

CITATION: Paesano v. Filippone et al., 2025 ONSC 4440
DIVISIONAL COURT FILE NO.: 192/25; 193/25
DATE: 20250801

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: NEILA PAESANO, Applicant/Appellant

AND:

NIKKI FILIPPONE, KAILA NOLAN, KARLEE SCHONKEN, COSECO INSURANCE COMPANY, FOCUS ASSESSMENTS (280368457), DARREN PARSONS, DR. JULIAN MARSHALL RANJI MATHOO, DR. ABDALHAKIM IMOHD MUSTAFA AND THE LICENCE APPEAL TRIBUNAL, Respondents

BEFORE: Matheson J.

COUNSEL: *Imtiaz Hosein*, for the applicant/appellant

Philippa G. Samworth, for the respondents Coseco Insurance Company, Nikki Filippone, Karlee Schonken and Kaila Nolan

Kerry Nash, for the respondents Focus Assessments (280368457) and Darren Parsons

Ian MacLeod, for the respondents Drs. Julian Marshall Ranji Mathoo and Abdalhakim Imohd Mustafa

Theresa McGee, for the Licence Appeal Tribunal

HEARD at Toronto: In writing.

ENDORSEMENT

[1] The applicant/appellant Mrs. Paesano¹ has been given notice that the Court is considering making an order staying or dismissing these proceedings under r. 2.1.01 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

[2] These proceedings arise from the applicant/appellant's second application to the LAT in relation to a motor vehicle accident in 2018 and claimed statutory accident benefits ("SABS") under the *Statutory Accident Benefits Schedule - Effective September 1, 2010*, O. Reg. 34/10.

[3] Mrs. Paesano's first application to the LAT concluded with a final LAT decision in 2023, followed by a decision not to appeal and an unsuccessful application for judicial review to this Court. However, the applicant/appellant commenced a second application to the LAT in 2025. This time, she added other non-insurer parties including health professionals, service providers and adjusters, some of whom were witnesses at her LAT hearing in 2023.

[4] In the second LAT application, the applicant/appellant asserted claims for substantial damages. Throughout this second round of LAT proceedings, the applicant/appellant has emphasized that she is not seeking SABS.

[5] The LAT declined to process the second application on the grounds that the LAT had no authority to award the claimed damages. It also had no authority to make an award against the non-insurer respondents.

[6] The applicant/appellant then commenced these two court proceedings, seeking to judicially review and appeal the 2025 LAT decisions arising from her second LAT application. The respondents (other than the tribunal) asked that the Court invoke the process under r. 2.1 of the *Rules of Civil Procedure*, which was done as set out in my directions of May 29, 2025, describing the issue as follows:

There is therefore an issue about the jurisdiction of this Court and whether these proceedings are an abuse of process through which the applicant/appellant is wrongly attempting to use the *Insurance Act* SABS process to address a civil tort claim.

[7] The parties have made submissions in response to the notice under r. 2.1. Under the amended r. 2.1, both the applicant/appellant, and some of the respondents, have made submissions.

[8] As discussed below, I conclude that these proceedings are an abuse of process as an attempt to pursue remedies that are not within the jurisdiction of the LAT or an impermissible collateral attack on the final determination of SABS arising from the prior LAT application.

¹ Counsel's submissions indicate a preference for "Mrs."

Prior LAT proceedings

[9] The applicant/appellant submitted an application to the LAT for statutory accident benefits arising from a motor vehicle accident that took place in 2018. The LAT application gave rise to a lengthy LAT hearing and a final LAT decision in 2023, followed by a decision of the Divisional Court.²

[10] As set out in the final LAT decision, dated October 20, 2023, the Adjudicator heard considerable evidence and made findings on numerous issues relevant to Mrs. Paesano's claims for SABS. The Adjudicator declined to address one claim (for income replacement benefits or IRBs) because Mrs. Paesano had not applied or qualified for those SABS benefits within the required time.

[11] Mrs. Paesano did not appeal the LAT decision even though an appeal was available as of right. She brought an application for judicial review to this Court, which was dismissed in June 2025.³ The Court held as follows:

- (i) that the Tribunal's decision was lengthy, coherent and well-reasoned;
- (ii) that the hearing was procedurally fair;
- (iii) that to the extent the application raised issues of law, the Court had jurisdiction but declined to hear those issues because Mrs. Paesano had failed to pursue her appeal rights; and
- (iv) the decision was not shown to be unreasonable.

[12] Mrs. Paesano's application to the LAT included a claim for a special award under s. 10, claiming that the insurer unreasonably withheld the payment of benefits. The Adjudicator decided that claim and did not conclude that such an award was warranted.

[13] The LAT application therefore proceeded to a final LAT decision in 2023, after which the application for judicial review was dismissed.

2025 LAT Proceedings

[14] In February 2025, the applicant/appellant submitted another application to the LAT. In the second application, the applicant/appellant named not only the insurer but also non-insurer parties

² *Paesano v. Coseco Insurance Company*, 2023 ONLAT 22-001009/AABS, 2023 CanLII 96371 (ON LAT); *Paesano v. Coseco Insurance Co.*, 2025 ONSC 3245 (Div. Ct.)

³ *Paesano v. Coseco Insurance Co.*, 2025 ONSC 3245 (Div. Ct.)

as respondents. The other parties included three of the insurer's claims adjusters, health professionals who had testified at the 2023 hearing or given reports and a service provider.

[15] In her notice of appeal/judicial review in this Court, the appellant/applicant alleges that, at the LAT hearing in 2023, the respondents Dr. Mustafa, Dr. Mathoo and Nikki Filippone gave sworn testimony as a result of which she "learned about the tortious conduct" of the respondents that "interfered" with her ability to dispute her injury status and secure enhanced SABS benefits.

[16] The applicant/appellant has therefore drawn a direct connection between her second application to the LAT and her entitlement to and the quantification of SABS. Nonetheless, the applicant/appellant expressly states that in the second LAT application she "does not dispute entitlement to benefits, nor does [she] seek the payment of any benefit under the SABS".

[17] In this second application to the LAT, the applicant/appellant asserted several claims for damages against various of the respondents including conspiracy, breach of the duty of good faith and intentional interference with economic relations.

[18] Despite the statutory regime, intended for the provision of SABS, the applicant/appellant sought damages that total over \$100,000,000 against various of the respondents (although the LAT application said that \$9,999,999.99 was the highest amount in dispute). She states that the damages are not only compensatory damages for herself but also damages to deter this happening to anyone else.

[19] The LAT did not accept the new application for processing, as set out in its letter of February 27, 2025.⁴ The LAT noted its jurisdiction under s. 280 of the *Insurance Act*, R.S.O. 1990, c. I.8, with respect to a person's entitlement to statutory accident benefits and with respect to the quantification of the SABS. It further noted that under s. 268 of the *Act*, an insured person's recourse for SABS is against an insurer.

[20] The applicant/appellant sought reconsideration, which was dismissed by LAT decision dated June 11, 2025.⁵

[21] In the reasons for decision dismissing the reconsideration, the Vice-Chair addressed the jurisdiction issues that foreclosed the application. The Adjudicator noted the Ontario Court of Appeal decisions relied upon by Mrs. Paesano, including *Stegenga v. Economical Mutual Insurance Company*, 2019 ONCA 615, 147 O.R. (3d) 65, and *Yang v. Co-operators General Insurance Company*, 2022 ONCA 178, 21 C.C.L.I. (6th) 1. The Vice-Chair correctly followed those decisions, which were concerned with benefits and amounts under the *Statutory Accidents Benefits Schedule*. However, Mrs. Paesano stated that she was not seeking SABS in her second

⁴ *Paesano v. Peel Mutual Insurance Company et al.*, 2025 ONLAT 25-002718/AABS (April 14, 2025)

⁵ *Paesano v. Peel Mutual Insurance Company et al.*, 2025 CanLII 55797 (ON LAT)

application. The Vice-Chair further cited the established law precluding a claim for punitive damages by the LAT. Lastly, the Vice-Chair noted that some of the grounds asserted in the second application could support a special award against the insurer under s. 10 of the SABS, but SABS were not sought.

[22] The applicant/appellant then commenced this application for judicial review and appeal.

Rule 2.1 Analysis

[23] Subrule 2.1.01(1) authorizes the Court to dismiss a proceeding as frivolous or vexatious or otherwise an abuse of the process of the court. However, r. 2.1 should only be used for “the clearest of cases”: *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, at para. 8. This is such a case.

[24] The core issue is the LAT’s remedial jurisdiction. The applicant/appellant repeats the legal arguments she presented to the LAT – arguments that apply to claims for SABS.⁶ There is no question that a claim for SABS must be brought to the LAT, a principle arising from a well-established interpretation of s. 280 of the *Insurance Act* cited and relied upon by the LAT. Yet this second LAT application seeks damages (including non-compensatory damages), not SABS.

[25] As noted by the LAT, and contrary to the submissions of the applicant/appellant, this case is not like *Yang v. Co-operators General Insurance Company*. In *Yang*, the Court of Appeal found that the substance of the claim was that she received fewer statutory accident benefits than she was owed. Here, the applicant/appellant has repeatedly emphasized that she is not seeking SABS.

[26] The applicant/appellant submits that because her allegations relate to the tortious steps taken in relation to her SABS benefits she must go to the LAT. There is a SABS remedy based on alleged poor conduct of an insurer – a special award under s. 10. Yet the applicant/appellant submits that she is not seeking SABS.

[27] The LAT is a statutory body. It has only the remedial powers that are granted to it by statute. In this case, the LAT’s remedial powers come from the *Insurance Act* and related regulations, including the *Statutory Accident Benefits Schedule*. Subsection 268(2) of the *Insurance Act* specifies that a person injured in an automobile accident may claim statutory accident benefits against an insurer or the Motor Vehicle Accident Claims Fund (the Fund not being relevant here).

⁶ The applicant/appellant also relies on a recent Superior Court decision, *Granville v. State Farm*, 2024 ONSC 2242. That brief endorsement is not an answer to the core issue of remedy.

[28] The applicant/appellant does not address the core issue – that the LAT must have statutory authority to grant the requested relief. The applicant/appellant has not pointed to any statutory jurisdiction that allows the LAT to award general damages or non-compensatory damages.

[29] The applicant/appellant submits that if she cannot go to the LAT, she cannot advance her tort claims at all. That is not the issue in these LAT proceedings. Here, there is a statutory regime that comprehensively provides for statutory accident benefits that may be awarded by the LAT and are paid by insurers. Those legislative choices have been made within the no-fault benefit statutory regime under the *Insurance Act* that provides statutory accident benefits that are paid by an insurer. The *Statutory Accident Benefits Schedule* includes remedies if there is poor conduct by an insurer. The applicant/appellant may want something more or different from the LAT process, but that does not give the LAT jurisdiction to grant the remedies that she seeks.

[30] The scope of the LAT’s statutory jurisdiction cannot be avoided or supplemented as suggested by the applicant/appellant. The issue of remedial jurisdiction fully addresses this matter.

[31] The applicant/appellant’s position could be said to be an indirect attempt to challenge the final LAT decision on SABS in 2023, even though she submits that she is not seeking more SABS. If so, it would be an impermissible collateral attack on that final decision.

[32] These proceedings are dismissed as frivolous, vexatious and an abuse of process under r. 2.1 of the *Rules of Civil Procedure*.

Matheson J.

Date: August 1, 2025