Tribunals Ontario

Licence Appeal Tribunal

15 Grosvenor Street, Ground Floor
Toronto, ON M7A 2G6
Telephone: 416-326-1356
Toll Free: 1-888-444-0240
TTY: 1-800-855-0511
Email: LATregistrar@ontario.ca
Website: tribunalsontario.ca/lat

Notice of Motion

Disponible en français

Important Information

- You must complete all sections of this form and attach additional information and/or documents as required. Supporting submissions must not exceed 6 double-spaced pages, exclusive of evidence and authorities. Submissions must be 12 point, Arial or Times New Roman font, with 1.5 inch margins.
- The processing of your Notice of Motion could be delayed if information or documents are missing.
- Please review Rule 15 for the requirements to file a motion.

Tribunal File No.: 23-015662/AABS

Name and Contact Information of Party making this Motion

Last Name	First Name	Middle Initial
McLean	Kevin	A.

Name of Party
Applicant (or "Moving Party") (Mr. Kevin A. McLean (B.A., J.D., CIM)

Address:

Street Number	Street Name	Unit Number	PO Box
775	King Street West	410	

Municipality *(City, town)*	Province	Postal Code
Toronto	Ontario	M5V 2K3

Telephone Number	Fax Number	Email Address
(647) 513-1270		mcleansniclat@gmail.com

I am the (check one):

☑ Applicant ☐ Respondent ☐ Added Party

☐ I have attached a copy of the order or decision this motion relates to, if any.

Details about the Motion

Describe in detail what remedy are you seeking. Please indicate if the motion is being made with the consent of the other parties.

See: schedule "A"

Please indicate the evidence and authorities you intend to rely on in support of the motion:

Evidence
Affidavit #25, of the Appellant made on June 4, 2024
(Affidavit material in the hearing record for NOM #8

Authorities
(see: Index pursuant to Rule 9.4.5)
(see also: authorities in the hearing record for NOM #8)

Please indicate the proposed motion hearing format:

☐ Electronically ☐ In-Person ☑ In Writing

Please advise if you wish to have the motion hearing heard at the Next Scheduled Event:

☐ No ☑ Yes, if so: 2024/06/20
Date of Next Scheduled Event *(yyyy/mm/dd)*

Acknowledgement

Read carefully then check each box to confirm the statement and sign and date the form.

☑ I have completed all pages of this form and attached all the required documentation. I understand that if I submit an incomplete form or do not attach required documents, my motion may not be processed.

☑ I have served a copy of this Notice of Motion and all additional attached documents on all other parties to the appeal and where applicable, on the person who issued the order/decision/proposal that is the subject of my appeal. I have attached a completed 'Certificate of Service' to this form as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at tribunalsontario.ca/lat.)

Signature

Last Name	First Name
McLean	Kevin

Signature of Party or Representative	Date *(yyyy/mm/dd)*
	2024/06/07

The Licence Appeal Tribunal collects the personal information requested on this form under section 3 of the *Licence Appeal Tribunal Act*, 1999. This information will be used to determine appeals under this *Act*. After an appeal is filed, all information may become available to the public. Any questions about this collection may be directed to the Licence Appeal Tribunal at 416-326-1356 or toll-free at 1-888-444-0240.

NOM #10
Re: Schedule "A"
June 7, 2024

The Appellant seeks the following orders:

1. An order that the hearing of this motion is heard at the same time as NOM #8 and the evidence and authorities provided in NOM #8 and NOM #10 will be relied upon by the Tribunal as one written hearing;
2. An order pursuant to section 23(1), (3) and 25.0.1 of the *SPPA* that Mr. Karat is permanently excluded from acting for SNIC in this SNIC Proceeding or otherwise;
3. An order pursuant to section 23(1), (3) and 25.0.1 of the *SPPA* that Mr. Nieuwland is permanently excluded from acting for TDGIC in this SNIC Proceeding and any potential representation (see: section 1(7) of the LSA) of SNIC, practising law or providing legal services to SNIC in this SNIC Proceeding or in the handling of the underlying TD Claim #3;
4. An order, pursuant to section 23(1) and 25.0.1 of the *SPPA* that the conduct of TDGIC, by Mr. Nieuwland, has been abusive of the Tribunal process and said filings by TDGIC, signed by Nieuwland, along with his dishonest conduct herein, amount to irremediable nullities;
5. An order, pursuant to section 23(1) and 25.0.1 of the *SPPA* that the failures by SNIC to retain and appoint a lawyer licensee since being served with the Appeal amount to irremediable nullities;
6. An Order, pursuant to a combination of section 7(1) to (3) of the *SPPA*, that pursuant to the following: (i) Mr. Karat being the sole representative for SNIC since January 23, 2024; (ii) by signing, filing and serving the SNIC Response on January 25, 2024; (iii) SNIC being the only insurance company entitled, by law, to be a party (respondent) herein; and (iv) SNIC having received notice of a variety of hearing dates, but choosing not to participate therein, SNIC is no longer entitled to any further notices in this SNIC Proceeding; and
7. Costs in the amount of $1000 in total for NOM #8 and NOM #10.

Jurisdiction: *Provincial (Ontario)*
Governing Automobile Insurance Legislation*: Insurance Act, R.S.O., 1990,* c I.8 et seq ("*Insurance Act*" or "*Ins. Act*")
Governing Automobile Provincial Regulations*: SABS and Reg 664*
Governing FSRA Rule*: Unfair Deceptive or Act Practices Rule 2022 et seq* Unfair or Deceptive Acts or Practices Rule as amended by Deferred Sales Charge Amendment 2 Approved by Minister of Finance: January 30, 2024 *("****UDAP Rule****")*
Insurance[1] Policy #: #001013511806 (the "Insurance Policy", "**Insurance Contract**"[2] or "Insurance Policy #806")
Insurance Program and Product*: Alumni And Professional Program*
Underwriter/Insurer*: Security National Insurance Company (****FSRA*** *Insurance Registration* ***#397****[3])*

> ***Combined Name with two distinct trademarks for two different insurance programs****: "TD Insurance Meloche Monnex"*
> ***Trademark word holder of "TD Insurance":*** *The Toronto-Dominion Bank ("TD Bank")*
> ***Trademark word holder of "Meloche Monnex":*** *Meloche Monnex Inc. ("MMI"), a CBCA incorporated company in [NTD:*

"Broker": *Meloche Monnex Financial Services Inc. (the "****Broker****" or "****Agent****", or "****MMFSI****")*
"Named Insureds": *BMW Financial Services Inc. (A Division of BMW Canada Inc.) (defined as "****BMW FS Inc****."; and Nicole Artopoulos (B.A., M.A.) ("****McLean Spouse****" or "****Individual Policyholder****")*
Insured Automobile*: BMW 3 Series Xi Drive 2019 4DR AWD*
Lessee*: Nicole Artopoulos*
Lessor*:* ***BMW FS Inc.***
Insured Person[4]*: Mr. Kevin A. McLean (B.A., J.D., CIM) ("Artopoulos Spouse", "Insured Person", "Unnamed Insured Person", "Occupant" ,"Appellant", Applicant", or "Claimant"[5])*
Date of Loss*: August 31, 2022 ("****DOL****" or "****Date Of Loss****")*

Location of Loss*: 320 to 360 Spadina Road (Northbound) (between Heath Rd and St. Clair Avenue), Toronto, Ontario (multiple postal codes due to involuntary movement of Insured Automobile by force of being rear-ended by the tortfeasor (insured by the tort insurer in Pembridge Insurance Company (“***Pembridge***” or “***Tort Insurer***”)*

Police File Number (North York Reporting Collision Centre): *Affidavit #3, Exhibit “A”*

TD Insurance Claim #:**035325790**[6]

TD Insurance Claim # for Appellant: **035325790-3** *(“**TD Claim #3**”)*

AABS File Number: **"23-015662/AABS"**

BETWEEN:

Kevin Alexander McLean

APPLICANT/APPELLANT

AND:

TD Insurance Meloche Monnex (**Security National Insurance Company)**

RESPONDENT

Re: In a matter of an **Appeal** (also defined as "**Application**", "**Application Of Injured Person**" or "**Application**") by the **Appellant** (also defined as "**Applicant**", "Claimant" or "Beneficiary"[7])[8] under the *Insurance Act*, RSO 1990, c I.8 et seq[9] (the "*Insurance Act*") in the above-noted **AABS Claim Number** (also defined as "**SNIC Proceeding**")

Re: NOM #10
Dated: June 7, 2024

<table>
<tr><td rowspan="5">APPLICANT/APPELLANT (PARTY)

Mr. Kevin A. McLean (B.A., J.D. CIM)
410-775 King Street West,
Toronto, Ontario, M5V 2K3

Telephone: 647.513.1270
Email: <u>MCLEANSNICLAT@GMAIL.COM</u></td><td>RESPONDENT PARTY[10]</td></tr>
<tr><td>Security National Insurance Company (Securite Nationale Compagnie D'Assurance)

Insurance License Number: <u>#397</u>

("SNIC", "SABS Insurer", and "SNIC #397")</td></tr>
<tr><td>Canadian Head Office

12th floor-50 Place Cremazie,
Montreal, QC
H2P 1B6</td></tr>
<tr><td>Address for Service in the Purported SNIC Response</td></tr>
<tr><td>101 McNabb Street,
Markham, Ontario,</td></tr>
</table>

	L3R 4H8 (“**SNIC** Markham”)
	AND TO (2):**AND TO:**
	Unlicensed Non-Exempt Representative to **SNIC** (“**Non-Exempt Non-Licensee**”): Mr. David **Karat** employed by TD Insurance[11] at the premises situated at 101 Mcnabb St, **Markham**, Ontario, L3R 4H8 (“**SNIC Markham**”)[12]; (“**Karat**”, “**ADR Representative**”, “**ADRR**”, “**ADR Specialist**” or “**Sole Signatory**” (of the “**Purported SNIC Response**”); 101 McNabb Street **Markham**, Ontario, L3B 4H8 877 855-3767 E-mail : david.karat@tdinsurance.com
	AND TO (3):
	TD General Insurance Company (“Non-*SABS* Insurance Company”) **(FSRA** Insurance Company registration number: **#353)** 3650 Victoria Park Avenue North York, Toronto, Ontario
	AND TO (4):
	Legal Representative **to Non-SABS Insurance Company (Non-Entitled Party)**
	Mr. Matthew **Nieuwland**, Barrister and Solicitor with the **LSO** **LSO** No. 71045A

Status: "Employed – Practising Law" L1 Licensee[13] with **LSO**[14], Employed by **TD Insurance Staff Legal** ("**TDISL**") Individual address for service: 66 Wellington St W, Toronto, Ontario, M5K 1A2 Email in **Nieuwland DOR (Non-*SABS* Insurance Company; Non-Respondent and Non-Party)** (January 30, 2024) (e): matthew.**Nieuwland**@tdinsurance.com[15]
AND COPIED TO (5):
Copied to: legal assistant to Mr. Nieuwland and "Ashley Dunkey"[16] Ms. Christiana Ortiz Christiana.ortiz@tdinsurance.com

(SOLELY FOR PURPOSES OF POTENTIALLY INTERVENING IN THE HEARING OF THIS MOTION OR BY WAY OF AMICUS CURAE)[17]:

Financial Services Regulatory Authority ("**FSRA**")
25 Sheppard Ave W
Suite 100,
North York, ON
M2N 6S6

Attention: The Chief Executive Officer of the **FSRA**, Mr. Mark White[18]
Attention: **FSRA** regulatory department for automotive insurers in Ontario
(e): contactcentre@**FSRA**o.ca

1. On August 31, 2022, the Appellant, as the driver of of a stopped Insured Automobile, was rear-ended at high velocity by an oversized and above-average weight SUV which caused his head to hit the steering wheel whilst involuntarily surging said Insured Automobile some 30 feet forward.[19] He sought benefits from SNIC and paid or approved some benefits and denied others. SNIC (the "SABS Insurer"), is an out-of- province insurer located in Quebec, and its FSRA insurance registration number has been and is #397.

2. TDGIC's (the "Non-SABS Insurance Company") FSRA insurance registration number has been and is #353.[20]In *Landreville*[21] at 814, Beetz J., for the SCC, noted: "Fraud, dishonesty[22], bad faith[23], extortion and bribery form a special category of causes of nullity, which transcends all others. Fraud unravels everything[24] (see: Lord Denning in *Lazarus Estates Ltd. v. Beasley*, at p. 712.)[25]

3. In 2024, Adjudicator Jarda of the LAT (AABS) released her precedent setting decision in *Chandrarajah* regarding irremediable nullities. She found that in the absence of a lawfully appointed representative for a party to a LAT proceeding, there was no viable way for a party, who did not have an authorized representative who was instructed by the correct and legal party to continue in the proceeding. Adj. Jarda further found that where a party has been put on notice of unauthorized representation or an absence of authorized instructions by the party entitled by law to be named therein, to a representative along with delays veering into the low hundreds of days and no evidence had been provided by the party, entitled by law to be a party in a LAT proceeding, as to any particulars or steps it had taken regarding authorized instructions from the party to its representative, this Tribunal declared a singular pleading nullity to be irremediable. *Void ab initio* is a Latin term that means "void from the beginning."[26] An "Irremediable nullity" is a nullity which cannot be remedied and focuses on the permanence of the invalidity. The irremediable nullities herein cannot be fixed or cured, even if Karat attempted to do so as he did have authority at first instance to sign and file the SNIC Response, and Nieuwland was acting for the Non-SABS Insurance Company without standing. Without standing, all else falls and unravels.

4. There is a distinction between removal of counsel and removal of unauthorized filings from the record. This NOM #10, to be heard at the same time as NOM #8, has its singular focus on the remedies sought in the duly signed motion form by the Appellant.[27]

5. The Tribunal had the power to direct the Appellant and SNIC to attend a pre-hearing conference but did not have the power to direct the Appellant and TDGIC to a pre-hearing conference or case conference (see: section 5.3 of *SPPA*). The Appellant does not fault the Tribunal as it was misled by individuals after the filing of the Appeal, and after the SNIC Response, and that level of dishonesty over some 131 days was a calculated risk by the likes of Mr. Nieuwland, Ms. Moraes *et al* for TDGIC and Mr. Karat (*et al*) for SNIC but the risk had consequences.

6. In *Jia*, the Ontario Divisional Court affirmed the findings of Vice-Chair Trojek when it found "that the specific protections provided in the *SABS Schedule* cannot be avoided by the general discretion granted to an Adjudicator under s.15 of the *SPPA*. Otherwise the protections enacted in s.33 of the *SABS* would be largely illusory." [28] The evidence filed by TDGIC was a nullity and was not to be admitted, and now irremediable.

7. Pursuant to Rule 14.6, "A party as defined under Rule 2.16 must attend their case conference." As Karat did attend but SNIC and TDGIC refused to properly notify the Tribunal of the correct respondent, while the Appellant maintained consistency in each and every filed document naming "TD Insurance Meloche Monnex" (Security National Insurance Company), as a technical matter, SNIC did not attend the case conference and/or did not have an authorized representative at the case conference. The same applied to NOM #4 and NOM #6 which were set by LAT orders.

8. As a direct consequence of the Non-SABS Insurance Company admitting, through its legal representative (Nieuwland), on June 6, 2024, that TDGIC would not oppose the relief sought in NOM #8, the Appellant seeks a procedural order that NOM #10 be heard on June 20, 2024. TDGIC's admission, through Nieuwland, was an admission or tantamount to an admission consistent with the Appellant's position since

January 30, 2024, that TDGIC did not have standing to be the sole respondent herein, and particularly, in substitution of SNIC #397 (the "**Non-Party Admission**" or "**Non-Standing Admission**").

9. NOM #8 arose as Nieuwland, for the first time, represented, albeit orally, on May 2, 2024 to the Tribunal (Vice-Chair Painchaund), SNIC (Karat), and the Appellant, the following: (1) 'SNIC and TDGIC' were and are "*one and the same*"; and (2) "This is how we always do it" (with respect to TDGIC substituting itself for SNIC in LAT proceedings).

10. After review of his notes from the May 2, 2024 multi-purpose pre-hearing conference and the 'to-be' ordered hearings of NOM #4 and NOM #6, the Appellant found the **FSRA Enforcement Decisions** and brought the same to the attention of the Tribunal. The Tribunal then, on or around May 6, 2024, invited Nieuwland to file a DOR for SNIC and, implicitly, amend the name of the respondent from TDGIC to SNIC. Nieuwland did not respond. On or around May 8, 2024, the Appellant delivered a formal letter to the Tribunal inviting it to correct the technical deficiency error on its own initiative. On May 15, 2024, the Appellant delivered his NOM #8 with the entirety of the hearing record in index, tabulated and consecutively numbered form but for the motion submissions. On May 19, 2024, the Appellant served SNIC, with a courtesy copy to TDGIC, with the motion submissions. The Appellant provided notice to the FSRA to appear by way of *amicus curiae*. On June 5, 2024, the Tribunal ordered that NOM #8 be heard on June 20, 2024. On June 6, 2024, TDGIC made the **Non-Party Admission** with the only corollary being that SNIC was the "sole party respondent" as a matter of simple deduction. On June 6, 2024, the Appellant drew to the attention of the Tribunal the *Syed Decisions* wherein Nieuwland was co-counsel and sole counsel in the initial decision and reconsideration decision of Adjudicator Evans along with inviting Nieuwland to file a DOR on behalf of SNIC whilst providing notice of proceeding accordingly. The *Syed Decisions* demonstrated that Nieuwland's representation of "this is how we always do it" [sic] and "TDGIC and SNIC being one and the same" was a misrepresentation with knowledge and intent to obtain a strategic advantage in April and May 2024. On June 6, 2024, the Appellant confirmed to the Tribunal, SNIC and TDGIC that he was obtaining the current certificates of status from the FSRA and

paying the requisite fees for the same, which further confirmed, consistent with the FSRA Enforcement Decisions, that SNIC and TDGIC were NOT "*one and the same*". Ergo, Nieuwland's representations to the Tribunal on May 2, 2024 were not innocent but calculated and intentional misrepresentations where he was playing a "game with the Tribunal" and taking inconsistent positions within this SNIC Proceeding and other unrelated Tribunal proceedings.

11. The list of dishonest conduct by the Non-SABS Insurance Company[29], through Nieuwland, and some by SNIC, through the unlicensed representative in Karat, are now well-known to the Tribunal and with the **Non-Party Admission**, this SNIC Proceeding has been irremediably tainted such that the only remaining issues are what the Appellant is entitled based on the documents in his affirmed evidence which all relate to SNIC's liabilities under the Insurance Act and SABS.

12. On April 11, 2024, the dishonest conduct and breaches of the LAT Rules continued by Nieuwland on behalf of the **Non-SABS Insurance Company**. Nieuwland tendered, on behalf of TDGIC, two responsive motion submissions to the LAT ordered timelines for NOM #4 and #6 whilst not complying with LAT Rule 9.4.5. In those non-compliant motion submissions, duly signed by Nieuwland on behalf of TDGIC (not SNIC), Nieuwland made the following misrepresentations including but not limited to the enumerated points.[30] If these abuses of process were not overwhelmingly enough when measured against the Non-Party Admission, Nieuwland also filed another non-compliant motion, contrary to Rule 9.4.5, seeking costs in an amount not allowed by the Tribunal by simple arithmetic under Rule 19 and that only a party [not TDGIC] can seek costs.[31] In *Syed*, Adjudicator Evans found, "The applicant was denied certain benefits by Security National Insurance Company, THE RESPONDENT, and submitted an application to the Licence Appeal Tribunal - Automobile Accident Benefits Service ("Tribunal") for resolution of the dispute" while denoting counsel as *none other* than "Matthew Nieuwland, Counsel for the Respondent".

VOLUME #2: ISSUE OF LAW

13. *What is the legal effect of the* ***Non-Party Admission****, on June 6, 2024 (some 131 days after notice was provided to SNIC and TDGIC) on behalf of the Non-SABS Insurance Company with respect to the now*

undisputed and admitted nullity filings by TDGIC along with the previous misrepresentations by Karat (SNIC) and Nieuwland?

VOLUME #3: LEGAL BASES

14. This **SABS Insurer**, and all SABS insurers, owe a continuing duty of faith and fiduciary duty to the Appellant until the Appellant and SNIC settle all issues in accordance with section 9.1 of Reg 664 or the Tribunal has decided all issues in this SNIC Proceeding (or any future proceedings between SNIC and the Appellant) (see: *Beasley*). The Tribunal has found that insurance companies are the sophisticated parties and they must ensure that any person providing legal services before the Tribunal is authorized and licensed to do so (see: Mosa, paragraph 20). The Tribunal has the statutory authority to make order in this **SNIC Proceeding** to prevent abuse of its process and control its proceedings.[32] The Tribunal has the power, pursuant to the statute[33] in which this SNIC proceeding has arisen to disqualify counsel for breaches of privacy and confidentiality. [34] [35] However, removing counsel and having SNIC retain new counsel does not cure the nullity filings and the improperly filed evidence by a non-party, along with an insurmountable amount of deceit by Nieuwland, over some 131 days. The Tribunal cannot condone violations of the *LSA* and the LSO By-Laws (see: *Dankha*). Since 2006, non-licensee agents cannot exclusively appear as the representative for another person in a LAT proceeding.[36] ADR representatives, who are neither lawyer licensees nor paralegal licensees, have not been found to be separate "parties" and have been excluded from acting on behalf of an insurance company even for written hearings pursuant to section 23(3) of the *SPPA*, and ADR specialists not being representatives under Rule 2.20, and section 26.1 of the LSA (see: *Mosa*). Permitting unlicensed individual to provide legal services results in procedural unfairness to the Appellant (see: Mosa, paragraph 19).[37] As such, Mr. Karat cannot respond (file and sign responsive submissions) to NOM #8 or NOM #10. [38]

VOLUME #4: CONCLUSION

15. The principle of abuse of process is somewhat amorphous. The categories of abuse of process are open. Abuse of process may be found where proceedings involve a deception on the court or constitute a mere sham; where the process of the court is not being fairly or honestly used, or is employed for some ulterior

or improper purpose. Permitting the SNIC Proceeding to proceed with SNIC finally attending to retaining a lawyer licensee, having Mr. Nieuwland remove himself as counsel, and then SNIC having to instruct new counsel of all of the various issues would violate principles such as judicial economy, consistency, finality and the integrity of the administration of justice. Moreover, the irremediable nullity documents filed in the record, open to the public, would still remain. *If advancing irreconcilable positons between proceedings is impressible by the same party but what about a Non-SABS Insurance Company and its representative advancing irreconcilable and inconsistent positions within the same SNIC Proceeding?* [N]either pleadings nor any other of the court processes are a game to be played according to what appears to be a strategic advantage of the time. [39]This is where the Tribunal and the Ontario Superior Court differ. In the latter, an order of special costs or solicitor-client costs would be ordered to the tune of some low six figure amount to cover for all of the steps taken and "costs thrown away". However, the Tribunal only has the power to order $1,000 in costs per hearing. It is trite that "No court will lend its aid to a man who founds his cause of action upon an immoral or an illegal act" is the common law principle founded on the Latin phrase "*EX TURPI CAUSA NON ORITUR ACTIO"* . Pursuant to the SPPA, SNIC cannot rely on its breaches of duties of good faith and fiduciary duties (by omission) to the Appellant, along with Mr. Nieuwland's misrepresentations to the Tribunal, for it [SNIC] to now protest that it did not have notice of the pre-hearing conference, NOM #4 and NOM #6 *et al*. Rather, SNIC had notice of the same but chose to not participate in this hearings. As such, the Tribunal has the power, and it must pursuant to governing legislation, to prohibit SNIC from any further notice in this **SNIC Proceeding** (see: *SPPA*, section 7(1) to (3) depending on the type of hearings that were set and the ability of a party to respond). To accede otherwise to any other relief would be to condone the utterly disgusting and dishonest conduct over an extended period of time when a duty of good faith and fiduciary duty was required by SNIC who chose not to participate after the filing and serving of the SNIC Response.

16. All of which is respectfully submitted to the Tribunal:

[INTENTIONALLY BLANK]

ENDNOTES

[1]"**Insurance**" means the undertaking by one person to indemnify another person against loss or liability for loss in respect of a certain risk or peril to which the object of the insurance may be exposed, or to pay a sum of money or other thing of value upon the happening of a certain event, and includes life insurance (see: s.1(1) of the UDAP Rule);

[2]UDAP Rule, 1(1)(v)(c): "Contract of insurance" means:(c) for a contract of insurance not referred to in (a) or (b), has the meaning ascribed to "contract" in s. 1 of the Act; see: section 1(1) of Insurance Act (Ontario): "contract" means a contract of insurance, and includes a policy, certificate, interim receipt, renewal receipt, or writing evidencing the contract, whether sealed or not, and a binding oral agreement;

[3]See: *SPPA*, section 1(1) definition of license: registration or similar form of permission required by law;

[4]See: *Insurance Act*, ss. 279 (incudes does not exclude); see: section 3(1) of SABS which includes the Spouse of the **Individual Named Insured** (Artopoulos)

[5]As defined under UDAP Rule, ss. 1(1): "Claimant": "means a person who claims statutory accident benefits or who otherwise claims any benefit, compensation or payment under a contract of insurance,

[6]See: **SNIC** Response on January 25, 2024

[7]As it relates to the statutorily deemed contractual relationship between the Insured Person (Applicant) and SNIC (#397). In reference to the statutorily deemed or imposed contractual relationship between the Applicant and Respondent (SNIC), the Insurance Act does not distinguish at law (distinction without a difference) between named and unnamed insured persons when an Insured Person is a Spouse of the Individual Policyholder and, namely herein, the Unnamed Spouse was driving his Spouse on an emergency basis for a personal and confidential issue, and was rear-ended in the course of those "spousal duties" or "spousal efforts". Put another way, the Appellant met the definition of an Insured Person on a variety of independent grounds including being the occupant (driver) and Spouse along with not being at any kind of fault for the accident (i.e. such driving conduct by some drivers is so reckless that it renders the coverage null and void irrespective of their named or unnamed insurance status. There was and is certainly an argument that the tortfeasor by running a red-light by way of left hand turn from St. Clair onto Spadina avenue, and then rear ending the Insured Automobile at high velocity up a slight hill may be such conduct that would have or may render her outside of her coverage with Pembridge but that is yet to be determined and no relevant herein). There is a surfeit of a law on the concept or doctrine of a "third party beneficiary" as it relates to, inter alia, certain individuals being foreign to the contract (i.e. not privies) but seeking recourse under such a contract as a "third party beneficiary" in cases such as privacy breaches where an unknown class of persons is identified as potentially being subject to prejudice thereunder and potential benefit therein by paying out of damages. It is a rare concept and often fails but nonetheless worthy of noting for distinction purposes. Under the Insurance Act (and SABS by implication or expressly, and/or a combination of both), the Legislature was unequivocal and unambiguous in its language that not only was the Appellant deemed an "Insured Person" but he was deemed to be a party to the Insurance Policy as if he had provided consideration thereunder at the time of contract formation (on or around April 2018) and the ongoing "consideration" in the form of monthly premiums and other requirements thereunder (albeit many unknown to him at the time of contract formation or thereafter).
NTD: cite the law of issue estoppel or res judicata)

[8]Please see: New LAT Rules or "LAT Rules", R. 2.1 and 2.2 for interchangeability between **Appellant** and Applicant

[9]See: section 280(1) "Resolution of Disputes": insured person's entitlement to statutory accident benefits OR in respect of the AMOUNT of statutory accident benefits of which an insured person is entitled; ss. 280(2): the insured person OR the insurer may apply to the LAT to resolve a dispute described in subsection 280(1) (see: Affidavit #23, Exhibit "A", page 52

[10]**(PURSUANT TO SECTION 1(1), 224, 268(3) AND 280 OF THE *INSURANCE ACT*, SECTION 1, 89 AND 92 OF THE LEGISLATION ACT, SECTION 1, 5 AND 21.1 OF THE SPPA, SECTION 11 OF LATA ET AL)**

[11](previously authorized for **SNIC** but not at the time of NOM #6)

[12]See: **HR INDEX**, Tab 3, page 99;

[13]71405A

[14]https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=71405A

[15]See: **HR INDEX**, Tab 4, page 120 and 121

[16](not the fictitiously represented or misrepresented legal assistant in Ms. Moraes (legal assistant to Ms. Arfa Saeed and Ms. Adrianna Klukowska)

[17]The **FSRA** is included herein as Mr. Nieuwland represented on May 2 that "Well, this is the way we always do it". If that is partially or fully correct, then the FSRA must forthwith investigate if the conduct between SNIC and TDGIC is a systemic problem and affecting (or may continue to affect) other insured persons similarly situated in SABS claims.

[18]https://www.fsrao.ca/about-fsra/leadership/mark-e-white

[19]SNIC, albeit using the wrong postal code despite the same for his Spouse who received her accident benefits package, tardily sent him the accident benefits package. After delivering signed OCF documents exclusively to SNIC, SNIC confirmed that the Appellant was an Insured Person by virtue of being the spouse of the Individual Policyholder. The OCF documents prohibited the conduct of TDGIC herein which, at the high end, has been the impermissible and non-consensual disclosure by the Non-SABS Insurance Company in this SNIC Proceeding. The depth and breadth of breaches by TDGIC is still being investigated and pursued independently as the Tribunal does not have jurisdiction in certain regards (see: Mansuri).
[20]As pointed out to the Appellant by the FSRA, with status certificates to follow as a formality, SNIC and TDGIC have been authorized with different classes of insurance in Ontario.
[21]*Landreville v. Town of Boucherville*, 1978 CanLII 202 (SCC),
[22]In this context of this licensee (Nieuwland) and Moraes (a P1 holder) and her supervising lawyers, please see: Dishonest conduct by a licensee has a significant impact not only on the licensee's clients. More broadly, "a breach of integrity such as this has a corrosive impact on public confidence in the legal profession and the administration of justice": *Christie* at para. 37. Non-licensees are **uninsured,** and **immune** from the regulatory and disciplinary control of the Law Society. Former licensees or non-licensee do not contribute to the Compensation Fund, are not subject to trust accounting requirements, and are not subject to assessment of any fee taken. This presents an obvious and significant risk to the public, in that there is no recourse to the Law Society's regulatory structure and, generally, little to no recourse against the former licensee for negligent or fraudulent acts done in the course of unauthorized practice.
[23]SNIC has a duty of good faith and fiduciary duty to the Appellant.
[24]The Court is careful not to find fraud *unless* it is distinctly pleaded and proved; but once it is proved, it vitiates judgments, contracts and all transactions whatsoever
[25]The dishonest conduct herein occurred after the Appellant filed and served the Appeal on SNIC, and primarily after the signing, filing and serving of the SNIC Response by Mr. Karat.
[26]Herein, it is the legal instruments signed and filed by Karat on behalf of SNIC and different legal instruments signed and filed by Nieuwland on behalf of the Non-SABS Insurance Company that are invalid and unenforceable from the moment they were signed (and then uttered i.e. filed, then served).
[27]Removing counsel does not necessarily remove filed documents from the record as they are not "one and the same". The *SPPA* does not have a provision for removing unauthorized filings from the record, and the LAT Rules only disentitle a party (not TDGIC) from relying on documents filed in contravention of the LAT Rules except with permission (no longer consent) of the Tribunal. The Tribunal cannot waive a procedural or rules requirement when it is prohibited by legislation which is the distinction between a procedural requirement and a jurisdictional requirement (see: Ameratto). With it now being admitted by TDGIC, through its authorized representative, on June 6, 2024, that it had no standing in this SNIC Proceeding, the damage is done, and it does not appear that the Tribunal has statutory authority to do so at this time (unlike section 21.1 of the *SPPA*).
[28]On April 11, 2024, TDGIC (not SNIC), through the purportedly responsive submissions, signed by Nieuwland, filed unsworn evidence on behalf of TDGIC when it did not have standing herein. The Appellant objected and maintained the objection to present. TDGIC then continued, without Nieuwland, TDGIC or SNIC notifying the Tribunal of the now Non-Party Admission that Nieuwland made on TDGIC's behalf but relevant to SNIC, and filed a case conference brief on behalf of the Non-SABS Insurance Company.
[29]Despite Mr. Karat copying him on the January 23 email which referred to Nieuwland as counsel for Security National Insurance Company, and Karat signing and filing the SNIC Response on January 25, 2024, Nieuwland was conveniently out of office from January 24 to 29. On January 30, one Ms. Moraes, a legal assistant to Ms. Saeed and Ms. Klukowska, delivered a DOR on behalf of Nieuwland was inconsistent with the SNIC Response as the filed DOR was on behalf of TDGIC – not SNIC. After the Appellant querying Nieuwland for the name of his actual legal assistant, Nieuwland continued to 'double down' and represent that Ms. Moraes was his legal assistant and demanded the Appellant copy her on correspondence. The Appellant confirmed he would if Nieuwland provided him with an unsworn affidavit. Nieuwland did not respond. In April 2024, Nieuwland's actual legal assistant surfaced in one Ms. Ortiz, slightly before the deadline for the April 11, 2024 responsive submissions for NOM #4.
[30](1) Mr. Kart was appointed [sic] as the ADR officer [sic] by TDGIC [sic] when, in fact, Mr. Karat represented, with Nieuwland copied on the January 23 email, that he was assigned as he ADR specialist by SNIC (see: paragraph 2); (2) Mr. Nieuwland was the lawyer for the Respondent [sic] (see: paragraph 3); (3) Ms. Moraes was Mr. Nieuwland's legal assistant when she was not and Mr. Nieuwland failed to provide any evidence of the same (see: paragraph 4); (4) Mr. Karat was an officer (nb: as a way to somehow contend that Mr. Karat could sign on its behalf as "officer" is used in the LSA) of the Respondent (TDGIC) when Mr. Karat never represented he was an officer at the time or thereafter (see: paragraph 5); (4) Contrary to Mr. Nieuwland's representation that Ms. Moraes was his legal assistant, Ms. Moraes' signature block referenced two female lawyers who were not Mr. Nieuwland (see: paragraph 6); (5) Mr. Nieuwland referred to the Impugned Individuals as "parties" when they were not entitled "parties" pursuant to section 5 of the *SPPA* and never sought leave to be added as "parties" (see: paragraph 7); (6) Nieuwland then, absent any evidence under oath by any individuals for themselves or on behalf of SNIC or TDGIC to counter the evidence of the Appellant, misstated the legal burden for the COI Motion (see: paragraph 8); (7) Nieuwland then misrepresented that the Appellant had received a letter regarding the "Andy Gera" name issue (see: paragraph 9); and (8) Nieuwland then misstated the legal test for a Tribunal to find a conflict of interest by referencing when it occurs as opposed to the settled legal test by the SCC that even perceived conflicts of interest by an objective person are sufficient to disqualify counsel and all those associated with counsel (see: paragraph 10).
[31]Moreover, Rule 19 is unequivocal that costs submissions can only be sought before the decision is made by the Tribunal. In effect, Nieuwland attempted, with an ulterior purpose or bad faith motive on behalf of the Non-SABS Insurance Company, to obtain an unlawful

costs order to create unreasonable costs and expenses for the Appellant all contrary to the LAT Rules and the UDAP Rule. Said non-compliant motion was declined to be decided by Vice Chair Lake without submissions requested from the Appellant.

[32](see: section 23(1) and 25.0.1 of the *SPPA*).

[33](Insurance Act, specifically, s. 280 (see: Mansuri, paragraph 19)

[34](see: Mansuri, paragraph 14))

[35]An order that the parties engage in document production herein is not applicable as Nieuwland solely acts for the Non-SABS Insurance Company, and only SNIC owes the Appellant a duty of good faith and fiduciary duty.

[36](see: section 1 and 10 of the *SPPA*; section 1(7) of the LSA; section 89 of the Legislation Act).

[37]A non-licensee is prohibited from even signing correspondence on behalf of the licensee's client unless it is a routine administrative nature (see: By-Law 7.1, section 6(d)).

[38]Parties are required to follow tribunal orders to ensure procedural fairness and integrity of the hearing process or their non-compliantly filed documents are struck from the record of proceeding (see: Orne, paragraph 16).

[39]The court expects a party to take a position which is consistent with its evidence and to maintain that position in its dealings with the court. In other words, saying something to one judge and saying the opposite to another will not be countenanced. His reasons make reference to a number of cases supporting the proposition that inconsistent positions in prior proceedings can constitute an abuse of process. *Mystar Holdings Ltd. v. 247037 Alberta Ltd.*, 2009 ABQB 480 was cited with approval.