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The Supreme Court Puts Down its Legal Dictionary

Sometimes small disputes about technical matters unearth deeper truths about how the law works. This happened in a decision released on January 27, 2017 by the Supreme Court of Canada. *Sabean v Portage La Prairie Mutual Insurance Co* on its face concerned a narrow issue of interpretation defining amounts payable under automobile insurance policies. In resolving this issue, the Court bumped into a much more general issue concerning whether and how jurisprudence influences the meaning of words used in private contracts.

The more general issue may have surprisingly wide ramifications. Since at least the first edition of Henry Campbell Black's Law Dictionary in 1891, a whole sub-industry of legal publishing has tried to offer guidance to the profession about the "legal" meaning of the words lawyers use in statutes, contracts, and legal discourse generally.

Sabean reminds us that dictionaries can only take us so far.

The case concerned language in an automobile excess insurance policy that purported to deduct from amounts payable under it amounts payable under any "policy of insurance" providing disability benefits or loss of income or medical expense or rehabilitation benefits. The specific issue was whether benefits payable under the Canada Pension Plan are benefits payable under a "policy of insurance."

A studious insurance solicitor would, before *Sabean*, have found an easy answer to this question in legal dictionaries and "words and phrases" services. Such sources would have led this solicitor to the decision of the Supreme Court of Canada in *Canadian Pacific Ltd v Gill*. That was a case involving the interpretation of a section of the British Columbia *Families' Compensation Act* that required the deduction from damages awarded in actions under the statute of amounts payable "under any contract of assurance or insurance." The Court in *Gill*, relying on the common law collateral benefits rule, found that the CPP benefits fell under amounts excluded under a "contract of . . . insurance".

The Nova Scotia Court of Appeal applied *Gill* and found that the CPP was a "policy of insurance" for the purposes of interpreting the scope of coverage under the automobile policy at issue in *Sabean*.

The Supreme Court of Canada, however, reversed this decision. Even though the Court's recent decision in *Ledcor Construction Ltd v Northbridge Indemnity Insurance Co* affirmed that issues surrounding the interpretation of standard form contracts will raise issues of law, this did not mean that the language in the excess policy was controlled by another court's interpretation of identical words where that interpretation arose in a statutory, not contractual, context.

The question whether CPP benefits were benefits available under a "policy of insurance" for the purpose of the automobile excess policy was therefore an open one. The Court resolved the issue not by opening its legal dictionary, but by asking how an insured would construe that language. Noting that the insured "is not someone with the specialized knowledge of related jurisprudence or of the objectives of the insurance industry", the Court held that, notwithstanding its own decision in Gill, the "ordinary meaning" of the words "policy of insurance" to an insured would not include the CPP.

Sabean reminds us of an important truth about where interpretation stops and law begins. While it can be comforting to look for certainty in legal dictionaries, words in contracts and statutes do not have free-standing "legal" meanings. The effect words have always depends on the specific context in which they are used.