

CITATION: Fawcett v. Sun Life Assurance Company of Canada, 2026 ONSC 1855
COURT FILE NO.: CV-20-00084920-0000
DATE: 2026Apr28

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
TARA JESSICA PRICE FAWCETT)
) J. Griffiths and E. Hallewick, for the
Plaintiff) Plaintiff
– and –)
)
SUN LIFE ASSURANCE COMPANY OF)
CANADA and THE CHILDREN’S)
HOSPITAL OF EASTERN ONTARIO) E. Scali and C. Marsh, for the Defendant,
Defendants/Moving Parties) Sun Life Assurance Company of Canada
)
) S. Campbell, for the Defendant, The
) Children’s Hospital of Eastern Ontario
)
)
) **HEARD at Ottawa:** January 26 and February 4,
) 2026

2026 ONSC 1855 (CanLII)

TRANMER J.

REASONS FOR DECISION ON SUMMARY JUDGMENT MOTIONS

BACKGROUND

[1] The plaintiff, Ms. Tara Jessica Price Fawcett, was employed by the defendant, the Children’s Hospital of Eastern Ontario (“CHEO”), for 17 years up until October 15, 2018, the date on which she submitted a resignation letter to CHEO, which read: “Please accept this as my formal resignation from CHEO, effective immediately. Thank you for the experience to be part of the CHEO team for 17 years.”

[2] On May 4, 2018, Ms. Fawcett had been approved for long-term disability (“LTD”) benefits effective March 7, 2018, pursuant to the benefits policy which was available to her through her employment. Her disability was accepted as anxiety and depression arising from her workplace atmosphere and environment.

[3] The co-defendant, Sun Life Assurance Company of Canada (“Sun Life”), was paying disability payments to the plaintiff and had directed her to participate in a gradual return-to-work program to her same position at CHEO.

[4] Prior to October 15, 2018, she told her treating physician on six occasions, her kinesiologist and occupational therapist, and, on two occasions a representative of Sun Life, that she planned to quit her job and pursue other options, including travelling to Thailand.

[5] Ms. Fawcett’s evidence is that on October 15, 2018, before she sent her resignation letter to CHEO, she spoke by telephone to the HR department at CHEO asking for confirmation that her only two options were to resign her position or return to work in the same position. She states that she was advised in that call that Sun Life was correct and that she either had to return to work in the same position or resign her position from CHEO. There is no other evidence that this conversation took place, or of its contents.

[6] Her claim against CHEO is that in that telephone call, CHEO negligently misrepresented her situation to her, and as a result, wrongfully induced her to resign her employment.

[7] On October 15, 2018, she attended with her family physician and reported that she had cashed in her pension, resigned, planned to “backpack to Indonesia, Vietnam, Cambodia, Thailand and Bali” and may not return. She reported that since making that decision, she “felt like a million bucks.” The doctor noted that she had a very positive effect, that there was no evidence of mania or psychosis, and he confirmed the plan to wean her off of her medication.

[8] The record shows that on October 16, 2018, the plaintiff contacted Sun Life and made no mention of the telephone conversation with the CHEO representative the day before. Further, Ms. Fawcett made no reference to that telephone conversation to Sun Life when she received its letter dated November 15, 2018, which advised her that her benefits had terminated effective, October 31, 2018, with her final benefits payment issued October 15, 2018.

[9] It is Sun Life’s position that because the plaintiff did not complete its return-to-work program, she was in breach of its insurance policy and therefore, under its terms, her benefits ended.

[10] The evidence is that she purchased a ticket to travel to Thailand on December 8, 2018, for travel between January 22, 2019, and June 14, 2019.

[11] The plaintiff gave evidence on her examination for discovery that she understood that as a result of her going to Thailand, her LTD benefits would end.

[12] As against Sun Life, the plaintiff claims that it breached its LTD benefits policy by ceasing her benefits. She further alleges that Sun Life negligently misrepresented the limited options available to her with respect to those benefits, including by failing to advise her that she could appeal the decision to place her on a return-to-work program.

[13] The defendants both submit that the first indication by the plaintiff that she had been wrongfully induced to quit her job was in her statement of claim which is dated November 6, 2020.

[14] The defendants have each brought a motion for summary judgment dismissing the claims of the plaintiff against them.

[15] The plaintiff has brought “boomerang” summary judgment motions against both defendants.

THE POSITION OF CHEO

[16] CHEO argues two issues.

[17] First, CHEO submits that because the plaintiff was a unionized employee, and therefore subject to the terms of a collective agreement, the court has no jurisdiction on the subject matter of this claim.

[18] Second, and in the alternative, CHEO submits that the plaintiff has put no evidence before the court to support her claim that she was wrongly induced to quit her job, therefore, there is no genuine issue on her claim against it. On this point, CHEO argues that the rule for summary judgment requires the court to weigh the credibility of the plaintiff with respect to her allegation about the telephone call when stacked against the significant contrary evidence on the record.

1. No Jurisdiction

[19] On this issue, CHEO relies on the terms of the collective agreement, s. 48(1) of the *Labour Relations Act, 1995*, S.O. 1995, c. 1 Sched A., and the relevant case law.

[20] It submits that labour arbitrators have exclusive jurisdiction over the subject matter of this claim.

[21] CHEO cites *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, at para. 53; *Allen v. Alberta*, 2003 SCC 13, [2003] 1 S.C.R. 128, at para. 15; *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42, [2021] 3 S.C.R. 107, at paras. 50-51; *Coleman v. Demers*, 2007 CanLII 7526 (Ont. S.C.), at para. 33, citing *Forster v. Canadian Airlines International Ltd* (1993), 109 D.L.R. (4th) 731 (B.C.S.C.); and *Blake v. University Health Network*, 2021 ONSC 7139, at paras. 10-12.

[22] CHEO submits that the essential character of the plaintiff’s claim is one of constructive dismissal.

2. The Alleged Telephone Call

[23] CHEO submits that the record of the plaintiff’s numerous statements to her doctor, treatment providers and Sun Life demonstrate that she had decided to end her employment prior to October 15, 2018.

[24] The plaintiff did not mention the telephone conversation when she met with her doctor on October 15, 2018, or when she spoke to Sun Life the following day.

[25] CHEO submits that a final decision on the return-to-work program had not been made as of October 15, 2018. Dr. Steele, the family physician, had not responded to the inquiry as to whether there were any medical reasons that a return-to-work program should not be followed.

[26] CHEO submits that there was no reason for the plaintiff to have contacted CHEO's HR on October 15, 2018, because that was not her point of contact. Rather, it was a person in the Occupational Health & Safety Department. This was the person that the plaintiff worked with after her LTD benefits claim had initially been denied and was then successfully appealed, and who continued to be involved in her LTD file.

[27] CHEO submits that the allegation concerning the subject telephone conversation was not made to it until the statement of claim dated November 6, 2020.

[28] CHEO submits that, based on the record on this summary judgment motion, the court should make an adverse credibility finding regarding the plaintiff's allegations concerning the single telephone call upon which she bases her claim. There is no other evidence supporting this allegation, and there is significant evidence that weighs strongly against it.

3. With Respect to the Plaintiff's Position on Partial Summary Judgment

[29] The plaintiff submits that on these summary judgment motions, all of the evidence, including the documentary evidence, is before the court. Examinations for discovery have been held. The plaintiff submits that the defendants are in possession of all of the evidence and information relating to their interactions with one another, which will be much more difficult to present at trial should a partial summary judgment motion be granted to either of the defendants.

[30] CHEO's response to this position is that at a trial any relevant witness can be subpoenaed, a party may read in evidence from the examination for discoveries, the party could file a request to admit, and the parties could file a joint book of documents on consent. These steps readily overcome the plaintiff's position on this point.

THE POSITION OF SUN LIFE

1. Additional Facts

[31] Sun Life submits additional facts to support its position.

[32] Sun Life approved the plaintiff's LTD benefits claim based on her treating physician's diagnosis of generalized anxiety disorder and major depressive disorder.

[33] On August 3, 2018, the plaintiff spoke with the Sun Life assigned rehabilitation consultant and advised that she was seeing her treating doctor at the beginning of October and that he did not want her returning to work before then.

[34] The rehabilitation consultant spoke with the plaintiff again on August 31, 2018. She confirmed that she would put together an eight-week gradual return-to-work plan to begin the week of October 22, 2018. She confirmed that she would send it to the treating physician and that they

would have a prep meeting prior to the start of the gradual return-to-work plan the week of October 15, 2018. The plaintiff indicated that she was in agreement with this go forward plan.

[35] On September 21, 2018, Sun Life's rehabilitation consultant wrote to the treating physician and provided him with the proposed gradual return-to-work plan. She asked the doctor to confirm if there were any medical contraindications against commencing the proposed return-to-work schedule and to confirm if there were any such medical restrictions or functional limitations that needed to be accommodated by CHEO. The rehabilitation consultant requested that the doctor respond on or before October 12, 2018, failing which she would take the lack of response as confirmation of his approval of the proposed schedule and that there were no restrictions or limitations that required accommodation by CHEO. The doctor did not respond to that letter. His clinical notes, which form part of the record, confirmed that he did receive the letter.

[36] On October 10, 2018, the plaintiff advised both her treating physician and the rehabilitation consultant of her plans to resign from her employment and travel to Thailand. Sun Life's evidence is that the rehabilitation consultant advised her that Sun Life would likely not continue paying for these services, as they were intended to prepare her to return to work.

[37] On October 11, 2018, the plaintiff spoke with her Sun Life disability case manager and advised her that she did not plan to return to work, and that she intended to resign from CHEO and to travel to Thailand. The disability case manager asked the plaintiff if she was certain of this decision. The plaintiff responded that she had put a lot of thought into the decision and felt great about it.

[38] On November 15, 2018, Sun Life confirmed in writing to the plaintiff that her final LTD benefits payment was issued on October 15, 2018, and that her file was now closed because she had resigned from her employment effective October 15, 2018.

[39] At her examination for discovery held January 25, 2022, and by way of answers to undertakings, the plaintiff confirmed that she understood that going to Thailand meant that her LTD benefits would end. She also confirmed that she was not receiving any treatment while in Thailand, other than meditation and journaling.

[40] In its submissions, Sun Life made it clear that the LTD benefits were terminated because the plaintiff did not participate in the return-to-work program under its policy and did not return to work. Sun Life confirms that the fact of the resignation itself did not terminate the ongoing disability benefits.

[41] Because of her resignation, any new claims for LTD benefits coverage going forward ended as of October 15, 2018, when she ceased to be an employee of CHEO.

[42] The plaintiff did travel to Thailand and returned June 14, 2019. There are five entries in the treating physician's records between October 15, 2018, and January 21, 2019, the day before the plaintiff left for Thailand. None of these entries indicated consultation or treatment for anxiety, stress or depression, on which the symptoms underlying her disability claim were based.

[43] On her return from Thailand, the plaintiff consulted with her family physician about a motorbike collision which had occurred while she was travelling. However, in the five entries from June 19, 2019 until January 15, 2020, there is no mention of anxiety or depression.

[44] A note made by the treating physician on January 15, 2020, recorded that the plaintiff was suffering from ongoing severe depression symptoms for the past two years. This is the first such complaint since October 2018.

[45] In a report sent to the plaintiff's lawyer dated November 3, 2020, the treating physician indicated as follows:

I received a note from Tara's insurer Sun Life Financial on September 21, 2018 indicating that they had been working with Tara over the preceding summer in a work hardening and "structured reactivation program" with the intent to have Tara return to work on October 22, 2018. They requested that if I had any medical contraindications to this plan I was to respond to them by October 12th. On October 10th Tara communicated to my office that she had purchased a one way ticket to Thailand and that she was resigning from CHEO. I met with Tara on October 15, 2018 whereby she confirmed these facts and that she had consulted with a pharmacist on how to wean off of all of her medications in anticipation of living abroad. I next met Tara on June 19, 2019 at which time I assessed her for benign positional vertigo. She had spent the winter in Thailand learning to scuba dive. She was emotionally well at that time. I next met with Tara on January 15, 2020 at which time she was feeling depressed, worthless, out of money and hopeless of the future. I restarted her lamotrigine. On February 6, 2020 she continued to feel depressed, was unemployed and financially strapped. I started her on seroquel for sleep and mood enhancement. By February 24, 2020 she was feeling better and by March 9, 2020 was feeling well, happy and planning to return to Thailand to scuba dive and possibly learn to do underwater commercial welding. COVID waylaid these plans though she was still coping reasonably well on April 3, 2020. I last saw Tara on October 19, 2000, two days post tubal ligation and would generalize her as emotionally well. Tara has had emotional/psychiatric problems for most of the time I have known her but has managed well with the support of her family, alternative medicine practitioners and good friends. She was formally diagnosed on February 21, 2018 by Dr. Tabitha Rogers, a psychiatrist at the Royal Ottawa Hospital, with major depression recurrent and generalized anxiety. Dr. Rogers did not think that Tara has bipolar affective disorder.

[46] Sun Life had no knowledge of the plaintiff's allegation that she was induced to quit her job by CHEO or that she remained totally disabled subsequent to October 15, 2018, or that she alleged that Sun Life had negligently misrepresented her LTD benefits options until it received the statement of claim in this action.

[47] Sun Life submits that it had no evidence that she was totally disabled subsequent to October 31, 2018, the date that her ongoing benefits ceased.

[48] Sun Life submits that the record indicates that the plaintiff was medically cleared for a gradual return to work to her own occupation and was not totally disabled as of November 1, 2018.

[49] She was not under any treatment while travelling in Thailand or subsequent to her return.

[50] Her treating physician reported in November 2020 that she was emotionally well.

[51] Sun Life asks the court to put little or no weight on the alleged expert report proffered by the plaintiff in this matter, as it was simply attached to the plaintiff's affidavit and the defendant had no opportunity to cross-examine the doctor on her qualifications to render the opinion or on the basis for that opinion. The opinion is dated November 25, 2021, and indicates that the plaintiff was continuously disabled since October 2018. Sun Life submits this is contrary to the evidence before the court and contrary to the treating physician's report of November 20, 2020.

[52] Sun Life further submits that the policy provides it will not pay any benefits if an employee is absent from Canada for more than four months for any reason, unless Sun Life agrees in writing in advance to pay the benefits during that period. The plaintiff had travelled and remained in Thailand for almost five months.

2. Negligent Misrepresentation

[53] Sun Life submits that the plaintiff has not pleaded the facts essential to establishing a claim based in negligent misrepresentation.

[54] Sun Life submits that there is no evidence before the court of any negligent misrepresentation on the part of Sun Life to the plaintiff. Sun Life submits that there is no evidence that Sun Life or representatives of Sun Life told her that she had only two options, namely, to resign or to comply with the return-to-work program. Sun Life points out that the plaintiff was aware of the appeal process with respect to her benefits as she had successfully appealed the initial denial of LTD benefits by Sun Life.

[55] Sun Life points to the evidence in the record that indicates that its representatives had fulsome discussions with the plaintiff about her disability benefits and the plaintiff acknowledged during her examination for discovery that she knew that by going to Thailand, her LTD benefits would end.

[56] Sun Life further points out that the plaintiff chose not to participate in the return-to-work program. As indicated, she knew about her right to appeal as she had taken advantage of it. The plaintiff does not suggest that there was any misrepresentation that caused her not to follow through with the return-to-work program.

[57] Sun Life points out that the resignation from employment did not affect the ongoing LTD benefits claim or the management or adjudication of it.

THE POSITION OF THE PLAINTIFF

[58] The plaintiff submits that the summary judgment motions should be dismissed because the record before the court demonstrates a genuine issue for trial as against both defendants.

1. CHEO jurisdiction submission

[59] The plaintiff submits that the Court of Appeal for Ontario's decision in *Grisnell v. Riverside* (2005), 199 O.A.C. 260 (C.A.), is on all fours with the present case and is the plaintiff's answer to CHEO's position in this regard.

[60] The plaintiff submits that this is not a dismissal case. Rather, at its core, it concerns CHEO's administration of the plaintiff's LTD benefits and a misrepresentation to the plaintiff about her options under that plan. The plaintiff submits that the relevant article of the collective agreement is article 22.

2. CHEO misrepresentation to the plaintiff

[61] The plaintiff submits that the overall approach taken by Sun Life and CHEO in relation to her ongoing disability claim – and their singular focus on returning her to her work position – supports her credibility regarding the telephone call she alleges she had with her employer and what she was told during that call.

[62] At the same time, the plaintiff acknowledges the evidence relied upon by the defendants suggesting that she made up her mind not to return to work. The plaintiff submits that this is not surprising, given that the only option presented to her by both defendants – expressly and indirectly through the return-to-work program – was to return to work or quit.

[63] The plaintiff submits that there is a serious and genuine issue for trial in respect of her evidence that CHEO negligently misrepresented to her that she had only two choices: quit or return to work.

3. With respect to Sun Life

[64] The plaintiff submits that the core of the disability accepted by Sun Life was the environment of the plaintiff's workplace position at CHEO.

[65] The plaintiff points to the documentation in the record from representatives of Sun Life and of CBI Health, to whom Sun Life referred the plaintiff, for an OT/Kin reactivation program under its LTD benefits policy.

[66] That documentation, commencing in May 2018 and through to October 2018, shows that Sun Life and its representatives, including CBI, knew that CHEO's workplace environment was the source that triggered the plaintiff's disability issues.

[67] In this regard, the plaintiff points to examples found in:

- Sun Life’s May 4, 2018 acceptance onto benefits letter;
- the May 23, 2018 referral letter to CBI Health;
- CBI’s June 6, 2018 initial report;
- the August 3, 2018 CBI report;
- the email exchange between CBI and Sun Life on August 21, 2018 and August 28, 2018;
- the August 31, 2018 call record of the Sun Life health management consultant; and
- the email dated September 27, 2018 from CBI to Sun Life.

[68] The plaintiff says that this record clearly indicates that the prospect of returning to her work position triggered and aggravated her disability symptoms; yet Sun Life and CBI remained singularly focused on a return-to-work program to that position.

[69] The plaintiff submits that the September 21, 2018 letter from Sun Life to Dr. Steele demonstrates that singular goal.

[70] The plaintiff also submits that the letter dated November 15, 2018 from Sun Life to the plaintiff closing her ongoing benefits claim also demonstrates that singular goal insofar as it can be read to state that her failure to return to her position at CHEO was the reason for termination of her ongoing benefits claim.

[71] The plaintiff submits that Sun Life’s submission on the motion – that the plaintiff’s failure to return to work in accordance with the return-to-work program resulted in the termination of her benefits – supports her position.

[72] The plaintiff’s position is that, because Sun Life knew that her workplace position was at the core of her disability, it had a duty of good faith to assess her job duties and work environment, and to consider accommodations that CHEO could offer, or alternative, similar work at CHEO or with another employer, consistent with the requirements of her own occupation duties.

[73] The plaintiff submits that there is no evidence this was done. The August 31, 2018 call record between the plaintiff and the Sun Life health management consultant indicates that the plaintiff told the representative that she could not return to her position at CHEO. The Sun Life representative told her that she would discuss this with CHEO. There is no evidence that such a discussion occurred.

4. Reply by CHEO

[74] CHEO submits that *Grinsell* is distinguishable and that the statement of claim in this case, fairly read, is a constructive dismissal claim in its essential character.

5. Reply by Sun Life

[75] It is submitted that the two assessment reports of June and August 2018 indicate an improvement with respect to the plaintiff's disability.

[76] Sun Life repeats its submission that the record indicates a freely made and informed decision on the part of the plaintiff to resign her employment. Her failure to return to work in accordance with the plan justifiably resulted in the termination of her ongoing benefits plan.

ANALYSIS

1. CHEO - Jurisdiction

[77] The court must consider whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement. If so, the jurisdiction of the court is ousted.

[78] In her statement of claim, the plaintiff claims the following relief as against CHEO:

- i. a declaration that [she] was induced by it to tender a resignation letter on or about October 15, 2018;
- ii. an order revoking the letter of resignation [...];
- iii. a declaration that [her] employment continued, uninterrupted, from October 15, 2018 to present and ongoing;
- iv. in the alternative, an Order reinstating [her] as an employee [...];
- v. a declaration that [she] remained "insured" as a part of an employee group disability and extended health and dental plan [...].

[79] As against her employer, she pleads that:

- it made false statements and fraudulent misrepresentations to her that she was required to return to work pursuant to the LTD policy or resign her employment;
- she was induced thereby to resign her long-term employment;
- as a result of her employer's false representations, she lost her employment of 17 years and therefore access to ongoing employee benefits;
- her employer made negligent misrepresentations to her in that respect; and
- as a consequence of her employer's fraudulent and/or negligent misrepresentations, she has suffered and will continue to suffer significant financial damages.

[80] The collective agreement provided in part:

Article 9.01: [...] that it is the exclusive right and function of the Employer to manage and direct its operations and affairs in all respects and, without limiting or restricting this right and function: [...] To hire, classify, direct, promote, demote, transfer, discipline, suspend and discharge employees.

Article 8.01: [...] a grievance is defined as a difference arising between the parties relating to the interpretation, application, administration, or alleged violation of the Agreement including any question as to whether a matter is arbitrable.

Article 8.06: A claim by an employee who has completed his/her probationary period that he/she has been unjustly discharged or disciplined shall be treated as a grievance [...].

Article 12.03 An employee shall lose all service and seniority and shall be deemed to have terminated if they: (a) resign.

[81] Under article 22, CHEO paid the insurance premiums for the Sun Life disability benefit provided to its employees.

[82] Section 48(1) of the *Labour Relations Act, 1995* provides:

Every collective agreement shall provide for the final and binding settlement by arbitration, without stoppage of work, of all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable.

[83] What matters are the facts of the complaint, not the legal form in which the complaint is advanced.

[84] In *Weber*, at para. 53, McLachlin J. (as she then was) stated: "... a review of decisions over the past few years reveals the following claims among those over which the courts have been found to lack jurisdiction: wrongful dismissal; bad faith on the part of the union; conspiracy and constructive dismissal; and damage to reputation."

[85] In *Blake*, at paras. 10-12, the court observed that over the last 25 years, Canadian courts have adopted a broad and liberal approach to the question of whether the essential character of a particular dispute lies "within or without" the ambit of a collective agreement. The court noted that the legislature had "gone to great pains to erect high walls surrounded by a deep moat to preserve and protect the labour relations environment from external incursions". It noted that the exclusive agency of the union and the exclusive jurisdiction of the arbitral dispute resolution regime mandated were but two of the most prominent elements of that edifice.

[86] The court in *Coleman*, at para. 33, cites with approval the principle that a termination of employment, whether by the employer or the employee, that may give rise to a claim must be the

subject of a grievance, whether based on the doctrine of constructive dismissal or not, and the claim is not, then, within the jurisdiction of the court.

[87] In support of her position that the dispute falls outside of the ambit of the collective agreement, the plaintiff submits that this is a case of negligent misrepresentation by her employer as to how the LTD benefits functions and is administered.

[88] On the record before me, Sun Life directly administered the benefits policy.

[89] I carefully considered the cases advanced by the plaintiff in support of her position.

[90] The essential character of these cases is the administration of or entitlement to benefits.

[91] In *Grisnell*, the essential character of the dispute between the parties concerned the propriety of the employer's group life insurance plan and its duties to the employee as a participating member of that plan: at para. 27.

[92] In *Richardson v. Hastings and Prince Edward District School Board*, 2021 ONSC 3224, at para. 31, the issue was enrolment, which was held to fall within the jurisdiction of the court.

[93] In *Barber v. The Manufacturers Life Insurance Company (Manulife Financial)*, 2017 ONCA 164, 136 O.R. (3d) 198, leave to appeal refused, [2017] S.C.C.A. No. 150, the issue was the payment and subsequent termination of LTD benefits, which was held to fall within the exclusive jurisdiction of the collective agreement provisions. In *Barber*, the parties agreed before the court that the essential character of the dispute concerned LTD benefits.

[94] These cases are not analogous to the present dispute. Ms. Fawcett's claim against CHEO is not entitlement to or enrolment in benefits.

[95] Rather, I find that the essential character of the dispute in this case is Ms. Fawcett's resignation and the resulting termination of her employment.

[96] Any issues relating to benefits and entitlements are clearly secondary to determination of whether she resigned.

[97] It is common ground in this case that but for Ms. Fawcett's resignation, her entitlement to ongoing LTD benefits remained in place.

[98] For these reasons, I find that the essential character of the dispute in this case falls squarely within the ambit of the collective agreement. Therefore, the court has no jurisdiction.

[99] CHEO's motion for summary judgment dismissing the claim against it is granted. The plaintiff's claim against CHEO is dismissed.

2. CHEO - Negligent misrepresentation

[100] In the event I am wrong on the jurisdiction issue, I go on to consider the second issue of the motion brought by CHEO.

[101] The plaintiff's allegations about the October 15, 2018 telephone conversation that she said that she had with the CHEO representative clearly requires a trial to permit a court to assess her credibility in that regard, both as to whether the telephone call took place and what was said in the course of that telephone call. Her credibility on that issue cannot be adjudicated on the record before me.

[102] A trial will consider the evidence advanced by the defendants, which they say weighs decisively against the credibility of the plaintiff, and the evidence referred to by the plaintiff, which she says demonstrates decisively that the defendants purposefully pressured her into believing that she had only two choices – namely, to return to her old position at work or to quit – which was confirmed to her in that telephone call.

[103] Therefore, if I am wrong on the jurisdiction issue, I would dismiss CHEO's motion for summary judgment.

[104] For these reasons, I would not grant summary judgment for the plaintiff against CHEO.

3. Sun Life

[105] The plaintiff strongly asserts that the record demonstrates a singular focus of Sun Life and its representatives in administering policy provisions and the ongoing approved LTD benefits claim, and on returning the plaintiff to her prior position at CHEO – a position the defendants knew caused and exacerbated her disability.

[106] Sun Life points out in its factum that an employee is considered totally disabled during the elimination period and the following 24 months if the employee is continuously unable, due to an illness, to perform the essential duties of their own occupation “in any workplace, including in a different department or location with the same employer or with another employer”.

[107] A trial is necessary to adjudicate whether that was the singular purpose, and, if so, why, and whether doing so accorded with the policy. A trial will permit the court to adjudicate that issue, including affording Sun Life the opportunity to address it. If Sun Life denies that this was its singular goal, issues of credibility arise that cannot be resolved on this motion. If Sun Life does not deny that this was its singular goal, it will have the opportunity to fully advance its position on the point.

[108] On that basis, summary judgment on this issue cannot be granted in favour of the plaintiff, as there is a genuine issue for trial.

DECISION

[109] For these reasons, CHEO’s motion for summary judgment is granted for lack of jurisdiction in the court. The action against it is dismissed.

[110] The motion for summary judgment brought by Sun Life is dismissed.

COSTS

[111] CHEO, on its motion, and the plaintiff, on Sun Life’s motion, may each make written submissions as to costs limited to three pages double spaced together with a costs outline and any authorities relied upon within 15 days of receipt of this decision.

[112] The plaintiff, in reply to CHEO, and Sun Life, in reply to the plaintiff, may each make their responding costs submissions in a similar format within ten days thereafter.

[113] The parties agreed that there is no need for oral submissions on costs.

Honourable Mr. Justice Gary W. Tranmer

Released: April 28, 2026

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SUPERIOR COURT OF JUSTICE

BETWEEN:

TARA JESSICA PRICE FAWCETT

Plaintiff

– and –

SUN LIFE ASSURANCE COMPANY OF CANADA
and THE CHILDREN’S HOSPITAL OF EASTERN
ONTARIO

Defendants/Moving Parties

**REASONS FOR DECISION ON SUMMARY
JUDGMENT MOTIONS**

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