

BETWEEN:

KEVIN ALEXANDER MCLEAN

APPELLANT

AND:

SECURITY NATIONAL INSURANCE COMPANY

RESPONDENT

Re: NOM #19 Hearing Record Index

APPLICANT/APPELLANT (PARTY)	RESPONDENT 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>	Security National Insurance Company FSRA Registration Number #353 5045 South Service Road, Floor #5 Burlington, Ontario, L7L 5Y7 Fax: 905-315-1074 Attention: Mr. David Karat (ADR Specialist) (deemed representative pursuant to ss. 1(7) of the LSA as of January 25, 2024) (david.karat@tdinsurance.com) Mr. Matthew Nieuwland, lawyer licensee with the LSO (declared representative as of June 28, 2024) (matthew.nieuwland@tdinsurance.com) With a copy to Mr. Nieuwland's legal assistant: Ms. Christiana Ortiz (christiana.ortiz@tdinsurance.com)

Hearing Record Index

1. NOM #19 Form with Submissions

Tab #1

**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

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 (<i>City, town</i>)		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.

The Appellant seeks the following relief without the consent of SNIC:

1. An Order that this motion is heard prior to any purported hearing proper involving the Applicant and SNIC;
2. An Order that to the extent that this motion is not heard and decided prior to the purported hearing proper, that the hearing proper is adjourned generally;
3. A Declaration, Order, Finding or Determination that SNIC failed to file a case conference brief;
4. A Declaration, Order, Finding or Determination that the pre-hearing conference conducted by the LAT was without statutory authority as it was contrary to section 5.3 of the SPPA; and
5. Costs against SNIC if it does not consent to the relief herein.

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

The Appellant relies on the following in the record of proceeding (as defined under section 20 of the Statutory Powers Procedure Act) including affidavits #1 to #38 but not limited to:

1. Case Conference Brief filed by TDGIC (a non-party);
2. The case conference notes by Vice Chair Painchaud;
3. The directions following the case conference by Vice Chair Painchaud;
4. Section 5.3 of the SPPA; and
5. Written Submissions.

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: 2025/01/24
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

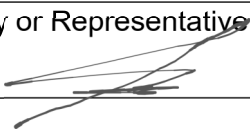
Last Name

McLean

First Name

Kevin

Signature of Party or Representative



Date (yyyy/mm/dd)

2025/01/21

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.



Submission for Tribunal File Number [23-015662/AABS](#)

General Information

Company/Firm Name (if applicable)

Person Submitting Documents

Last Name MCLEAN	First Name KEVIN	Middle Initial ALEXANDER
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Mailing Address

Unit Number	Street Number 775	Street Name KING ST W	PO Box
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City/Town TORONTO	Province/State ON	Postal/Zip Code M5V2K3
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Country
[Canada](#)

Daytime Phone 647 513-1270	Ext.	Alternate Phone	Ext.	Fax Number
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Email Address
mcleansniclat@gmail.com

Documents Submitted

1 . Notice of Motion

[Notice of Motion_AR_NOM_19_Case Conference_Nullity_Without Jurisdiction_KAM_signed_Document.pdf](#)

Acknowledgement

Read carefully and then confirm the statements below.

I am the Claimant

- ☒ I certify that all information above and in the attachments are true and complete.
- ☒ I certify that within 5 days, I will serve a copy of the attached documents on all other parties and will serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at www.slsto-tsapno.gov.on.ca/lat-tamp/en/automobile-accident-benefits-service/forms/).

Date of submission [2025-01-21](#)

LAT File #: 23-015662/AABS

BETWEEN:

KEVIN ALEXANDER MCLEAN**APPELLANT**

AND:

SECURITY NATIONAL INSURANCE COMPANY**RESPONDENT**

Re: Motion Submissions for NOM #19**Re #2: SNIC failed to file a case conference summary or brief****Re #3: SNIC failed to attend a case conference****Re #4: SNIC failed to seek to correct the same thereafter**

APPLICANT/APPELLANT (PARTY)	RESPONDENT 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>	Security National Insurance Company FSRA Registration Number #353 5045 South Service Road, Floor #5 Burlington, Ontario, L7L 5Y7 Fax: 905-315-1074¹ Attention: Mr. David Karat (ADR Specialist) (deemed representative pursuant to ss. 1(7) of the LSA as of January 25, 2024) (david.karat@tdinsurance.com) Mr. Matthew Nieuwland, lawyer licensee with the LSO (declared representative as of June 28, 2024) (matthew.nieuwland@tdinsurance.com) With a copy to Mr. Nieuwland's legal assistant: Ms. Christiana Ortiz (christiana.ortiz@tdinsurance.com)

VOLUME #1: MATERIAL FACTS

1. The Appellant was injured in the **Accident** as the **Driver** of the **Insured Automobile** on the **DOL**. SNIC was the Sole Underwriter. By being the “applicant” in the JRPA Proceeding which remains ongoing, the Appellant refers to himself as the Appellant and the Applicant interchangeably. The Applicant repeats and relies upon the sworn evidence in affidavits #1 to #38. Despite being the Sole Underwriter of the Insurance Policy, SNIC provided the Applicant with the fax number of TDHA as opposed to its own. On October 13, 2022, TDHA became the First Insurer on a provisional basis. On January 11, 2023, TDHA became the First Insurer on a permanent basis.
2. Despite the Applicant serving the fax number of 416.774.3120 with the LAT Appeal, SNIC purported to file a Response by the sole signatory of Mr. Karat, a self-titled ADR specialist and non-licensee (as defined by the LSO By-Laws), on January 25, 2024.
3. On January 30, 2024, Mr. Nieuwland filed a DOR on behalf of TDGIC (FSRA registration number 353). In April 2024, TDGIC filed a case conference brief by the Tribunal’s direction that a case conference be conducted between the Applicant and a non-party in TDGIC. In April 2024, the Applicant, consistent with the only underwriter and insurance company that he knew of as per representations made by SNIC and SNIC being the sole insurance company to file a Response, filed a case conference brief involving himself and SNIC. SNIC never filed a case conference brief or sought to correct the same by motion. SNIC was never directed to a case conference.

VOLUME #1(a): JRPA Proceeding

4. For current background, the Appellant provides the following. On November 15, 2024, the Applicant filed and served his JRPA Application regarding the final decisions and orders (five orders therein) arising out of NOM #14 and #15. The ONSC Divisional Court stylized the JRPA Proceeding as *McLean v. TDHA et al.*
5. On November 27, 2024, the Tribunal, through Mr. Boyce, filed a Notice of Appearance.
6. The Tribunal has failed to forthwith file a record of proceeding, contrary to section 10 of the JRPA and section 20 of the SPPA, in the JRPA Proceeding and the Applicant has been compelled to bring a motion against the Tribunal and seek costs against it.
7. On December 3, 2024, the three distinct respondent insurance companies in TDHA, TDGIC, and SNIC, filed a Notice of Appearance. Mr. Nieuwland was and is counsel to each of them and has represented in an open court proceeding that he is counsel to TDHA. Mr. Nieuwland was counsel to the non-party, as found by the VCM Decision on September 13, 2024, to TDGIC, and became counsel to SNIC on June 28, 2024.
8. As the JRPA Proceeding was ongoing, VCM issued her orders and reasons for decision involving the Applicant's NOM #16 which was outstanding since September 2024. ‘
9. On December 4, 2024, Mr. Karat, citing a style of cause unknown to this LAT Proceeding, although an unknown file number, purported to provide documents that related to the VCM orders in NOM #16. NOM #16 involved the party of SNIC and not the non-party of TDGIC. The Applicant put SNIC on notice of the same but it failed to respond for some 50 days. As a result, the hearing proper (albeit involving the incorrect party and the Applicant providing his positions and submissions under protest) must be adjourned. The adjournment request will be further formalized and rely on the same. As noted, case manager Ms. Lee represented to the Applicant that he could bring such an adjournment

motion two days prior and he will do so. It was only prudent to await whether SNIC complied with its obligations and allow time for review by the Applicant to do so.

10. The Appellant, in his capacity as a JRPA Applicant, filed his factum and application record in the JRPA Proceeding on December 10 and 12, 2024, respectively.
11. The Appellant filed and paid for the certificate of perfection on December 13, 2024, along with an affidavit of service.
12. The respondents, inclusive of this Tribunal and the three respondent insurance companies, had 30 days, pursuant to Rule 68.04 of the Rules of Civil Procedure to file their factums and application records. They failed to do so.
13. Despite the sworn evidence that the Applicant had concerns about Mr. Boyce’s acting for the Tribunal in any capacity as a result of his business (employer) name and business address being the same as other adjudicators and vice chairs, and pursuant to the limited participation rights espoused in cases that followed the legal principles in *Ontario (Energy Board)*, Mr. Boyce took the unprecedented step to remove those particulars after such notice.
14. SNIC has been on notice of this issue for some time but failed to take any steps to correct the same. It is obvious why in that SNIC is not the First Insurer. However, the honest approach would have been to disclose the same as opposed to filing a “Response” by a “non-licensee”.

Volume #2: Issues of Law

15. The issues of law are as follows:
 - a. Did SNIC fail to file a case conference brief or summary?

- b. Was the case conference (or pre-hearing conference) conducted without statutory authority rendering it a nullity?
 - c. What relief must be granted against SNIC for its failure to file a case conference brief (and attend at the pre-hearing conference and/or object to the same)?
- 16. The answers are as follows:
 - a. SNIC failed to file a case conference brief;
 - b. The case conference was without statutory authority pursuant to SPPA, section 5.3; and
 - c. Any defence or opposition by SNIC must be prohibited as per the “rule of law” (procedural and substantive) and SNIC should be required to pay costs for each and every motion hearing of the Applicant.

Volume #3: Argument

- 17. While the Appellant’s claim is against the First Insurer in TDHA and that issue has not been resolved yet by the Divisional Court, the fact that SNIC has not filed a case conference brief and it did not oppose the relief in NOM #14 and #15, declaratory and consequential relief can be sought against it while it is a party including costs.
- 18. Section 5.3 of the SPPA states:

Pre-hearing conferences
 5.3 (1) If the tribunal’s rules made under [section 25.1](#) deal with pre-hearing conferences, the tribunal may direct the parties to participate in a pre-hearing conference to consider
- 19. Rule 14 of the LAT Rules states in part (relevant portions included for this NOM #19 with emphasis being that of the Appellant’s):

“14.2 SCOPE OF CASE CONFERENCE SUBJECT MATTER

The Tribunal may on its own initiative, or in response to a party's written request, direct THE PARTIES to participate in a case conference to consider:

14.4 SETTLEMENT DISCUSSIONS

The case conference is an important opportunity to discuss settlement of the issues without the need for a hearing. The PARTIES are expected to come to the case conference prepared to discuss settlement.

14.6 PARTY ATTENDANCE AT CASE CONFERENCES

A PARTY as defined under Rule 2.16 must attend their case conference.

20. The following definitions are relevant to this NOM #19:

2.4 “CASE CONFERENCE”

“Case Conference” has the same meaning as “Pre-Hearing Conference” as defined in the SPPA.

2.16 “PARTY”

“Party” means a person, association or corporation who has the right to participate in a proceeding and has notified the Tribunal of their intention to participate in the proceeding

2.21 “RESPONDENT”

“Respondent” means the party identified as the respondent in an appeal or the party who is identified as the respondent under the applicable legislation.

2.22 “RESPONSE”

“Response” means the response a respondent is required to provide in relation to an appeal or as may otherwise be specified by the Tribunal.

Volume #4: Conclusion

21. Rule 20.4² and 9.4.1. are further rules that support the Appellant’s relief sought and SNIC must be required to pay costs for all steps taken by the Appellant including all motion hearings as per its failures regarding failing to file a case conference summary (brief),

failing to attend the case conference et al despite filing the SNIC Response on January 25, 2024.

22. The Appellant objects and reserves his right as he has done since NOM #14 and #15 and on the same grounds as NOM #20. The Appellant reserves his right of statutory appeal and/or judicial review even on academic and public interest grounds.
23. SNIC cannot have it both ways. SNIC filed a Response but TDGIC did not do so. Therefore, at the time that the Tribunal directed a case conference, whilst the Appellant objecting at each stage and at the pre-hearing conference and thereafter until NOM #8 was granted (not by consent as VCM would have it), there were but a few certainties:
 - a. TDGIC was NOT a party as it, inter alia, had not filed a Response;
 - b. TDGIC was not identified in the LAT Appeal (December 24, 2023);
 - c. TDGIC was not identified in any applicable legislation as “the respondent”;
 - d. TDGIC had no right to participate in the LAT Proceeding;
 - e. SNIC had filed a Response; and
 - f. SNIC was required, as the sole party at the time as per the order of VCM that retroactive effect on all documents issued by the Tribunal, to attend its case conference and failed to do so.
24. The Appellant shall file costs submissions in support of the same unless SNIC forthwith consents to the relief herein. Until the First Insurer is declared to be TDHA, the Applicant is only entitled to seek costs against a party which is currently SNIC.
25. Subject to the right of reply, all of which is most respectfully submitted on January 21, 2025, by the Appellant:



Endnotes

¹Not the fax number of the First Insurer in TDHA

²20.4 AABS CASE CONFERENCE SUMMARY

At least 10 days before a case conference, each party must file a case conference summary in such form as required by the Tribunal. The case conference summary must also be served on the other parties.

The case conference summary shall include:

Any preliminary issue(s) the party intends to raise;

Any issue(s) the party is seeking to add to the appeal and whether the responding parties agree to add the issue(s);

A list of documents and things in the party's possession which they intend to rely on at the hearing;

Verification that the documents and things listed in (c) have been provided to, or made available for inspection by, the other parties;

A list of documents and things that a party is seeking from other parties;

Any requests for production orders;

A list of documents and things the party is seeking from non-parties;

The party's preference of hearing format with reasons for the preference;

A list of anticipated witnesses, including expert witnesses, that the party intends to call at an electronic or in-person hearing and a brief description of each witness' anticipated testimony; and

An explanation of the necessity of calling more than two expert witnesses if a party seeks to call more than two such experts.

If a party does not file a case conference summary in compliance with this Rule, the Tribunal will take into account the party's non-compliance when:

making orders and directions under Rule 14.1; and

considering motions for productions under Rule 9 filed by the party after the case conference



Submission for Tribunal File Number 23-015662/AABS

General Information

Company/Firm Name (if applicable)

Person Submitting Documents

Last Name McLean	First Name Kevin	Middle Initial A
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Mailing Address

Unit Number	Street Number 775	Street Name KING ST W	PO Box
City/Town TORONTO	Province/State ON	Postal/Zip Code M5V2K3	
Country Canada			

Daytime Phone 647 513-1270	Ext.	Alternate Phone	Ext.	Fax Number
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Email Address
mcleansniclat@gmail.com

Documents Submitted

1 . Motion Submissions

Motion Submissions_AR_NOM_19_Motion Submissions_Jan 21_25_filed_Document.pdf

Acknowledgement

Read carefully and then confirm the statements below.

I am the Claimant

☒ I certify that all information above and in the attachments are true and complete.

☒ I certify that within 5 days, I will serve a copy of the attached documents on all other parties and will serve the Tribunal with a completed Certificate of Service as proof of service of the documents. (Blank 'Certificate of Service' forms are available on the Tribunal's website at www.slsto-tsapno.gov.on.ca/lat-tamp/en/automobile-accident-benefits-service/forms/).

Date of submission 2025-01-21