COURT OF APPEAL FOR ONTARIO

CITATION: Borok v. Primmum Insurance Company, 2026 ONCA 748
DATE: 20261021
DOCKET: COA-25-CV-1701

Huscroft, Trotter and Wilson JJ.A.

BETWEEN

Abraham Borok, by his Litigation Guardian Tuvia Borok

Applicant

(Respondent)

and

Primmum Insurance Company

Respondent
(Appellant)

Erik K. Grossman and Rebecca Brown Greer, for the appellant

Andrew M. Lee, for the respondent

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

Philippa G. Samworth, for the intervener Canadian Defence Lawyers

Kelley Bryan, for the intervener Public Guardian and Trustee

Heard: September 25, 2026

On appeal from the judgment of Justice R. Lee Akazaki dated December 9, 2025, with reasons reported at 2025 ONSC 6881, 52 C.C.L.I. (6th) 161.

Wilson J.A.:

[1] This appeal concerns the approval of a proposed settlement for a party under disability pursuant to Rule 7.08 of the *Rules of Civil Procedure,* R.R.O. 1990, Reg. 194 (the "*Rules*"). These motions and applications for approval are submitted regularly to judges of the Superior Court of Justice around this province and have been for many years. They are part of the regular work of judges of the court. This application was no different. An application record was submitted to the court and assigned to the application judge to review. The appellant insurer consented to the approval of the proposed settlement.

[2] The application judge, however, dismissed the request for approval. Without hearing submissions from the parties, on his own initiative, he determined that the Superior Court of Justice did not have jurisdiction to approve the proposed settlement because it involved the resolution of claims under the *Statutory Accident Benefits Schedule – Effective September 1, 2010*, O. Reg. 34/10 ("SABS"), which was the exclusive jurisdiction of the Licence Appeal Tribunal ("LAT").

[3] The insurer appeals to this court, submitting the application judge erred in law in his analysis of the jurisdiction of the Superior Court. The respondent and the interveners agree that the decision must be set aside. The parties further requested that this court approve the proposed settlement.

[4] At the hearing of the appeal, we allowed the appeal and approved the proposed settlement with reasons to follow. As explained below, the decision of the application judge is fundamentally flawed, and he erred in several ways in his understanding of s. 280 of the *Insurance Act*, R.S.O. 1990, c. I.8 and r. 7.08 of the *Rules*. In addition, the manner in which he dealt with the application for approval was procedurally unfair.

A. BACKGROUND

[5] Abraham Borok was injured in a motor vehicle accident that occurred on February 17, 2017. He is a person under disability under the *Rules* and his son serves as his litigation guardian pursuant to a Continuing Power of Attorney for Property.

[6] SABS are available to persons injured as a result of an accident involving a motor vehicle for such items as loss of income, the costs of treatment of injuries and necessary caregiving. They are available as part of every motor vehicle liability policy, pursuant to s. 268 of the *Insurance Act*.

[7] A licensed paralegal was retained to negotiate resolution of Mr. Borok's claims for SABS. A proposed resolution in the sum of $70,000 was arrived at and Minutes of Settlement were signed on September 19, 2022. A Notice of Application for approval of this proposed settlement was issued in the Superior Court of Justice on January 30, 2023. An affidavit from the paralegal was included with the initial

Application Record, and an affidavit of solicitor was filed in support of the application in June 2025. The solicitor deposed that he had reviewed the medical evidence and concluded that the proposed settlement was fair and reasonable. The proposed legal fees and the net amount payable to the party under disability was also set out in the material filed for approval.

[8] On August 21, 2025, the application judge issued an endorsement that erroneously stated that no solicitor's affidavit had been included in the application record and he adjourned the application, directing that an affidavit from a solicitor be filed. In a further endorsement dated September 9, 2025, the application judge acknowledged that the affidavit of solicitor was in the record, but he expressed concerns that the lawyer had not actually negotiated the proposed settlement. He directed that the Public Guardian and Trustee ("PGT") be served with the application record and that counsel attend a "one-hour formal hearing" before him.

[9] The hearing was convened on December 5, 2025, and the judge reiterated his concerns that the solicitor filing the affidavit was also required to have been involved in the negotiation of the proposed settlement and could not be retained simply to obtain court approval. The issue of jurisdiction of the Superior Court to approve a settlement of SABS claims was not raised at the hearing. Nevertheless, the judge dismissed the application, finding that r. 7.08 does not apply to the proposed resolution of claims for SABS and that the Superior Court does not have

jurisdiction to approve proposed settlements of any SABS claims as they are within the exclusive jurisdiction of the LAT.

B. ANALYSIS

[10] The grounds of appeal involve questions of law and the parties agree the standard of review is correctness: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 8.

a. The Superior Court has jurisdiction on the settlement of claims arising from SABS

[11] Rule 7.08(1) of the *Rules* provides that no settlement of a claim involving a person under disability is binding without the approval of a judge. The rule requires that a motion or application for approval must contain certain materials: an affidavit from the litigation guardian setting out their position in respect of the settlement; an affidavit from a lawyer setting out the lawyer's position with respect to the proposed settlement; and the minutes of settlement. After reviewing the materials, the judge must determine, based on the evidence, whether the proposed settlement is in the best interests of the party under disability and ought to be approved.

[12] Here, the application judge misunderstood s. 280 of the *Insurance Act*. He found that the LAT had "exclusive jurisdiction" over all things related to SABS, including a proposed settlement. That is not what the section says:

> **Resolution of disputes**
>
> **280** (1) This section applies with respect to the resolution of disputes in respect of an insured person's entitlement to statutory accident benefits or in respect of the amount of statutory accident benefits to which an insured person is entitled.
>
> **Application to Tribunal**
>
> (2) The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1).
>
> **Limit on court proceedings**
>
> (3) No person may bring a proceeding in any court with respect to a dispute described in subsection (1), other than an appeal from a decision of the Licence Appeal Tribunal or an application for judicial review.

[13] Section 280 of the *Insurance Act* deals with the procedure to be followed when there is a dispute concerning an insured person's entitlement to a benefit or the quantum of a benefit. When it was enacted in 2016, s. 280 removed the right to sue in the Superior Court for disputed entitlement to SABS and conferred on the LAT exclusive jurisdiction to determine these disputes: *Insurance Act*, s. 280(3); *Stegenga v. Economical Mutual Insurance Company*, 2019 ONCA 615, 147 O.R. (3d) 65, at para. 36. Entitlement and quantum of a benefit are determined by the LAT following a specific procedure: *Insurance Act*, s. 280(2). An appeal from a decision from the LAT may be heard by the Divisional Court: *Licence Appeal Tribunal Act, 1999*, S.O. 1999, c. 12, Sched. G, s. 11.

[14] The application judge erred in law by concluding that s. 280 granted the LAT exclusive jurisdiction over all matters relating to SABS, including the approval of

proposed settlements. Section 280 grants exclusive jurisdiction to the LAT over disputes arising from ongoing claims related to SABS, not to settlements: *Yang v. Co-operators General Insurance Company*, 2022 ONCA 178, 21 C.C.L.I (6th) 1, leave to appeal refused, [2022] S.C.C.A. No. 141; *Stegenga,* at paras. 21-22.

[15] Section 280 of the *Insurance Act* does not address proposed settlements of SABS claims for parties under disability. As this court has noted, if the jurisdiction of the Superior Court is to be taken away, the statute must do so in clear and unequivocal language: *R.W. Tomlinson Limited v. Labourers' International Union of North America, Local 527*, 2025 ONCA 861, 515 D.L.R. (4th) 680, at para. 45, leave to appeal granted, [2026] S.C.C.A. No. 30. It has not done so with respect to approval of settlements under r. 7.08.

[16] Furthermore, s. 9.1 of *Automobile Insurance*, R.R.O. 1990, Reg. 664 (the "*Automobile Insurance* regulation") of the *Insurance Act* addresses specifically proposed settlements of SABS claims and sets out a highly regulated procedure when a settlement is entered into that requires the exchange of certain documents, the establishment of cooling-off periods, and what occurs if the claimant wishes to rescind a settlement. Section 9.1(6) states specifically that certain aspects of the procedure set out in the *Automobile Insurance* regulation do not apply to settlements that have been approved by a court pursuant to r. 7 of the *Rules*. This makes it clear that for the proposed settlement of a SABS claim that involves a

party under disability the procedure is to file materials pursuant to r. 7 and seek approval from the Superior Court, in the same way that all proposed settlements involving parties under disability are done.

[17] Obtaining court approval of proposed settlements for parties under disability is mandatory in every civil case, no matter what type of case it is and that has always been the procedure. This court confirmed the necessity of securing court approval of any settlement that involves a party under disability in *Wu Estate v. Zurich Insurance Co.* (2006), 268 D.L.R. (4th) 670 (Ont. C.A.), leave to appeal refused, [2006] S.C.C.A. No. 289, where it noted at para. 10:

> The requirement for court approval of settlements made on behalf of parties under disability is derived from the court's *parens patriae* jurisdiction. The *parens patriae* jurisdiction is of ancient origin and is "founded on necessity, namely the need to act for the protection of those who cannot care for themselves…to be exercised in the 'best interest' of the protected person…for his or her 'benefit or welfare'." [Citation omitted.]

[18] This court recently reaffirmed the protective purpose of court approval under r. 7.08 in *D.V. v. Cordocedo*, 2026 ONCA 705, at para. 29.

[19] In the context of addressing the issue of sealing orders in r. 7.08 settlement approval motions, this court has specifically commented on the *parens patriae* jurisdiction of the court in r. 7.08 matters. As noted in *S.E.C. v. M.P.*, 2023 ONCA 821, 97 R.F.L. (8th) 54, leave to appeal refused, [2024] S.C.C.A. No. 39, at para. 39:

> The common law rules mean that, as put by Salhany J.: "For centuries, judges of the Superior Court have exercised the *parens patriae* guardianship of the sovereign to ensure that the rights of infants and others legally disabled are protected": *Ruetz v. Morscher & Morscher* (1996), 28 O.R. (3d) 545, (S.C.), at p. 549.
>
> …
>
> The protective purpose of settlement approval for parties under disability has been repeatedly affirmed in this court's jurisprudence." [Citations partially omitted.]

[20] The application judge misunderstood the purpose of r. 7 and the *parens patriae* jurisdiction of the court. This court has confirmed on numerous occasions that r. 7.08 provides that no proposed settlements on behalf of parties under disability are binding without a judge's approval: see e.g. *S.E.C.*, at para. 2. Furthermore, judges of the Superior Court have been and continue to approve proposed resolutions of the SABS claims of parties under disability pursuant to r. 7: see e.g. *Kwok (Litigation guardian of) v. State Farm Mutual Automobile Insurance Co.*, 2016 ONSC 7339; *Bellama v. Trafalgar Insurance,* 2023 ONSC 172; *Wang v. Safety Insurance Company*, 2026 ONSC 3237; and *Gidda v. Intact Insurance Company*, 2023 ONSC 2799. Following the release of the decision under appeal, Firestone R.S.J. released a decision confirming that all settlements proposed on behalf of any party under disability, including the resolution of SABS claims, are subject to court approval: see *Gomez v. The Personal Insurance Co.*, 2025 ONSC 7049, 52 C.C.L.I. (6th) 247.

b. A paralegal can negotiate a resolution of a claimant's SABS claims

[21] The application judge erred in finding that a lawyer must negotiate the proposed settlement for the party under disability and file an affidavit confirming this. The application judge found he "could not approve the settlement without requiring Mr. Borok to renegotiate his settlement with a lawyer acting for him." Rule 7 does not require a lawyer to participate in the settlement negotiations for a party under disability; it simply requires that as part of the material filed in support of the approval motion or application, an affidavit of solicitor acting for the litigation guardian be filed. This affidavit must set out the lawyer's position in respect of the settlement. The application judge's finding in this regard was incorrect.

[22] There is no prohibition against paralegals who are licensed by the Law Society of Ontario dealing with SABS claims on behalf of clients who are under a disability: *Insurance Act*, s. 398; *Automobile Insurance* regulation, s. 18. While paralegals are prohibited from dealing with settlements of SABS claims for parties who have been catastrophically impaired, this case did not involve a claimant who had been designated catastrophically impaired: Law Society of Ontario, By-Law 4, ss. 6(1)-(2); see also *Charles (Litigation Guardian of) v. Gore Mutual Insurance Company*, 2023 ONSC 7053 at paras. 2, 5.

[23] Regardless of whether a paralegal or a lawyer negotiated the proposed settlement, the approval materials must contain an affidavit from the solicitor who has been retained and who has reviewed all of the circumstances giving rise to the

action, including liability issues and damages issues. The solicitor must provide an opinion on whether the proposed settlement is in the best interests of the party under disability and the reasons for the opinion. In this way, the affidavit enables the court to meaningfully assess the reasonableness of the settlement: *Spicer v. Wawanesa Mutual Insurance Company*, 2023 ONSC 3221, 35 C.C.L.I. (6th) 257, at paras. 11-15.

c. There was procedural unfairness

[24] It is well-established that "cases should not be decided on grounds not raised": *Saadati v. Moorhead*, 2017 SCC 28, [2017] 1 S.C.R. 543, at para. 9. To ensure procedural fairness, "each party is entitled to know and respond to the case it must answer": *Saadati*, at para. 9.

[25] The application judge failed to advise the parties that he was considering dismissing the approval application on the basis that the Superior Court lacked jurisdiction. Instead, he convened an oral hearing because of concerns he had about a paralegal negotiating a proposed settlement of a claim for SABS on behalf of a party under disability, and with the lawyer swearing the affidavit being retained after the settlement negotiations.

[26] It is clear from the transcript of the hearing that the issue of jurisdiction of the Superior Court over SABS settlements was not raised by the parties, nor was it raised by the judge at the hearing. The application judge ought to have advised

the parties and the PGT that he was considering dismissing the application for lack of jurisdiction. The first notice that the parties had that the judge had a concern about his jurisdiction to approve the proposed settlement was when his reasons dismissing the application were released. It was manifestly unfair to the parties to proceed in this fashion, particularly given the fact that counsel were following the established procedure for approval of proposed settlements pursuant to r. 7.08, along with the "Consolidated Practice Direction – Toronto Region" (October 14, 2025) and the "Best Practice's Guidelines and Checklist" for these motions and applications.

C. DISPOSITION

[27] The appeal is allowed and the decision of the application judge is set aside. The proposed settlement in the amount of $70,000 is hereby approved, pursuant to this court's authority under s. 134(1)(a) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

Released: October 21, 2026

D.A. Wilson J.A.

I agree.

I agree. K.E. Taylor J.A.