Insurance Company

Applicant
(Respondent)

and

Shelley Rumball

Respondent
(Appellant)

Fabio Longo, Bryan Fromstein and Kristy Kerwin, for the appellant

Eric Grossman and Alexander Dos Reis for the respondent

Alexander Voudouris, M. Steven Rastin and Jessica M. Golosky for the intervenor Ontario Trial Lawyers Association

Heard: June 24, 2025

On appeal from the order of the Divisional Court (Regional Senior Justice Mark L. Edwards, Justices Thomas R. Lederer and Breese Davies) dated December 21, 2022, with reasons reported at 2022 ONSC 7215, affirming a decision of the Licence Appeal Tribunal, dated February 5, 2018.

Wilson J.A.:

A. OVERVIEW

[1] The appellant, Shelley Rumball ("Rumball"), was involved in a motor vehicle accident on December 28, 2014. She applied to her insurer, Traders General Insurance Company ("Traders"), for statutory accident benefits ("SABs") due to her inability to work.

[2] Pursuant to s. 6(2)(b) of the *Statutory Accident Benefits Schedule*, O. Reg. 34/10 (the "*Schedule*"), income replacement benefits ("IRBs") are payable to an insured person after the first 104 weeks of disability if, as a result of the accident, "the insured person is suffering a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience." This is a more stringent test than applies during the first 104 weeks, which requires the insured person to suffer "a substantial inability to perform the essential tasks of [their pre-accident] employment": *Schedule*, s. 5(1)1.

[3] Following her accident, Rumball returned to work on February 25, 2015, but stopped working again on May 31, 2015. She claimed further benefits from Traders from May 30, 2015 onwards. Because she asserted that she was unable to return to work, she sought payment of the benefits up to the 104-week mark and beyond.

[4] The Adjudicator at the Licence Appeal Tribunal ("LAT") determined that Rumball was entitled to IRBs from May 30, 2015 to December 28, 2016. She further found, however, that Rumball was not entitled to benefits after the 104-

week mark because she did not suffer a complete inability to engage in employment for which she is reasonably suited by education, training or experience.

[5] Rumball applied for a reconsideration pursuant to the *Licence Appeal Tribunal, Animal Care Review Board, and Fire Safety Commission Common Rules of Practice and Procedure, Version I (October 2, 2017)*. The Adjudicator dismissed the reconsideration request.

[6] Rumball then appealed to the Divisional Court pursuant to s. 11 of the *Licence Appeal Tribunal Act,* S.O. 1999, c. 12, Sch. G. Appeals from a decision of the LAT relating to a matter under the *Insurance Act*, R.S.O. 1990, c. I.8, are limited to questions of law: *Licence Appeal Tribunal Act, 1999*, s. 11(6). In its decision, the Divisional Court dismissed Rumball's appeal, finding no error in the Adjudicator's decision.

[7] Rumball subsequently sought and obtained leave to appeal to this court on the issue of the correct interpretation of the test under s. 6 of the *Schedule*.

[8] For the reasons that follow, I would dismiss the appeal.

B. BACKGROUND

[9] Prior to the accident, Rumball worked as an educational assistant with a school board, working 35 hours per week. She also had taken a course in wedding planning and had started a business as a wedding planner in 2014.

[10] Rumball returned to work as an educational assistant on February 25, 2015,[1] but stopped on May 31, 2015, stating that she was unable to do her job. She asserted that she could not do the lifting associated with her job at the school board since she worked with special needs children. She completed a number of weddings following the accident but required assistance from family members. She also engaged in volunteer work and provided caregiving services to her terminally ill father.

[11] At the hearing, Rumball testified that she developed chronic pain as a result of the accident. She was diagnosed with soft tissue injuries and claimed she also suffered from depression, post-traumatic stress disorder and other psychological impairments. Rumball called evidence from the psychiatrist Dr. Waisman and Dr. Ta, a specialist in chronic pain. She also filed the records of her family doctor, Dr. Fejes. These medical experts testified that as a result of her injuries from the car accident, Rumball could not return to work in any capacity, although Dr. Ta stated she was a good candidate for retraining.

[12] Traders called expert evidence from the orthopedic surgeon Dr. McKenzie, the psychiatrist Dr. Luczak, and a general practitioner Dr. Jugnundan, all of whom confirmed that Rumball suffered only minor injuries in the accident, and that she

[1] Traders paid Rumball IRBs from January 4, 2015 to February 24, 2015. There was no dispute as to Rumball's entitlement to these benefits.

was not precluded from returning to work as an educational assistant, a wedding planner or any other job for which she is suited by education, training or experience.

[13] The Adjudicator determined that Rumball was entitled to IRBs up to the two-year point because she met the test, pursuant to the *Schedule*, of proving on a balance of probabilities that, as a result of her physical and psychological impairments from the accident, she was substantially unable to perform the essential tasks of her pre-accident employment as an educational assistant.

[14] However, the Adjudicator found on the evidence that Rumball had not proven that she met the more stringent post-104-week test, that of a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience. The Adjudicator found on the evidence that Rumball had not proven that she was disabled from any work that was suitable for her. She found that the wedding planning was a job that was one that was suitable for Rumball based on her education, training or experience. She noted that Rumball had testified that her pain had plateaued, and that medical evidence suggested her condition was improving. She had also begun volunteering in a retail environment, provided care to her father, and reported doing more activities at home. Based on the totality of the evidence, the Adjudicator found that the evidence did not demonstrate that Rumball suffered a complete

inability to engage in any employment for which she is reasonably suited by education, training or experience.

[15] On the request for reconsideration, the Adjudicator dismissed the request, finding no error in the reasoning or conclusions in her decision. The Adjudicator acknowledged that she had made an error concerning the timing of Rumball's volunteer work with a camp but held that this error did not lead to a different result.

[16] The Divisional Court dismissed Rumball's appeal, finding that the Adjudicator applied the correct test for post-104-week IRBs and made no errors in her decision. The court observed, at para. 60, that "the only test to be applied in establishing an entitlement to post-104 [IRBs] is the one set forth in the *Schedule* and it does not include employment in a competitive, real-world setting, nor does it include any test that suitable employment should be comparable in terms of status and wages." The Divisional Court agreed that, on the evidence, Rumball had not met her onus of proving the components of the post-104-week test.

C. ISSUES ON APPEAL

[17] Rumball obtained leave to appeal the decision of the Divisional Court on the question of the proper interpretation of the test to be applied under s. 6 of the *Schedule* for benefits beyond the 104-week period.

[18] While Rumball's written materials included other issues for determination by this court, leave to appeal was granted only on the issue of the proper test under s. 6.

D. POSITIONS OF THE PARTIES

(1) Rumball

[19] Rumball submits that the Divisional Court erred by misstating the test under s. 6(2)(b) of the *Schedule* and by misinterpreting the law in its application of the test. As a result, Rumball contends the Divisional Court's decision is flawed and must be set aside. Rumball argues that the complete inability test must consider employment in a competitive, real-world setting and must take into account the remuneration of the job as well as its status, consistent with this court's interpretation of the test in *Burtch v. Aviva Insurance Company of Canada*, 2009 ONCA 479, 97 O.R. (3d) 550. Instead, the Divisional Court narrowly interpreted s. 6(2)(b) of the *Schedule*.

[20] Rumball argues that the Divisional Court's interpretation of s. 6(2)(b) is inconsistent with the intent of the legislation. SABs are remedial and intended to provide consumer protection to people injured in car accidents and to minimize economic disruption in their lives. The approach of the Divisional Court, it is submitted, does not accord with the legislative intent behind the *Schedule* and the interpretation constitutes an error and the decision cannot stand.

[21] Finally, relying on *Constitution Insurance Company of Canada v. Coombe* (1997), 36 O.R. (3d) 308 (C.A.), leave to appeal refused, [1997] S.C.C.A. No. 614, Rumball also argues that the Divisional Court erroneously reversed the onus on the parties by placing the burden of proof on the insured person when it rests with the insurer to prove that the person is capable of working.

(2) Traders

[22] Traders submits that the interpretation of the post-104-week test for IRBs does not include the language Rumball seeks to incorporate, which would have the effect of simply continuing the pre-104-week test. That is not consistent with the jurisprudence, nor does it accord with the legislative intent. The language of s. 6(2)(b) is clear and unambiguous and there is no need to read anything into it.

[23] Further, Traders argues that the onus is on a claimant to prove their entitlement to benefits and that the consumer protection purpose of insurance law does not demand otherwise. Traders submits that SABs were created, in part, to keep insurance rates fair and affordable and that the *Schedule* achieves this balance by recognizing that insured persons may not be fully compensated for their losses.

(3) Ontario Trial Lawyers Association

[24] Ontario Trial Lawyers Association (“OTLA”) was granted leave to intervene. OTLA submits that the Divisional Court erred in its interpretation and application

of the test for post-104-week IRBs. OTLA contends that *Burtch* is a narrow decision with no direct relevance to this case and that *Coombe* sets out the correct test.

E. ANALYSIS

(1) Legal Principles:

[25] The issue before this court is a narrow one, the correct interpretation of the test as set out in s. 6(2)(b) of the *Schedule* for entitlement to IRBs beyond the 104-week period. There is no dispute that the standard of review is correctness: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, [2019] 4 S.C.R. 653, at para. 37.

[26] Section 6(2)(b) of the *Schedule* provides the following:

> The insurer is not required to pay an income replacement benefit … after the first 104 weeks of disability, unless, as a result of the accident, the insured person is suffering a complete inability to engage in any employment or self-employment for which he or she is reasonably suited by education, training or experience. [Emphasis added.]

[27] Before the Divisional Court and this court, much of the argument focussed on whether the test under s. 6(2)(b) requires reasonably suited employment to be employment in a competitive, real-world setting that is comparable to the insured's former employment in nature, status and reward. As I explain below, I conclude that s. 6(2)(b) establishes an evidence-based test that, by its clear and unambiguous language, requires an insured person to suffer a complete inability to engage in employment for which they are "reasonably suited by education,

training or experience". In making that assessment, a decision maker must consider all relevant factors, including the competitive, real-world setting and a job's nature, status and reward. These factors, however, are not stand-alone components of the test, which remains an evidence-driven analysis to determine whether, based on the totality of the evidence, the insured person has suffered a complete inability to engage in employment for which they are reasonably suited by education, training or experience.

[28] In support of their respective positions, counsel for Rumball and Traders both cited this court's decision in *Burtch*.[2] I agree with the parties that *Burtch* provides helpful insight into the correct test under s. 6(2)(b). I do not, however, accept Rumball's submission that *Burtch* somehow changed the statutory test and imported the requirements that the proposed employment be in a competitive, real-world setting and commensurate in terms of nature, status and reward to the prior employment. Nor do I accept Traders' submission that these factors need not be considered when the decision maker is conducting the analysis of the post-104-week test.

[2] *Burtch* considered the post-104-week test under a previous version of the *Schedule*, but the test is not materially different. Like s. 6(2)(b) of the current *Schedule*, s. 5(2)(b) of the *Statutory Accident Benefits Schedule - Accidents on or After November 1, 1996*, O. Reg. 403/96, provided that an insurer was not required to pay IRBs "for any period longer than 104 weeks of disability, unless, as a result of the accident, the insured person is suffering a complete inability to engage in any employment for which he or she is reasonably suited by education, training or experience".

[29] In *Burtch*, this court granted an appeal from a trial judge's decision holding that an insured was entitled to post-104-week IRBs, concluding the trial judge applied the wrong test in determining the insured was completely unable to engage in any employment for which he was reasonably suited by education, training or experience. At the time of the accident, the insured was employed as a general labourer. The trial judge found that the job of long-haul trucking was one for which he was reasonably suited by education, training or experience. However, the insured was not qualified to drive such trucks at the time of trial, and the trial judge concluded that since he was not qualified, he met the test for post-104-week IRBs.

[30] This court determined that the trial judge erred by applying the wrong test: at para. 23. Juriansz J.A. confirmed that a job for which the insured was not formally qualified may be a suitable alternative job under the test: at para. 24. The issues of availability of jobs, remuneration and qualification were the subject of evidence at trial: at para. 25. Further, Juriansz J.A. noted, at para. 25: "Most importantly, the medical and vocational evidence indicated that the [insured] could perform the duties of the job."

[31] In *Burtch,* this court held that in considering whether an insured meets the test for post-104-week IRBs, a decision maker will necessarily consider all relevant factors, including if suitable alternative jobs are actually available, whether such jobs pay similar remuneration as the insured's prior employment and are of a similar status, and whether to secure the job substantial upgrading or retraining is

necessary. These factors are necessary and relevant to the analysis, but they are not stand-alone parts of the test. They are considerations, not requirements.

[32] Importantly, *Burtch* clarifies that it is not mandatory that all of these factors be met for an alternative job to be deemed suitable under the test. In *Burtch*, long-haul trucking was identified as a suitable alternative for the insured, even though he was not qualified to do the job, and he would have to take some further education. Though not available to him at the time, this court confirmed that availability was not necessary in order for it to be a suitable alternative.

[33] I thus do not accept Rumball's submission that *Burtch* made it clear that suitable employment as set out in s. 6(2)(b) means employment in a competitive, real-world setting that is comparable in nature, status and wages. This court did not restate the test in *Burtch* to incorporate those factors; rather it stated the test is that contained in s. 6(2)(b). As Juriansz J.A. wrote, at para. 24:

> The proper test, which the trial judge recognized[at para 63] earlier in his reasons, is whether, "as a result of the accident, the insured person is suffering a complete inability to engage in any employment for which he or she is reasonably suited by education, training or experience". It is not necessary that the insured person be formally qualified and able to begin work immediately in order for a particular employment to be considered a reasonably suitable alternative. A job for which the insured is not already qualified may be a suitable alternative if substantial upgrading or retraining is not required. [Emphasis added.]

[34] It thus follows that I also do not agree with OTLA's submissions that *Burtch* is irrelevant because it dealt with the necessity of retraining for a different job. *Burtch* is relevant and helpful because it examines the process that must be undertaken in determining whether or not an insured meets the test pursuant to s. 6(2)(b). The facts of *Burtch* required this court to consider whether the requirement to retrain for a suitable alternative job meant that the insured met the test for post-104-week IRBs, and this court found that it did not.

[35] Further, it also follows that I do not accept Traders' submission that a decision maker need not consider factors related to whether there is employment in a competitive, real-world setting commensurate in nature, status and reward to the insured's prior employment. *Burtch* did not incorporate these factors as stand-alone requirements to the test under s. 6(2)(b), but confirms they are relevant to the evidence-based analysis of whether an insured person has suffered a complete inability to engage in employment for which they are reasonably suited by education, training or experience.

[36] In addition to *Burtch*, the parties also referred (for the first time on appeal to this court) to this court's earlier decision in *Coombe*. In that case, the court dismissed an insured's appeal from a decision holding he was no longer disabled and therefore no longer entitled to post-104-week benefits. The policy at issue in *Coombe* required the insurer to pay benefits after 104 weeks if the insured's injury "permanently and totally disabled [him] from engaging in any occupation or

employment for which he is reasonably suited by education, training or experience".[3] In an earlier decision, Cromarty J. was satisfied the test was met and ordered the insurer to pay benefits "for the duration during which the [insured] is permanently and totally disabled from engaging in any occupation or employment for which he is reasonably suited by education, training or experience": *Coombe v. Constitution Insurance Co.*, [1978] I.L.R. 1-1034 (Ont. H.C.), aff'd in part, 1979 CarswellOnt3416 (C.A.) The insurer later successfully moved for an order suspending Cromarty J.'s order, arguing the insured was no longer permanently and totally disabled. The insured appealed.

[37] On appeal, this court upheld the trial judge's decision ceasing benefits. The court observed, at p. 310, that a person would not be totally disabled under the policy if they could work at a job that was reasonably comparable to their old occupation in status and reward and for which they were reasonably suited given their education, training and experience:

> This judicial interpretation of the definition of "total disability" does not impose a burden upon the [insurer] to prove that the [insured] is receiving the same or similar remuneration to what he received prior to his accident, but only that he was able to enter into an occupation that is reasonably suitable in status and reward. We would not disturb the trial judge's finding of fact that [the insured] was engaged in the day-to-day operation of Custom

[3] As this court explained in its earlier reasons in *Coombe v. Constitution Insurance Co.* (1980), 29 O.R. (2d) 729 (C.A.), at pp. 730-31, leave to appeal to S.C.C. refused, 16391 (February 3, 1981), this language was based on Schedule E to the *Insurance Act*, R.S.O. 1970, c. 224, as amended by 1971, Vol. 2, c. 84, s. 26, and 1972, c. 66, s. 18..

> Chopper; an occupation for which [the insured] was reasonably suited by education, training or experience.

[38] *Coombe* is consistent with the approach taken in *Burtch*. In both cases, the court confirmed that a decision maker must determine whether the insured suffers a complete inability to engage in employment for which they are "reasonably suited by education, training or experience" taking into account all relevant factors, including whether the employment is reasonably suitable in status and reward. In other words, status, reward and other factors are considerations that inform the applicable test, not stand-alone requirements.

[39] Rumball also relies on *Coombe* for the argument that the onus is on an insurer, not the insured, to show that there is reasonably suitable alternative employment. While the passage quoted above from *Coombe* about the insurer's "burden" to prove that the insured "was able to enter into an occupation that is reasonably suitable in status and reward" could, if read in isolation, support Rumball's position, it is important to place the passage in context. In *Coombe*, the insurer sought to suspend a court order requiring it to pay benefits and accepted that it bore the burden of proof throughout the action.[4] In contrast, when an insured person applies for benefits under s. 6(2)(b) of the *Schedule*, the onus is on them

[4] The trial judge observed: "[The insurer] accepts that it bears the burden of proof throughout this action but the evidential burden is subject to a tactical shift. Once [the insurer] has established a *prima facie* case, the evidential burden shifts and [the insured] must respond to the shift": *Constitution Insurance Co. v. Coombe* (1993), 15 O.R. (3d) 461 (Gen. Div.), at p. 473, aff'd (1997), 36 O.R. (3d) 308 (C.A.), leave to appeal refused, [1997] S.C.C.A. No. 614.

to prove their entitlement to the benefits sought: *Nash v. Aviva General Insurance Company*, 2022 ONSC 6723, 31 C.C.L.I. (6th) 153 (Div. Ct.), at para. 40; *C.P. v. Certas Home and Auto Insurance Company*, 2022 ONSC 5978 (Div. Ct.), at para. 25.

[40] I am solidified in my view on the appropriate test under s. 6(2)(b) of the *Schedule* by the legislative text and context. It is clear that the test for post-104-week IRBs is a more stringent one than the test prior to two years, which requires that the insured person demonstrate that they are unable to return to the job they were doing at the time of the accident. The language of s. 6(2)(b) is clear and unambiguous. The decision maker must determine whether an insured is completely unable due to injuries from the accident to work at any job for which they are "reasonably suited by education, training or experience." It follows that the status and nature of a potential job should be considered as well as the compensation. In determining if the test has been met, the decision maker is required to consider the evidence in the context of the insured's circumstances and in doing so, must take into account the factors of the status, remuneration and nature of the proposed employment. To do otherwise does not accord with the legislation's remedial purpose: see *Tomec v. Economical Mutual Insurance Company*, 2019 ONCA 882, 148 O.R. (3d) 438, at para. 42, leave to appeal refused, [2020] S.C.C.A. No. 7.

[41] Nevertheless, as the foregoing analysis shows, the statutory text does not spell out each factor that the decision maker must consider when making the determination of whether or not the insured meets the test for post-104-week IRBs under the *Schedule* or treat those factors as stand-alone requirements under the test. For example, while much of the argument in this case focused on whether suitable employment meant employment in a competitive, real-world setting that is comparable to the insured's former employment in nature, status and reward, there is no dispute that the decision maker must evaluate the insured's medical status, even though s. 6(2)(b) does not explicitly state that medical status must be taken into account.

[42] In sum, in determining entitlement to IRBs in the post-104-week period, the decision maker must decide, based on the evidence, if the insured person is completely unable to work in any job or capacity for which they are suited by education, training or experience. This is necessarily a contextual analysis. In order to make this determination, the decision maker must consider all the relevant evidence and factors, including whether any alternative employment is employment in a competitive, real-world setting that is comparable to the insured's former employment in nature, status and reward. These factors are not stand-alone components of the test but inform the evidence-based determination of whether the insured person has suffered a complete inability to engage in

employment for which they are reasonably suited by education, training or experience.

(2) Legal Principles Applied:

[43] Having set out the correct test, I now turn to its application in this case. Before doing so, however, I pause to clarify certain language in the Divisional Court's reasons about the test as it was the focus of some confusion before this court. In its decision, at para. 60, the Divisional Court summarized the test for post-104-week IRBs under the *Schedule* in the following terms:

> As such this court, being bound by the decision of the Court of Appeal in *Burtch*, concludes that the only test to be applied in establishing an entitlement to post-104 [IRBs] is the one set forth in the *Schedule* and it does not include employment in a competitive, real-world setting, nor does it include any test that suitable employment should be comparable in terms of status and wages.

[44] As should be clear from these reasons, the Divisional Court was correct in stating that the test that must be met to qualify for IRBs after the 104-week mark is the one set forth in s. 6(2)(b), namely "a complete inability to engage in any employment or self-employment for which [the insured] is reasonably suited by education, training or experience." Further, while the Divisional Court is technically correct that the test does not state explicitly that suitable employment should be comparable in terms of status and wages, I underscore that this passage should not be misread to suggest that these factors are irrelevant to the test. Rather, they are essential factors that must be considered in order to determine if an insured

has met the test for post-104 IRBs. Importantly, these factors are not stand alone, nor are they determinative of whether an insured meets the test. It is an evidence-based, contextual analysis that must take into account the particular circumstances of the insured.

[45] In this case, the Adjudicator correctly described the test for post-104-week SABs under the *Schedule*, considered the evidence and arrived at the determination that Rumball did not suffer a complete inability to engage in employment or self-employment for which she is reasonably suited by education, training or experience. The Divisional Court was correct in upholding her decision. She made no error in her analysis or application of the proper test.

[46] The Adjudicator correctly set out the test under s. 6(2)(b) of the *Schedule*, explaining that Rumball "must demonstrate she suffers a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience." She noted that determining whether a person suffers a complete inability to work in any job for which they are reasonably suited by education, training or experience "requires a reflection of all the evidence" including, among other factors, wages earned, status, employer demands for reasonable hours and productivity, the nature of the insured's condition and extent of their disability, the insured's efforts to return to the workforce, the vocational assistance that they had, and the options for alternative work that were put forward. In a nutshell, the decision maker has to make the determination of whether or not

the test has been satisfied by considering the totality of the evidence in each particular case. It is not done in a vacuum.

[47] Applying the correct test, the Adjudicator concluded Rumball did not suffer a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience for the post-104-week period. She considered the medical evidence called by both parties, Rumball's testimony, her volunteer work at a consignment store, her caregiving activities for her father, and her work as an educational assistant and as a wedding planner. She found wedding planning was a job Rumball was reasonably suited for by education, training or experience.

[48] Determinations of the nature and extent of injuries suffered are necessarily fact driven and evidence is critical to the assessment. In this case, the Adjudicator reviewed the evidence carefully and found that the medical evidence was not sufficiently up to date to enable her to determine whether Rumball's impairments continued to the extent that it made it impossible for her to work. In addition, the medical experts did not obtain a detailed work history from Rumball so they were unable to offer opinions on what type of work she was capable of doing, although Dr. Ta stated that she would be an excellent candidate for retraining. As well, Rumball failed to call evidence from a vocational expert, who could have assisted the Adjudicator with the issue of whether there was other employment that was suitable in light of her education, training or experience.

[49] The Adjudicator found that Rumball had not satisfied the test for post-104-week IRBs as set out in s. 6(2)(b) based on the evidence that was tendered. That finding was based on the application of the correct evidence based and contextual test, including consideration of whether other jobs were of the same nature, status and remuneration in a real-world, competitive setting.

[50] In any event, Traders argues that even if Rumball is correct that the test includes a stand-alone requirement there be an alternative job which exists in the real-world setting that is similar in nature, status and remuneration, Rumball would not meet the test. I agree. The onus is on the insured to prove their entitlement to benefits on a balance of probabilities and it is clear on the facts of this case that Rumball failed to meet her onus. The Adjudicator found on the evidence that the job of a wedding planner was a suitable one for Rumball and one which she was capable of doing. That finding was available on the evidence and I see no error in her decision. Rumball urges this court to come to a different conclusion, but it is not the function of this court to retry the case.

[51] In conclusion, the Adjudicator articulated and applied the correct test in her determination that Rumball did not suffer a complete inability to engage in any employment or self-employment for which she is reasonably suited by education, training or experience for the post-104-week period.

F. DISPOSITION

[52] I would dismiss the appeal, and award costs to the respondents, Traders, in the agreed-upon sum of $7,000.

Released: September 23, 2025 “J.M.C.”

“D.A. Wilson J.A.”
“I agree. J. Copeland J.A.”
“I agree. M. Rahman J.A.”