

CITATION: GOMEZ v. THE PERSONAL INSURANCE CO. 2025 ONSC 7049
COURT FILE NO.: CV-25-00741061-0000
DATE: 20251216

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
DUSTIN GOMEZ, by his Litigation) *Adam K. Wagman and Victoria Yang*
Guardian, Abegail Gomez)
Applicant) for the Applicant
– and –)
)
THE PERSONAL INSURANCE)
COMPANY)
Respondent)
) Heard in Writing

2025 ONSC 7049 (CanLII)

REASONS FOR DECISION

Firestone, R.S.J.

[1] The minor applicant Dustin Gomez (“Dustin”) born February 17, 2015, by his Litigation Guardian and mother brings this Application under rule 7.08 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the “*Rules*”) for court approval of the proposed full and final settlement of his statutory accident benefit claim. Settlement of the corresponding tort claim was approved by the court by Judgment dated December 20, 2024

Statutory Accident Benefit Settlements and Rule 7.08

[2] In the recent decision in *Borok, Abraham v. Primmum Insurance Company*, 2025 ONSC 6881, released December 9, 2025, the court held that the Superior Court of Justice does not have subject matter jurisdiction to approve a statutory accident benefit settlement under rule 7.08 of the *Rules*.

[3] Based on the principles of horizontal *stare decisis* set forth in *R. v. Sullivan*, 2022 SCC 19 [2022] 1 S.C.R. 460, I have considered this issue and respectfully reach a different conclusion. I find that the Superior Court of Justice has both the jurisdiction and authority to approve a statutory accident benefits settlement under rule 7.08. Such authority is not removed by the application of r. 1.02(1)3. or section 280 of the *Insurance Act*, R.S.O. 1990, c. I.8 (the “*Act*”)

[4] In determining this issue, it is important to consider the interplay between rules 1.02, 7.08, and section 280 of the *Act*. Rule 1.02, titled “Application of Rules”, states that the *Rules* apply to all civil proceedings (which, pursuant to rule 1.03, includes both an action and application) in the Court of Appeal and the Superior Court of Justice, subject to the enumerated exceptions. Clause 1.02(1)3. goes on to state that the *Rules* do not apply if a statute provides a different procedure.

[5] Section 280 of the *Act*, titled “Resolution of Disputes”, came into force on April 1, 2016. This section sets forth the process to be followed by both an insured person and the insurer for determining a dispute regarding an insured person’s entitlement to or amount of statutory accident benefits.

[6] It is in regard to these specific unresolved disputes that subsections 280(2) and (3) provide that both the insured person or insurer may apply to the License Appeal Tribunal (the “LAT”) to resolve such ongoing disputes and further that no person may bring a proceeding in any court with respect to such disputes other than an appeal from a decision from the LAT or an application for judicial review. Section 280 of the *Act* deals with the process to follow for the determination of an ongoing, not settled, statutory accident benefits dispute.

[7] Prior to the enactment of s. 280 of the *Act*, all ongoing disputes regarding entitlement to and quantum of statutory accident benefits were required to proceed to mandatory mediation at the Financial Services Commission of Ontario (“FSCO”). If the dispute was not resolved at mediation, the insured person had the option of proceeding through arbitration at FSCO or commencing an action for the final determination of those disputed benefits.

[8] The enactment of section 280 of the *Act* took away the right to sue for disputed benefits in the context of an ongoing statutory accident benefit claim. Section 280 does not speak to or purport to address the procedure to follow once such claim is settled. Section 280 of the *Act* does not remove the mandatory requirement for court approval, the court’s jurisdiction or authority to approve such settlement on behalf of a party under disability, or that party’s right to seek such approval by way of court proceeding.

[9] In *R.W. Tomlinson Limited v. Labourers’ International Union of North America Local 527*, 2025 ONCA 861 at para 45, citing *Skof v. Bordeleau*, 2020 ONCA 729, 456 D.L.R. (4th) 236, at paras. 8-9, the court confirms the principle that “the law requires clear and express statutory language to remove the Superior Court’s jurisdiction or extinguish the right to sue”. The language in section 280(1)(3) of the *Act* is clear and unambiguous. It removes the right to sue for disputed statutory accident benefits and nothing more.

[10] At para. 50 of *R.W. Tomlinson*, the court states that preserving the Superior Court of Justice’s jurisdiction in the situation before it upholds the rule of law, avoids jurisdictional vacuums, and promotes access to justice. Applying this chain of reasoning to the issue before me, preserving the Superior Court’s inherent and *parens patriae* jurisdiction over the approval of statutory accident benefit claims involving parties under disability will avoid a jurisdictional vacuum which would undermine the rule of law and access to justice.

[11] Subrule 7.08(1) provides that “[n]o settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a judge.” Rule 7.08 does not limit the court’s inherent or *parens patriae* jurisdiction by stating that the approval process only applies to the settlement of a dispute or claim for which a proceeding could be commenced in the Superior Court of Justice.

[12] There is no express language in either rule 1.02 or section 280 of the *Act* which removes or excludes a statutory accident benefit settlement from the mandatory judicial approval process under rule 7.08.

[13] The mandatory requirement to seek court approval for all settlements on behalf of a party under disability codified in r. 7.08(1) allows the court to properly exercise both its inherent and *parens patriae* jurisdiction to ensure the legal rights of a party under disability are protected and not compromised without proper compensation in keeping with the principles set forth in *Wu Estate v. Zurich Insurance Co.* (2006), 268 D.L.R. (4th) 670 (Ont. C.A.) at para 10, leave to appeal refused [2006] 2 S.C.R. xiii (note); see also *Rivera v. LeBlond* (2007), 44 C.P.C. (6th) 180 (Ont. S.C.) and *Spicer v. Wawanesa Mutual Insurance Company*, 2023 ONSC 3221, 35 C.C.L.I. (6th) 257, at paras. 11-15

[14] This conclusion is reinforced by the determination in *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. At para. 4 of this decision, the court confirms that section 280 of the *Act* grants the LAT exclusive jurisdiction over disputes in respect of statutory accident benefits and to that extent section 280(3) deprives the Superior Court of jurisdiction.

[15] In the subsequent Court of Appeal decision in *S.E.C. v. M.P.*, 2023 ONCA 821, the court provides guidance regarding the scope and limits of the open court principle in the context of approval of settlements involving minor parties or parties under disability brought by way of motion or application under rule 7.08.

[16] One of the decisions under appeal in *S.E.C.* was the Superior Court judge’s rule 7 determination of both the tort and statutory accident benefit claims arising from the same motor vehicle collision which took place on November 21, 2017, after section 280 of the *Act* came into force.

[17] In determining the appeal, the court did not question or raise as a preliminary issue the jurisdiction of the Superior Court of Justice to approve a statutory accident benefit settlement under

rule 7.08. At paragraph 42 of *S.E.C.*, the Court of Appeal confirms that rule 7.08 “is explicitly designed to protect parties under disability by providing court oversight of settlements that the parties under disability cannot themselves shape and agree to.” This decision does not appear to have been brought to the attention of the application judge in *Borak*.

The Proposed Statutory Accident Benefit Settlement.

[18] Dustin was 3 years old when he was involved in the subject motor vehicle collision on August 4, 2018. As a result, Dustin suffered seizure activity, loss of consciousness, injury to his flava ligament at C4/C5 and C5/C6, behavioral regression, abdominal pains, abrasions to his forehead, right clavicle, and neck, and trauma response. Dustin remained in hospital until September 7, 2018. Dustin made a very good recovery while in hospital.

[19] Following discharge from the Hospital for Sick Children, the only medical concerns identified requiring follow up were Dustin’s ligamentous neck injury, which has fully resolved, and emotional and psychological issues.

[20] Dustin has worked with a social worker, an occupational therapist and a behavioral therapist to address his behavioral issues and emotional regulation which are attributed to the trauma from the collision. While Dustin’s psycho-social and emotional symptoms have seen marked improvement, as of 2022 he still suffered impairment in functioning including poor coping mechanisms when dealing with stress and frustration. It was recommended he receive individual psychological treatment, family therapy, behavioral therapy, occupational and rehabilitation therapy, tutoring support, school based mental health supports, and academic accommodations.

[21] Dustin is not currently engaging in active treatment other than occasional tutoring. He has used \$46,325.60 of the available \$65,000.00 non-catastrophic medical/rehabilitation limits. The statutory accident benefit insurer has agreed to pay the full remainder of the entitlement in the amount of \$18,674.40 with no discount as a term of settlement. From the amount of \$18,674.40 council seek a fee of \$1,867.44 plus HST in the amount of \$242.77. This represents a fee of 10%.

[22] Based on the record before me I am satisfied that the proposed settlement is fair and reasonable and in the best interests of Dustin Gomez.

[23] From the net settlement proceeds in the amount of \$16,564.19, I direct that the amount of \$5,000.00 be paid to Dustin’s mother and litigation guardian Abegail Gomez pursuant to and in accordance with s. 51 of the *Children’s Law Reform Act*, R.S.O. 1990, c. C.12 to be used for Dustin’s immediate treatment needs. The amount of \$11,564.19 is to be paid to the Accountant of the Superior Court of Justice until Dustin reaches the age of 18 years, at which time the principal and accrued interest shall be paid to Dustin, subject to any further order of the court.

[24] Counsel is to provide a draft judgment in accordance with paragraphs 22-24 of these reasons.

Firestone RSJ.

Date: December 16, 2025

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