Insurance Policy #: #001013511806
Insurance Program*: "TD Insurance Meloche Monnex" (Alumni And Professional Program)*
Broker*: Meloche Monnex Financial Services Inc.* [1]
Underwriter/Insurer*: Security National Insurance Company*
Named Insureds*: BMW Financial Services Inc. (A Division of BMW Canada Inc.); and Nicole Artopoulos (B.A., M.A.) ("McLean Spouse")*
Insured Automobile*: BMW 3 Series Xi Drive 2019*
Insured Person/Appellant*: Mr. Kevin A. McLean (B.A., J.D., CIM) ("Artopoulos Spouse")*
Date of Loss*: August 31, 2022 ("DOL")*
Location of Loss*: Spadina Road (between Heath Rd and St. Clair Avenue), Toronto, Ontario*
Police File Number (North York Reporting Collision Centre):
TD Insurance Claim #: **035325790-3** *("TD Claim #3")*

AABS File Number**: "23-015662/AABS"**[2]

BETWEEN:

Kevin Alexander McLean

APPLICANT/APPELLANT

AND:

TD Insurance Meloche Monnex[3] [4] [5] [6]**(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**")[7] under the *Insurance Act*, RSO 1990, c I.8 et seq (the "*Insurance Act*") in the above noted **AABS Claim Number** (also defined as "**SNIC Proceeding**")

Re #2: **NOM #4**

Appellant's Speaking Notes for NOM #4
(TO BE PROVIDED TO THE ADJUDICATOR OR VICE CHAIR RENDERING DECISION AND ORDER FOR NOM #4)

APPLICANT/APPELLANT

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

Telephone: 647.513.1270

RESPONDENT

Security National Insurance Company ("SNIC")
Insurance License Number: 910166[8]
Security National Insurance Company, Securite Nationale Compagnie D'Assurance[9]

Email: MCLEAN**SNIC**LAT@GMAIL.COM

Canadian Head Office or Chief Agent Address
12th-50 Place Cremazie,
Montreal, QC
H2P 1B6

Address for Service in the Purported SNIC Response and Cover Letter[10] serving the Appellant the same:

101 McNabb Street,
Markham, Ontario,
L3R 4H8

AND TO:

Unlicensed Non-Exempt Representative of **SNIC** ("**Non-Exempt Non-Licensee**"):

Mr. David **Karat:**

(**Non-Licensee** or **Unlicensed Representative** of **SNIC**, employed by TD Insurance[11] at the premises situated at 101 Mcnabb St, Markham, Ontario, L3R 4H8 ("**TD Insurance Markham**" or "**SNIC Markham**")[12];

101 McNabb Street (no unit number)
Markham, Ontario, L3B 4H8
(t):
877 855-3767
E-mail or fax: *none listed* in the **Purported SNIC Response**

("**Karat**", "**ADR Representative**", "**ADRR**", "**ADR Specialist**" or "**Sole Signatory**"(of the "**Purported SNIC Response**");

- AND -

On NOTICE TO (FOR COSTS PURPOSES)

NON-SABS INSURANCE COMPANY in *TDGIC*

COUNSEL TO A NON-RESPONDENT AND NON-PARTY *by way of the* ***Purported Nieuwland DOR***

Legal Representative for TD General Insurance Company ("TDGI") (see: **License Number: 907362** TD General Insurance Company: 66 Wellington Street West, 39th Floor, Toronto, ON M5K 1A2)

Mr. Matthew **Nieuwland**, Barrister and Solicitor with the **LSO** (**LSO** No. 71045A (in "*private practice*" with "**TD Insurance Staff Legal**")

((L1 Licensee[13] with **LSO**[14], employed by **TD Insurance Staff Legal** at the premises situated at 66 Wellington St W, Toronto, Ontario, M5K 1A2)

Email in **Nieuwland DOR Non-Respondent**
(e): matthew.**Nieuwland**@tdinsurance.com[15]

Copied to: legal assistant to Mr. Nieuwland and "Ashley Dunkley"

Ms. Christiana Ortiz
Christiana.ortiz@tdinsurance.com

VOLUME #1: Introduction

1. The Appellant tenders these "Speaking Notes" as a result of the Appellant's Impairment as a result of the Accident, with his memory not being what it once was, for the hearing portion on May 2, 2024; specifically **NOM #4** (also defined as the "IRB Quantum Motion" or "IRB Historical Quantum Motion"). The Appellant adopts the definitions from the "Joint Hearing Brief" for **NOM #4** which was served on **SNIC** (Karat) with courtesy copies to the **NON-SABS Insurance Company** on Friday, April 26, 2024 and then filed thereafter.

2. Further, the Appellant provides these "Speaking Notes" as a courtesy to the Tribunal and the SABS Insurer in Security National Insurance Company (generally defined as "**SNIC**" and "SABS Insurer"; specifically in relation to the IRB Quantum Motion, **SNIC** is defined as the "Sole Historical Benefits Payor", "Sole Payor", "Sole Benefits Future Payor" and "Sole IRB Benefits Payor").

3. The Appellant has met the definition of "Insured" and "Insured Person" since the DOL. The Appellant's rights under SABS as the Spouse of the Individual Policyholder (Artopoulos) and the "Occupant" (Driver) of the Insured Automobile. Pursuant to the *Insurance Act*, the Appellant is not only deemed an "Insured Person" but a "party" to the underlying Insurance Policy and to have given the same consideration therefor inclusive of the "monetary considerations" of "premiums' from the Appellant's Spouse to **SNIC**. The Insurance Policy, as a contract, was affirmed and reaffirmed in its legal validity since Fall 2019 to the DOL. There was never a dispute that the Insured Automobile was a covered automobile at the time of the Accident.

VOLUME #1(A): **SNIC** (the "SABS Insurer")

SNIC as the "Sole SABS Insurer"
SNIC as the "Sole Liable Insurer" for payment of benefits under SABS

SNIC has not opposed **NOM #4** but the order can only be against **SNIC** and in favour of the Appellant

4. The SABS Insurer was incorporated in 1934 (see: HB, Tab 23, page 558) under the laws of Canada and was continued under the Insurance Companies Act (Canada) on or around 1991. The SABS Insurer's head is denoted above ("**SNIC** Head Office"). By virtue of the same, **SNIC** is out of an province insurer who has certain requirements under the *Insurance Act* (Ontario) such as: (i) having a chief agent which **SNIC** has given a power of attorney to he or she. **SNIC**'s official documents, which would include its "license", under section 26 of the *Insurance Act*, are dispositive of the issue of the distinction between **SNIC** as the "SABS Insurer" and "*TDGIC*" as the "Non-SABS Insurer"

5. **SNIC** is the only liable "Insurer" (see: Tab 23 page 545) as a matter of law for the payment of the IRB in the IRB Principal Amount including SABS interest under section 51 therein for "overdue payments" with reference to section 36(9) of SABS. **SNIC** was the underwriter of the Insurance Policy (Insurance Contract) and undertook the same with respect to the Appellant's Spouse and the lessor of the Insurer Automobile in BMW Financial Services Inc.

6. **SNIC** is the only "insurer" named in the "Insurance Policy" which is licensed in Ontario to provide automobile insurance that is relevant to TD Claim #3 and this **SNIC Proceeding**. Section 127 of the *Insurance Act* requires that every policy SHALL contain the name of the insurer. In addition to the Insurance Policy only containing the name of **SNIC**, the "Motor Vehicle Liability Cards" (colloquially referred to as the "pink document") contained the name of the "broker" in Meloche Monnex Financial Services Inc. (the "Broker") and **SNIC**.

7. The Broker is not an "Insurer" and not the SABS Insurer. Put another way, the Broker has no liability for the payments of benefits under the Schedule.

8. The "TDI Group" (defined as "TDI") includes not only brokers but insurance companies (see: Tab 23, page 619).

9. The trade name of "TD Insurance Meloche Monnex" (see: Tab 23, page 620) includes two underwriters for two different insurance programs: (i) Professional And **Alumni Program** (the "**Alumni Program**"); and (ii) Employer Group Program. It is only the **Alumni Program** that is relevant to this **NOM #4** and **SNIC Proceeding** pursuant to the Appellant's Spouse being an alumnus of University of Toronto. Naturally, the **Alumni Program** provides for different benefits than other insurance program that are more general in nature.

10. **SNIC** has insured the Insured Automobile since 2019. Pursuant to section 268(2)(ii) of the *Insurance Act*, the Appellant only had recourse against "The Insurer" of an automobile in respect of which he was an occupant (being the "Occupant Driver"; see: section 1(1) of the *Insurance Act* for definition of "Occupant"). Recovery has been available against **SNIC** since the DOL and **SNIC** has been the sole payor of benefits in 2022 and 2023.

11. **SNIC**'s right to a license under its insurance license number, denoted supra, is based in part on its name pursuant to section 53 of the *Insurance Act*.

12. **SNIC** has an insurance license in Ontario with six different classes of insurance.

13. While the issue of "Medical And Rehab Benefits" are not at issue in this **NOM #4**, only **SNIC** was authorized to collect and use the Appellant's Beneficiary Bank Account details for the purposes of "depositing" ETF payments for various benefits. **SNIC** was and is the only authorized payor for benefits of SABS to the Appellant. Put another way, no other insurance company has the right to deposit any funds to the Appellant regarding SABS as it did not obtain the Appellant's consent (see: SABS, Method Of Payment", infra).

VOLUME #1(B): the sole representative in this herein LAT Proceeding

Mr. Karat is not liable as he is not a "respondent" and not a "party
Pursuant to *Mosa*, he must be excluded from the "hearing portion" of May 2, 2024

14. Mr. Karat remains the sole signatory, filer and server of the **SNIC** Response, and, as such, the de facto representative of **SNIC**.

15. However, as a non-licensed representative under the LSO, Mr. Karat cannot represent **SNIC** in this hearing (partly written and partly electronic) before the Tribunal as he is the sole unlicensed representative. Mr. Karat does not have any exemptions under the By-Laws of the LSA so he cannot represent **SNIC** herein. Moreover, he was required to file a DOR for **SNIC** if he was.

16. In *Mosa*, an ADR representative in Ms. Morrow was excluded from the hearing and acting on behalf of BelairDirect Insurance Company as she was neither a paralegal nor a lawyer, and did not have any exemptions.

17. The argument by BelairDirect Insurance Company that Ms. Morrow was somehow acting for herself and was a separate party was naturally summarily dismissed as having no merit.

18. Moreover, Karat represented in the **SNIC** Response on behalf of **SNIC**, which he, prima facie, solely signed and filed with LAT (with his certifications and representations being "true and complete") and served the Appellant that "he was the insurance company" [sic].

VOLUME #1(C): The **NON-SABS Insurance Company**

19. TD General Insurance Company did not exist until 2000 which was some 66 years after **SNIC** was incorporated. *TDGIC*'s insurance license number is denoted above and it, compared to **SNIC**, only has three (3) classes of

insurance of which it can underwrite and be the "Insurer" with other "insured persons" when it undertakes those 'contracts of insurance'.

20. Precision with names and language is an important particularly when the *Insurance Act*, Law Society Act and *Legislation Act* (with the latter coming into force by the AJA 2006 and the former being drastically amended by the AJA) with had consequential amendments on the *SPPA* (see: Caruso).

> **VOLUME #**1(C)(I): *"Toronto Dominion General Insurance Company" changed its name to "TD Direct Insurance Company"*

21. The former name in the heading is not to be confused with "TD General Insurance Company". Toronto Dominion General Insurance Company changed its name, as per the OSFI public notices, on September 1, 2022 to "TD Direct Insurance Company".

> **VOLUME #**1(C)(II): *"CT Direct Insurance Inc." changes name to "TD General Insurance Company" (see: Tab 23, page 629)*

22. TD Direct Insurance Company (not to be confused with "TD Direct Insurance Agency") only became a legal person and insurance company on September 1, 2000 when "CT Direct Insurance Inc." changes its name to TD General Insurance Company (see: Tab 23, Page 560).

> **VOLUME #**1(C)(III): *"As a Matter of Law"*

23. Therefore, as bizarre as it may seem to some and particularly laypersons in this area or without a background in distinctions between bodies corporate and individuals, corporate governance et al, those insured persons with insurance policies with "Toronto Dominion General Insurance Company' and "TD General Insurance Company" had entirely different underwriters and insurers as it related to whatever insurance policies they had in the licensed classes that those two insurance companies had.

24. While even "common sense" or a "reasonable person" may say that they are one and the same, they were and are not.

> **VOLUME #**1(C)(IV): If "Toronto Dominion General Insurance Company", and "TD General Insurance Company" are not the same, then are **SNIC** and TD General Insurance Company the "same insurer"?

25. By the above analysis, when measured against publicly issued government documents by the OSFI, the question answers itself.

VOLUME #1(D): The representative of the **NON-SABS Insurance Company**

26. Mr. Nieuwland is the representative of the **NON-SABS Insurance Company**.

27. As different insurance companies, which **SNIC** and *TDGIC* were at the time of the DOL (and remain as of May 1, 2024), are required to publish the "Consolidated Premiums and Claims Totals" with the OSFI, which in turn provides public access online to the data, Nieuwland is not only acting for a **NON-SABS Insurance Company**, he

is acting for an insurance company that would not have had "premiums paid to it" and "claims data" regarding this Appellant.

28. On this ground alone, *TDGIC* has no standing in this **SNIC Proceeding** and certainly not in relation to **NOM #4**.

Volume 1(E): pure point of law: admissions on pleadings

29. Pursuant to the only filed pleadings of the Appellant and the SABS Insurer, the issue in this **NOM #4** exclusively relates to **SNIC**'s *historical* obligations (see: *Han* for purposes of historical obligations), pursuant to the *Insurance Act*, for payment of the "Specified Benefit" of "IRB", defined under 33 of SABS.

30. This **NOM #4** does not relate to any potential IRB that the Appellant may be entitled from on or around December 31, 2023 or January 4, 2024 (see: section 64 of SABS; "deemed receipt") to August 31, 2024, and specifically thereafter (see: change in legal test under SABS for IRB post 104 weeks).

31. The SABS Insurer (**SNIC**), pursuant to SABS and insurer who is liable to pay any quantum of "Specified Benefit" as an "insurer" in relation to SABS is never required to pay IRB for the first week after the Accident (the "One Week Moratorium"). The One Week Moratorium ended on or around September 7, 2022 with the first day and weeks thereafter of eligibility, under the 103 week potential period for payment of IRB, being September 8, 2022. Pursuant to SABS, any insurer responsible for SABS benefits and this SABS Insurer is only required to pay the Specified Benefit every two weeks.

IRB Quantum

32. The Appellant's IRB Schedule, tendered on March 25, 2024, utilized said date as the commencement date for the "first stream" of IRB (the "IRB First Stream") which remains unpaid since two weeks thereafter being September 22, 2022. The Appellant has calculated, without dispute from **SNIC**, that there were 38 streams from September 8, 2022 to December 28, 2023 for a total of IRB principal quantum owing by **SNIC** to the Appellant of $27,200 (the "IRB Principal Quantum").

33. Pursuant to section 51 of SABS, **SNIC** owes the amount of 1% of compound interest on each and every payment that it failed to make pursuant to SABS.

SNIC as sole payor

34. There is no dispute that **SNIC** received the confidential particulars of the Appellant's Beneficiary Bank Account particulars. There is also no dispute that **SNIC** had made payments, with "Security National Insurance Company" being denoted as the "payor" for benefits under "Medical And Rehab Benefits" and "section 25 adjusting expenses" not being IRB. The total amount paid by **SNIC** to the Appellant was $1499.98. Each and every payment for "Medical And Rehab Benefits" and "Section 25 expenses" were tendered by the Appellant to **SNIC** – which were in a pre-printed return address to **SNIC** Markham (attention: Ms. Alisha Anne-Nurse).

35. There is also no dispute that **SNIC** made payment to the Appellant's health practitioners in the sum of approximately over $2,000 for periods from 2022 to 2023. This **NOM #4** does not address any amounts payable or to be paid in relation to other benefits outside of IRB. However, there is also no dispute that "health practitioners" continued to tender invoices of amounts due and owing from **SNIC** to them.

Appeal: filed and served

36. The Appellant filed his Appeal on December 24, 2023 and served **SNIC** (Markham and Burlington) via fax on the same date.

January 23, 2024

37. After the Appeal was processed, with the inclusion of various denial letters from **SNIC**, Mr. Karat represented to the Appellant, on January 23, 2024 via email, that he was assigned as the "ADR" to handle this LAT Dispute on behalf of his signature block in "red colour" "representing the Security National Insurance Company". Mr. Karat was unknown to the Appellant, prior to January 23, 2024, as evidenced by his introduction of his name. Mr. Karat further confirmed to the Appellant that any and all ongoing "day-to-day" handling of the adjusting of his Accident Benefits File with **SNIC** would continue outside of the issues in his Appeal with Ms. Persaud (**SNIC** Burlington). The Appellant thanked Mr. Karat regarding the same and consented to doing the same. In the January 23, 2024 email from Karat, he copied Mr. Nieuwland and referred to him as counsel.

38. On January 25, 2024, Karat emailed the Appellant with the following:

a. Email: confirming that he was attaching copies of a cover letter and the "Response" on behalf of an Insurance Company (**SNIC**);
b. Cover letter:
    i. Content: confirming the service of the **SNIC** Response;
    ii. Author: TD Insurance Meloche Monnex;
    iii. Return address: Security National Insurance Company (**SNIC** Markham); and
c. Purported **SNIC** Response:
    i. The **SNIC** Response, which Mr. Karat solely signed and filed, which provided the address for service of **SNIC** Markham;

39. In said email, Mr. Karat asked the Appellant to confirm receipt of the same as a courtesy and the Appellant reciprocated the courtesy.

40. Since January 25, 2024, no lawyer licensee has filed a DOR on behalf of **SNIC**.

The admissions in the **SNIC** Response

41. The material facts pleaded, which necessitated this **NOM #4**, were as follows:

a. IRB application delivery date: October 13, 2022;
b. IRB quantum: $400 per week; and
c. IRB Denial Date: December 23, 2023.

(the "IRB Admissions").

42. In early February 2023, the Appellant confirmed with **SNIC** (Karat) that he would be filing a motion to seek immediate payment of all historical amounts due and owing based on the pleadings as the Appellant and **SNIC** did not dispute the timing of the IRB Application Delivery Date, IRB Quantum and IRB Denial Date (subject to reserving his rights).

43. As the IRB Applications contained the "Date Of Loss" and there was no dispute with respect to the Appellant being an Insured Person, by **SNIC**'s determination, by rudimentary legal analysis, **SNIC** owed IRB from the date of September 8, 2022 to the date of deemed receipt after the IRB Denial Date.

44. On February 13, 2024, LAT issued an order that the IRB Quantum Motion would be heard on May 2, 2024 but the party responding to the IRB Quantum Motion was required to provide any responsive materials (including evidence and authorities) by April 11, 2024 and the Appellant was required to provide any "reply" by April 25, 2024.

45. As the pleadings are between two parties, pursuant to TD Claim #3 and the Insurance Policy, by reference to the deeming provisions and definitions under the *Insurance Act* of the Appellant being an Insured Person, and the only "insurer" in relation to that "contract of insurance" being **SNIC**, **SNIC** was at liberty to tender responsive submissions on April 11, 2024.

46. However, **SNIC** failed to do so by April 11, 2024 or seek leave to do so after the date of April 11, 2024.

47. The "**NON-SABS Insurance Company**" of "*TDGIC*" filed responsive submissions purporting to be responsive submissions although they were not in compliance with LAT Rule 9.4.5. *TDGIC* was required to seek leave to be able to rely on any documents or things at the "electronic hearing" component of the **NOM #4**. Even if it were to seek leave, the Tribunal is prohibited by legislation, namely the *Insurance Act*, the *SPPA* and the *Legislation Act*, from admitting any of the documents or things.

48. Specifically, pursuant to the decision of Jia by the ONSC, which affirmed the relevant findings of Vice Chair Trojek to this **NOM #4**, the Tribunal does not have a residual discretion under section 15 of the *SPPA* (see: Affidavit #19, page 33 of the body; Hearing Brief, Tab 23, page 574) to admit unsworn evidence (documents or things) wherein an insurance company and its counsel have received confidential information, documents, records or things not in its capacity as an "insurer" under "SABS".

49. In Jia, The Personal Insurance Company was an insurer under SABS to a fatally killed female, who was the mother and wife to the "Applicants" therein, in an automobile accident. The "Jia Applicants" were seeking death and funeral benefits under Ms. Xu's insurance policy with The Personal Insurance Company.

50. The Personal Insurance Company advanced a separate priority dispute proceeding the insurance company known as "Canadian Automobile Insurance" (CAA). The same counsel represented The Personal Insurance Company in the SABS dispute between the Jia Applicants and TPIC, and represented TPIC in the priority dispute with CAA. The same counsel purported to utilize a transcript from an examination for discovery the "CAA Priority Dispute" in the Jia SABS Dispute.

51. Counsel for Jia Applicants in the SABS dispute objected to that being a conflict of interest. The Tribunal disagreed at first instance but Vice Chair Trojek on reconsideration overturned the decision of the adjudicator of the Tribunal. The ONSC (Divisional Court) affirmed the findings and orders of Vice Chair Trojek, and particularly found that the protections under section 33 of SABS could not be circumvented by the conduct of the same counsel for TPIC and none of the evidence could be admitted in the SABS dispute between Jia and TPIC under the residual discretion granted by the Legislature to "adjudicative bodies" under section 15 of the *SPPA*.

52. In this **SNIC Proceeding**, and particularly this **NOM #4**, it is far worse considering that **SNIC** has an "ADR Specialist" as the sole representative having filed the most consequential document in a proceeding before the Tribunal being a "responsive pleading" which requires the listing and attaching of documents to a "Response" by the "Insurer" who an appellant has sought recourse against under SABS and is liable to pay expenses, benefits et al.

53. As "*TDGIC*" is a party to the Insurance Policy, and no recourse was ever sought from it under SABS, it has no standing herein. Therefore, the Tribunal cannot admit any of the noncompliant documents or things filed by *TDGIC*, by a separate representative in Mr. Nieuwland, under section 15 of the *SPPA*. As denoted in LAT Rule 3, the Tribunal cannot vary or waive any procedure or Rule without the consent of the "Parties" but even with consent of the "Parties", the Tribunal cannot do so IF prohibited by legislation. By the findings and decision in Jia, which affirmed Vice Chair Trojek's correct ruling, findings and orders in overturning an adjudicator of LAT, *TDGIC*'s purporting filing cannot be admitted and must be struck from the "record of proceeding".

54. While *TDGIC* was never, is not and will never be the "Insurer" under the Insurance Policy as it relates to SABS, it is further important to note that the Appellant's Spouse naturally selected a different insurance company in Spring of 2023 in light of, inter alia, Security National Insurance Company cancelling the "safe driver discount" through the TD MyAdvantage App based on the misrepresentation that the Appellant's Spouse did not have it turned on at all material times. The Appellant assisted his spouse with the language therein after they jointly reviewed the data that she was being charged for having the "app" on at all material times when she was driving or when the Appellant was driving with her in the Insured Automobile.

55. While the relevant time for analysis was the DOL, there was no ability for any amendment to the Insurance Policy, by way of "insurer" prior to the DOL or thereafter.

56. Pursuant to section 16 of the *SPPA*, the Legislature has granted authority to the Tribunal to take "judicial notice" of facts such as admissions made in pleadings. It is commonplace and required for motions to be advanced on admissions from the pleadings. There was no prohibition on **SNIC** seeking leave to amend its pleadings but it did not.

57. From January 28, 2024 to February 10, 2024, the Appellant affirmed four (4) affidavits numbered #7 to #10. On February 13, 2024, the Appellant perfected his Hearing Brief and motion submissions, served **SNIC** and filed with the Tribunal.

58. On February 14, 2024, LAT issued the binding LAT Order herein (see: supra).

Volume # 2: Statement of Issues

59. *The sole issue herein as it relates to SABS is whether the quantum calculation for the IRB Principal Quantum is correct based upon the date of September 8, 2022 (see: section 6 of SABS) to the date of deemed receipt based on section 64 of SABS?*

60. *The sole issue as it relates to Reg 664 is the quantum of the penalty that the Appellant would be entitled to based upon SNIC's unreasonable withholding (as the IRB Weekly Quantum is admitted) of its required 38 payments of IRB since September 8, 2022 to the date of deemed receipt based on the IRB Denial Date admitted by SNIC?*

Volume #3: Argument

Volume #3(A): Legislation

Part 3(A)(I): *Insurance Act* [16] (see: HB, Tab 6)

Insurer

61. "**Insurer**" means the person who undertakes a contract (see: section 1(1)).

Application of the Facts to the Law

62. The "Insurer" under TD Claim #3 and this LAT Proceeding (23-015662) was **SNIC**.

Insured and Insured Person

Section 224 of the *Insurance Act*

63. "Insured" means a person insured by a contract *whether named or not* and includes every person who is entitled to statutory accident benefits under the contract whether or not described therein as an insured person (see: section 224 of the *Insurance Act*).

Section 279 of the *Insurance Act*

64. "Insured Person" includes a person who is claiming funeral expenses or a death benefit under the *Statutory Accident Benefits Schedule* (see: *Insurance Act*, RSO 1990, c I.8, s 279).

Application of the Facts to the Law

65. The "Insured", pursuant to section 224 of the *Insurance Act*, under TD Claim #3 and this **SNIC Proceeding** is the Applicant or Appellant.

66. The "Insured Person", pursuant to section 279 of the *Insurance Act*, under TD Claim #3 and this **SNIC Proceeding** is the Applicant or Appellant.

Statutory Accident Benefits

Insurance Policy: deemed to provide SABS in the Schedule

67. Every contract evidenced by a motor vehicle liability policy, including every such contract in force when the *Statutory Accident Benefits Schedule* is made or amended, shall be *deemed* to provide for the statutory accident benefits set out in the *Schedule* and any amendments to the *Schedule*, subject to the terms, conditions, provisions, exclusions and limits set out in that *Schedule*. 1993, c. 10, s. 26 (1). (see: *Insurance Act*, RSO 1990, c I.8, s 268).

Application of the Facts to the Law

68. The Insurance Policy (Insurance Contract) was deemed to provide the statutory accident benefits under the Schedule.

If Insured Person has recourse against Insurer – Insurer – Liable – Pay – Benefits

69. An insurer against whom a person has recourse for the payment of statutory accident benefits is liable to pay the benefits. (see: *Insurance Act*, RSO 1990, c I.8, s 268(3)).

Application of the Facts to the Law

70. The Appellant only has recourse for the payment of statutory accident benefits against **SNIC** (SABS Insurer). Ergo, **SNIC** is liable to pay the benefits under the Schedule.

The choice of insurer is that of Insured (Insured Person) (see: s. 268(4)

71. If, under subparagraph i or iii of paragraph 1 or subparagraph i or iii of paragraph 2 of subsection 268(2), a person has recourse against more than one insurer for the payment of statutory accident benefits, the person, in his or her absolute discretion, may decide the insurer from which he or she will claim the benefits. R.S.O. 1990, c. I.8, s. 268 (4))

Application of the Facts to the Law

72. The Appellant does not have recourse against more than one insurer for SABS under the Schedule. The Appellant has recourse against Pembridge Insurance Company for a potential tort claim and only **SNIC** for the SABS under the Schedule.

No Discretion: Spouse of an Named Insured (see: section 268(5) of the *Insurance Act*)

73. Despite subsection (4), if a person is a named insured under a contract evidenced by a motor vehicle liability policy or the person is the **spouse** or a dependant, as defined in the *Statutory Accident Benefits Schedule*, of a named insured, the person shall claim statutory accident benefits against the insurer under that policy. 1993, c. 10, s. 26 (2); 1999, c. 6, s. 31 (9); 2005, c. 5, s. 35 (13). (see: *Insurance Act*, RSO 1990, c I.8, s 268(5))

Application of the Facts to the Law

74. The Appellant, as the Spouse of the Individual Policyholder, was required (SHALL) to claim SABS against **SNIC** under the Insurance Policy.

Deemed Party to a Contract, may recover indemnity and have given consideration therefor (see: section 244)

75. Any person insured by but not named in a contract to which section 239 or 241 applies may recover indemnity in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.O. 1990, c. I.8, s. 244.

Application of the Facts to the Law

76. While the Appellant was not named in the Insurance Contract, he was entitled as the occupant (driver) to recover indemnity in the same manner

Section 270: Unnamed persons in Insurance Contract; recover in same manner and deemed to be a party and given consideration therefor

77. Any person insured by but not named in a contract to which section 265 or 268 applies may recover under the contract in the same manner and to the same extent as if named therein as the insured, and for that purpose shall be deemed to be a party to the contract and to have given consideration therefor. R.S.O. 1990, c. I.8, s. 270.

Application of the Facts to the Law

78. The Appellant was not named in the Insurance Contract but he was the driver (occupant) and entitled to recover in the same manner and to the extent as if he were named, deemed to be a party to the Insurance Contract and given consideration therefor.

Resolution of Disputes: Amount only (see: section 280 of the *Insurance Act*)

79. 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. 2014, c. 9, Sched. 3, s. 14 (see: *Insurance Act*, RSO 1990, c I.8, s 280(1), <https://canlii.ca/t/2g6#sec280>, retrieved on 2024-04-30).

80. The insured person or the insurer may apply to the Licence Appeal Tribunal to resolve a dispute described in subsection (1) (see: section 280(2) of the *Insurance Act*).

Application of the Facts to the Law

81. Sections 279 to 283 apply to the resolution of disputes before the Tribunal. As the Appellant met the definition of an Insured Person, he applied, pursuant to section 280(2) to the Tribunal by way of his Appeal (including his listed, attached and served documents therein). Until the Appellant and **SNIC** have resolved all of their disputes and claims under TD Claim #3, this **SNIC Proceeding** and potentially any Future Related LAT Proceedings, **SNIC** (as the "Insurer" under "SABS") remains, at liberty, to apply to the Tribunal for "dispute resolution" [not exclusively ADR]

82. The issue under **NOM #4** solely relates to quantum (amount) of the IRB.

Shall be Resolved in Accordance with SABS

83. The dispute shall be resolved in accordance with the *Statutory Accident Benefits Schedule* (see: section 280(4).

Application of the Facts to the Law

84. The dispute herein is defined by the pleadings.

85. The portion of the dispute relating to **NOM #4** is the quantum of the IRB benefits owed from September 8, 2022 to December 23, 2023 with either SABS interest pursuant to section 51 of SABS or interest and penalties under section 10 of Reg 664.

86. The Tribunal is required to resolve **NOM #4** in accordance with SABS which requires the Tribunal to determine the amounts owed by **SNIC** to the Appellant for the IRB Historical Period.

Volume 3(A)(II): *Legislation Act* (see: Tab 7)

Section 46

87. Part IV of the *Legislation Act* applies to every Act and regulation.

88. The law is always speaking, and the present tense shall be applied to the circumstances as they arise (see: section 63).

89. An Act, including a regulation, shall be interpreted as remedial and shall be given fair, large and liberal interpretation as best ensures the attainment of its objects (see: section 64(1) and (2) of the *Legislation Act*).

Performance when occasion requires (see: section 79 of the *Legislation Act*)

90. Powers that are conferred on a person may be exercised, and duties that are imposed on a person shall be performed whenever the occasion requires.

Definitions (see: section 87)

91. "Individual" means a natural person. "Person" includes a corporation but "Individual" does not include a corporation.

Volume #3(A)(III): The *SPPA* (see: Tab 8)

Legislative sections: relevant to **NOM #4**

Section 1(1) of the *SPPA*

92. "Electronic hearing" means a hearing held by conference telephone. "Hearing" means a hearing in any proceeding. "Proceeding" means a proceeding to which the *SPPA* applies.

93. "Representative" means a person authorized the LSA to represent A Person in that "Proceeding".

Section 1(2) of the *SPPA* (deemed persons)

94. Municipalities, unincorporated associations of employers, a trade union or council of trade unions who may be a party to a proceeding in the exercise of a statutory power of decision under the statute conferring the power (see: *Insurance Act*) shall be deemed to be a person for the purpose of any provision of the *SPPA* or any rule made under the *SPPA* that applies to parties.

Section 2 of the *SPPA*: Most Expeditious, Just and Cost-Effective

95. The *SPPA*, and any rule made by a tribunal under section 17.1(4) or section 25.1, shall be liberally construed to secure the just, most expeditious and cost-effective of every proceeding on its merits.

Waiver: section 4 of the *SPPA*

96. Jurisdictional requirements cannot be waived with the consent of the parties and the Tribunal. Procedural requirements can be waived with the consent of the parties and the Tribunal.

Section 4.8: ADR

97. The Tribunal cannot direct a party and non-party (*TDGIC*) to a proceeding to participate in an ADR mechanism for the purposes of resolving the proceeding or an issue in the proceeding if: (a) the Tribunal has made rules under section 25.1 respective the use of ADR (mediation, conciliation, negotiation or any other means of facilitating the resolution of issues in dispute); AND all parties consent to participating in the ADR mechanism.

Parties: section 5

98. The parties to a proceeding shall be the persons specified as parties by or under the statute (*Insurance Act*) which the proceeding arises. [nota bene: distinction between definition of parties under *SPPA* and LAT Rule]

Pre-hearing conferences (see: section 5.3(1) of the *SPPA*)

99. If the Tribunal has made rules dealing with pre-hearing conferences, the tribunal may direct the Parties in a pre-hearing conference to settle any and all issue, simplification of the issue, facts or evidence may be agreed upon, et al.

Section 5.3(1.1)

100. The Tribunal's power to direct THE PARTIES to participate in a pre-hearing conference is subject to any other Act (*Insurance Act*, *Legislation Act* et al) or regulation (SABS and Reg 664) that applies to the **SNIC Proceeding**.

Section 10 of the *SPPA*:

101. A party to a proceeding may be represented by a representative the corollary being that a non-party is not entitled to be represented by representative as the non-party (**NON-SABS Insurance Company** herein) is not entitled to be added as a party (not substituted) unless it obtains leave.

Section 15 of the *SPPA*: Evidence: what is admissible and not admissible at a hearing?

102. Subject to sections 15(2) and (3) of the *SPPA*, the Tribunal may admit as evidence at a hearing, including non-sworn evidence or not admissible as evidence in court: (b) any document or other thing, relevant to the subject matter of the **SNIC Proceeding** and may act on such evidence.

103. Pursuant to Jia, the Tribunal does not have the authority to admit evidence tendered on behalf of a **NON-SABS Insurance Company** that was collected, used and disclosed from the **SNIC** AB File without the consent of the Appellant for purposes beyond the consent given for Limited Purposes or PIPEDA, or court order.[17]

Section 16 of *SPPA*: Notice of Facts and Opinions

104. A Tribunal may, in making its decision in any proceeding: (a) take notice of facts that may be judicially noticed.

Interim Decisions and Orders (see: section 16 of the *SPPA*)

105. The Tribunal may make interim decisions and orders which need not be accompanied by reasons (see: section 16(1) and (3) of the *SPPA*).

Order: Payment of Money (see: section 17(2) of the *SPPA*)

106. A Tribunal that makes an order for payment of money that shall set out in the order:
    a. Principal sum;
    b. Interest payable;
    c. Rate of interest;
    d. Date from which interest is calculated.

Costs (see: section 17.1(1) of the *SPPA*)

107. A Tribunal may, in the circumstances set out in rules made under section 17.1(4) of the *SPPA*, order a party to pay all or part of another party's [see: *TDGIC* not a "party" under the *Insurance Act* so not a party under the *SPPA*; conflict between LAT Rule 2 and legislation] costs in a proceeding.

108. The Tribunal shall NOT make an order to pay costs under section 17 UNLESS the conduct or course of conduct of a Party has been: (i) unreasonable; (ii) frivolous; (iii) vexatious or a Party has acted in "bad faith", AND the Tribunal (see: Rule 19) has made rule section 17.1(4)

Enforcement of Orders

109. A certified copy of the Tribunal's decision or order in this **SNIC Proceeding** may be filed in the Ontario Superior Court of Justice by the Tribunal OR a party and on filing shall be deemed to be an order of that court and is enforceable as such (see: section 19(1))

Order For Payment of Money (see: section 19(3)

110. On receiving a certified copy of a tribunal's order for payment of money, the sheriff SHALL enforce the order as if it were an execution issued by the Superior Court of Justice (not provincial court or small claims) (see: ss. 19(3) of the *SPPA*).

Correction of Errors (see: section 21.1 of the *SPPA*)

111. A Tribunal may at any time correct a: (i) a typographic error; (ii) calculation error; or (iii) similar error, made in its decisions or order (see: section 21.1 of the *SPPA*).

Tribunal Powers to Control of Proceedings (see: section 23 of the *SPPA*)

Abuse of Process (see: section 23(1) of the *SPPA*)

112. The LAT may make orders or give such directions in proceedings before it as it considers proper to prevent abuse of its processes.

Exclusion of Representatives

113. A tribunal exclude from a hearing (not necessarily the Proceeding) anyone, other than a person licensed under the LSA, appearing on behalf of a PARTY or as an adviser to a witness (Witness Adviser) IF it finds that such a person is not competent property to represent or to be a Witness Adviser (nb: "representative" different than a "Witness Adviser") OR does not understand and comply at the hearing with the duties and responsibilities of an: (i) Advocate; or (ii) Advisor.

114. The Legislature has distinguished between the following:
    a. "Party Representative" vs. "Witness Adviser"; and
    b. Advocate vs. Adviser.

Section 25.1(3): Consistent with Acts

115. The LAT Rules SHALL be consistent with the *SPPA* and with the other Acts [*Insurance Act* (Ontario), LSA and *Legislation Act*] to which they relate.

Volume #3(B): Statutory Accident Benefits Schedule (the "Schedule") (Tab 10)

Introduction

116. Against the backdrop that SABS was passed under the *Insurance Act*, and the *Insurance Act* is the statute upon which this **SNIC Proceeding** is governed by and must be conducted in accordance with, SABS is a regulation and cannot be inconsistent with its enabling legislation (*Insurance Act*).

Definitions

Insured Person

117. "Insured Person" means in respect of the Insurance Policy, includes: (a) the Spouse (Appellant) of the Individual Named Insured; or (b) the occupant of the Insured Automobile (BMW 3 Series) and who is a resident of Ontario.

Part II: IRB

Section 5 and 7

118. There is no dispute on eligibility of the Appellant with respect to IRB by virtue of the pleadings confirm receipt of his IRB applications on the IRB Application Date.

119. There is no dispute with respect to entitlement of the Appellant to the IRB as per the Unwithdrawn Admissions in the **SNIC** Response.

Section 6: Period of the Benefit

120. **SNIC** was not required to pay the IRB for the following time periods:
   a. First week of the Disability; and
   b. After 104 weeks of the Disability (subject to the Appellant, as a result of the Accident, the Insured Person (Appellant) is suffering a complete inability to engage any employment or self-employment for which he is reasonably suited by education, training or experience.

Section 32 of SABS: Notice of Insurer and application for Benefits

121. The Appellant was required to notify **SNIC** of his intention no later than the 7th day after the circumstances arose that give rise to the entitlement to the benefit or as soon as practicable after that day. The Appellant did so, which is an Unwithdrawn Admission by **SNIC** with respect to the IRB Application Date. (see: section 32(1)).

122. **SNIC** was required to promptly provide the Appellant with: (a) appropriate application forms; (b) written explanation of the benefits available; (c) information to assist the Appellant in applying for benefits; and (d) election information relating to IRB et al.

Section 32(5): Applicant – submit – completed – signed application for benefits

123. The Appellant was required to submit completed and signed OCF-1 and OCF-2 to **SNIC** and he did so on the IRB Application Date. The Appellant, within the time limits, provided his correct address, proof of his identity and information relating to the IRB to **SNIC** (SABS Insurer).

Section 36 of the SABS

124. Within ten business days after **SNIC** received the complete OCF applications and a completed disability certificate (**SNIC** admitted to the IRB Application Date (October 13, 2022), **SNIC** ["The Insurer"] had three options:

a. (i) **PAYMENT**: SHALL pay the Specified Benefit (IRB);
b. (ii) **Medical Reasons Notice**: give the applicant a "Notice" which:
    i. Explains the:
        1. Medical; and
        2. Any other reasons
            a. Why **SNIC** did not believe the Applicant was entitled to the Specified Benefit; AND
    ii. If the insurer [**SNIC** – not "*TDGIC*"] requires an examination under section 44 RELATING to the IRB, advising the applicant of the requirement for an examination; OR
c. **Reasonably Required Information Determining Applicant's Entitlement (Quantum) to IRB:**
    i. Send a request to the Appellant under section 33(1) or (2).

Within the Applicable Time Limit (see: section 36(6) of SABS)

125. If the Insurer [**SNIC**] fails to comply with section (4) or (5) WITHIN THE APPLICABLE TIME LIMIT, **SNIC** shall pay the Specified Benefit for the period:

a. **COMMENCEMENT**: starting on the day that the Insurer [**SNIC**] received the Application [see: Admitted IRB Application Date] and completed disability certificate and;
b. **ENDING**: if the insurer [**SNIC**] subsequently gives a notice described in section 36(4)(b) (the "Medical Reasons Notice Denial").

Section 36(9) of SABS: every second week

126. Every IRB SHALL be paid:
a. At least ONCE;
b. Every second week.

Method of Payment (see: section 48(1) of SABS)

127. **SNIC** was required to pay the Specified Benefit under the Schedule by ETF to the account in the name of the Appellant with the Appellant's consent.

Application of Section 48 of SABS

128. The Appellant provided his consent, with particulars for his Beneficiary Bank Account, to **SNIC** [not *TDGIC*], for **SNIC**, solely, to pay the Specified Benefit under the Schedule to said Beneficiary Bank Account.

Overdue Payments (see: section 51 of SABS)

129. An amount payable in respect of an IRB (Specified Benefit) is overdue IF:
a. the Insurer [**SNIC**] fails to pay the benefit;
b. WITHIN the time required under the Schedule.

130. If a payment of a Specified Benefit under Schedule is overdue, the Insurer [**SNIC**] SHALL pay:
a. Interest on the overdue amount with section 51 of SABS for EACH DAY the amounts is overdue.

No Issues of Repayment to THE INSURER (see: section 52 of SABS)

131. As **SNIC** is the only Insurer in the Insurance Policy, any claims for repayment would have to be made by **SNIC** [not *TDGIC*].

Restriction on Proceeding (see: section 55 of SABS) and Time Limit For Proceedings

132. As the Appellant provided notice to **SNIC** [not "*TDGIC*" as it was unknown to the Appellant] of the circumstances that would give rise to a benefit by virtue of affidavits #1 to #4.

133. As the **SNIC** Response only raised one "preliminary issue" which related to "Medical And Rehab Benefits", that is not an issue in **NOM #4**.

134. Moreover, since **SNIC**'s Response herein did not list any documents or attach the same (when required), they are not before the Tribunal.

135. Since it is only *TDGIC* that has filed and served documents or things since the Purported **SNIC** Response, **SNIC** has not been able to provide any admissible evidence as **SNIC** is the only "Respondent Party" as a matter of legislation under the *Insurance Act*, *SPPA* and *Legislation Act* that is allowed to file and serve documents in relation to the same. The same is applicable to this **NOM #4** as **SNIC** does not have any evidence filed ON ITS BEHALF before the Tribunal in accordance the legislation.

Section 56 of SABS

136. An application under section 280(2) of the *Insurance Act* in respect of a benefit SHALL BE COMMENCED within two years after THE Insurer's [**SNIC**] refusal to pay the amount.

137. **SNIC**'s refusal, as admitted by the **SNIC** Response, was on the IRB Denial Date (December 23, 2023).

No Assignability (see: section 62)

138. The Appellant has not attempted to or assigned his benefits to any other persons. However, his Spouse has an interest (spousal under the common law of Ontario) in his IRB.

Section 67 of SABS: when a form is considered completed

139. As per the Unwithdrawn Admission by **SNIC** regarding the IRB Delivered Application Date, there is no dispute that the Appellant delivered the OCF Applications, made by the CEO under section 66(1.) of SABS, on October 13, 2022 to **SNIC** Markham.

Application of SABS to uncontroverted evidence to **NOM #4**

140. The drafters of SABS were not ambiguous in passing section 36(6) of SABS that once the Appellant delivered, as **SNIC** was satisfied by its Unwithdrawn Admission regarding the IRB Delivered Application Date, the OCF Applications that it had ten business days to deliver a Medical Reasons Notice or a section 33(1) or (2) request. SNIC did not. SNIC was then duty bound under the Insurance Act and SABS to pay the Specified Benefit until it tendered a Medical Reasons Notice in relation to the Specified Benefit.

Tab 11: Reg 664 (see: pages 95 and 96)

Settlement Agreement: only between Appellant and **SNIC**

141. A "settlement" is defined as: means an agreement between **an insurer** and an insured person that finally disposes of a claim or dispute in respect of the insured person's entitlement to one or more benefits under the *Statutory Accident Benefits Schedule*. O. Reg. 780/93, s. 7.

Application of section 9 of Reg 664 to Uncontroverted Evidence and Unwithdrawn Admissions relating to **NOM #4**

142. The Appellant has claims under TD Claim #3 and a dispute with **SNIC** in respect of the Insured Person's entitlement to one or more benefits under SABS. In **NOM #4**, the dispute solely relates to the quantum of the IRB (Specified Benefit) from the IRB Historical Duration Period based on the Unwithdrawn Admissions by **SNIC**.

143. Karat admitted by his service, with thanks, of the **SNIC** Response that he was delivered on behalf of AN Insurance Company [**SNIC].**

Section 10 of Reg 664

Dispute Resolution (section 280 of the Act)

144. Section 10 of Reg 664 authorizes LAT, in addition to awarding the Specified Benefit and interest (see: section 51 of SABS) to which the Appellant is entitled under the Schedule, to award a lump sum up to 50% of the amount (see: IRB Principal Quantum) at the time of the award (May 2, 2024) together with interest on all amounts then owing the Insured (see: *Insurance Act*, sections supra) including unpaid interest at the rate of 2 percent per month, compounded monthly, from the time the Specified Benefit first became payable (see: IRB Commencement Date pursuant to section 6(1) of SABS) under the Schedule.

The Proper legal test is in Coachman (see: Formula under TAB 21)

145. The correct formula to be applied was outlined in Coachman and there is no dispute on the math as of April 2024 with now simple calculations to move it forward, as a courtesy to SNIC, for the date of May 2, 2024 and on the date that it sends an ETF for all outstanding 38 payments of IRB.

Tab 12: LAT Rules

Authority for Rules (Rule 1.1)

146. The LAT Rules are made pursuant to section 25.1 of the *SPPA* and s. 6 of the LATA. The LAT Rules are read and understood together with the *SPPA* and all other relevant statutes (see: *Insurance Act*, LSA, SPPA, *Legislation Act* et al) or regulations dealing with the specific type of proceeding before the relevant 'tribunal'.

Conflict

147. The statute or regulation prevails over the LAT Rules in the event of conflict or inconsistency (see: LAT Rule 1.2).

Definitions

Appeal and Appellant

148. The Appeal herein was the Application Of An Injured Person ("Application" or "Appeal") before the Tribunal pursuant to section 280(2) of the *Insurance Act* (Ontario). The Appellant is denoted above.

Case Conferences (Pre-Hearing Conferences *SPPA*)

149. "Case Conferences" have the same meaning as "Pre-Hearing Conference" under the *SPPA* which can only be between "parties" as denoted under section 5 of the *SPPA*. As the "Insurer" under the *Insurance Act*, including by reference under SABS, was and is **SNIC**, and **SNIC** is the only liable "insurer" ("Sole Liable SABS Insurer"), then there cannot be a case conference between the Appellant and *TDGIC* (only Appellant and **SNIC**). However, a lawyer licensee has to file a DOR before the commencement of the "case conference portion" of May 2, 2024.

Hearing (Rule 2.10)

150. NOM #6 includes, by definition under the *SPPA* and Rule 2.10, the hearing of **NOM #4** before the Tribunal which a Party (see: paramount definition and interpretation of section 5 of the *SPPA*; section 1 of the *Insurance Act*).

151. Therefore, only **SNIC** has the opportunity to participate in the "electronic hearing" component of **NOM #4**.

Motion (Rule 2.13): Functions

152. The Appellant made his request under **NOM #4** for orders for the purposes necessary for the Tribunal to carry out its "functions".

Party (Rule 2.16) and Proceeding (2.17)

153. **SNIC** is a corporation and a person (see: *Legislation Act*, s. 87). *TDGIC* is a distinct corporation and person from **SNIC**.

154. *TDGIC* is NOT even an "underwriter" under the "trade name" of TD Insurance Meloche Monnex. While the inclusion of "Primmum Insurance Company" would also be incorrect in law, it would have at least been under the trade name of "TD Insurance Meloche Monnex".

155. **SNIC** has a continued right, as the SABS Insurer who undertook the Insurance Policy as the "Insurer", to participate in this **SNIC Proceeding**, and certainly notified the Tribunal of its intention to participate in the **SNIC Proceeding**:
    a. **SNIC** Response; and
    b. Karat COS.

Representative (Rule 2.20)

156. As TDGIC is prohibited from being the "respondent party" as a matter of legislation, Nieuwland cannot be a representative to *TDGIC*, and he is not authorized to do so. Leaving aside the COI issues, Nieuwland could file a DOR for **SNIC** as he is a lawyer licensee and the pleadings involve a dispute about whether the Appellant (Insured Person) is CAT Impaired.

Respondent (Rule 2.21); and Response (Rule 2.2)

157. The Appellant never identified "*TDGIC*" as "the respondent" the Appeal so it could not be the "Respondent" (under the LAT Rules).

158. *TDGIC* is NOT the party identified as the "respondent" under "applicable legislation" (see: certainly not under the *Insurance Act* (and SABS), the *SPPA* and *Legislation Act*).

Rule 3 (General)

3.1: Liberal Interpretation

159. As *TDGIC* is not a "Party", it cannot have a representative in Nieuwland and, as such, the "effective participation" does not apply to it.

160. If Vice Chair Lake's point is correct in law that **SNIC** can be "self-represented", which the Appellant disputes, then Karat remains as the contact individual for **SNIC**. **SNIC** is a party, the "respondent party" as the "respondent insurer" to this Appeal, under section 280(2) of the Insurance Act to LAT (AABS).

161. In order to have an efficient, proportional and timely (see: *SPPA*, section 2; "most expeditious") resolution of the merits of this **SNIC Proceeding** before LAT and "guaranteeing consistency with governing legislation and regulations", ordering **SNIC** to comply with its obligations under the Insurance Act and SABS is required.

162. Such an order under **NOM #4** with a Reg 664 award will not only be required under the governing legislation and regulations (SABS and Reg 664) but it also has utility for the entire **SNIC Proceeding**. The utility will be in the nature of motivating **SNIC** to comply with its obligations, by its Insurance License #91066 under its classification of insurance for automobile insurance as an out of province insurer, under the *Insurance Act* and SABS as it relates to other benefits, or suffer further Reg 664 awards where it has unreasonably withheld or delayed payment of benefits.

Rule 3.2: Tribunal Powers

163. As the Tribunal cannot waive or vary the requirement of **SNIC** to be the SABS Insurer, any and all orders relating to **SNIC**'s obligations under the *Insurance Act*, when read in conjunction with SABS, and discharge payment on the IRB Quantum et al.

Rule 3.6 (Adding Parties: not substituting)

164. It remains unclear how or why *TDGIC* is named in this **SNIC Proceeding** without the name of **SNIC** as the respondent party (although Nieuwland refers to individuals as "parties") but there would need to be evidence as to how *TDGIC* as a separate person at law has a "significant interest in this **SNIC Proceeding**". The Appellant would oppose any motion by *TDGIC* to add itself as a "party herein".

Rule 9: Document Exchange, Production Orders, Witness Lists, and Hearing Briefs

165. As per the Appellant's Appeal (with required listed and attached documents therein and then served on Nurse and Persaud of **SNIC** Markham and **SNIC** Burlington respectively), the Appellant commenced exchanging documents with **SNIC** as soon as after filing and serving the same. The Appellant continued to do so with documents and affidavits from December 2023 to January 25, 2024 with the names of Persaud and Nurse.

166. In presuming that TDIADR was the email for "ADR" for TD Insurance and this **SNIC Proceeding**, the Appellant continued to exchange documents with **SNIC** by email and fax.

167. On January 23, 2024, Karat requested that the Appellant continue to communicate with Persaud for day-to-day handling of the AB File with **SNIC**. The Appellant continued to do so with Persaud up and until this week (see: Mitchkie).

168. The entire **SNIC Proceeding**, including pre-hearing conference is frustrated, with an inability of the Appellant to take meaningful steps,

Rule 9.3: Failure to Comply with the LAT Rules; and Rule 9.4.5

169. The Nieuwland Purported Responsive Motion Submissions (not a "Hearing Brief"), on behalf of a non-party pursuant to the *SPPA, Insurance Act* (including Corporations Act) and Legislation Act, is not only impermissible and inadmissible by governing legislation.

170. **NOM #4** is a combination of a "written hearing" and "electronic hearing" (telephone) and while TDGIC is not a "Party" under governing legislation, the amendment by the drafters of the Rule 9.3 and 9.4.5 was intentional and unambiguous in changing of language from "consent" to "permission" (must ask for permission) in that a "Party" that fails to comply with "ANY" Rule, direction or order with respect to disclosure or exchange of documents (which the purported Nieuwland Motion Submission are a "document" (electronic), that party MAY NOT rely on the document or thing as evidence without the permission of the Tribunal).

171. The Nieuwland Purported Motion Submissions (see: Tab 22) are not on behalf of the solely liable SABS benefits Insurer in the SABS Insurer (**SNIC**).

*Seminal Point: Unopposed **NOM #4***

172. As such, this **NOM #4** proceeds **unopposed** unless **SNIC** attempts to file and serve Motion Submissions, with evidence and authorities, and then seeks leave of the Tribunal.

Motion Submissions vs. Unnumbered, Unindexed Attachments

173. To the extent that the Motion Submissions by the "**NON-SABS Insurance Company**" are not considered "evidence", then **SNIC** (nor *TDGIC*) has no evidence before the Tribunal by virtue of its non-compliant **SNIC** Response which failed to list and attach documents therein. **SNIC** chose that route by its **SNIC** Response, signed by Karat, then filed and served by Karat, and it now reaps the consequences of failing to do so.

174. Rule 9.4.5 is clear on its face and, when combined with the LAT Order of February 14, 2024, there was no excuse for **SNIC** not to file an indexed tabbed and consecutively page numbered PDF with only the evidence and authorities "A PARTY" intends to rely on at a hearing.

175. As Nieuwland references *TDGIC* being a party, when it is not under Governing Legislation, then even in his subjective state of mind and theories (like his misguided theories on "costs" which are also inconsistent with governing legislation and rules made under the *SPPA*), there was no excuse to not comply with LAT Order and Rule 9.4.5. It states "A PARTY'.

176. As *TDGIC* is not a "party" under "Governing Legislation", the **SNIC** cannot make submissions before the Tribunal if the "evidence and authorities" can be used at the hearing. The Appellant further provides these "Speaking Notices" on the grounds of a preliminary objection that if it attempts to do so, the Tribunal is prohibited by legislation to allow any submissions by a non-party.

Rule 14: Case Conferences

177. As a "case conference" can only be between "Parties" (as defined under the *Insurance Act* and section 5 of the *SPPA*), **SNIC** has failed to file a "case conference brief".

Rule 14.4: Settlement Discussions

178. While **SNIC**, which would be required to retain a lawyer licensee prior to the case conference portion of May 2, 2024, as the Appeal and **SNIC** Response both confirm and admit that CAT Impairment is at issue, only the Appellant and **SNIC** could be directed to participate in a case conference. As such, this leaves **NOM #4** and NOM #6.

179. As Reg 664 dovetails with section 280(2) of the *Insurance Act* (the "Application" to LAT (AABS), it is only the Appellant and **SNIC** that can engage in settlement discussions and reach a "settlement" as it relates to TD Claim #3 and this **SNIC Proceeding**.

Rule 14.6: Party Attendance at Case Conferences

180. As **SNIC** is the only party, as a matter of the *Insurance Act* and by reference to the *SPPA*, it is only **SNIC** that is required to attend the case conference portion.

Rule 15.4: Attendance at Motion Hearings

181. A "Representative" may attend a Motion Hearing (as part is "Electronic Hearing") on behalf of a Party. As *TDGIC* is not a Party, Nieuwland is prohibited from attending the **NOM #4** portion.

Rule 17: Review and Correction (Typographical, Calculation and Other Minor Errors)

182. Consistent with a governing piece of legislation in the *SPPA* (section 21.1), the Tribunal has the same powers as bestowed upon it.

Rule 19 Costs

183. As *TDGIC* is not a "party" by governing legislation, and it did not seek to be added as a "party" after the signing and filing by Karat of the **SNIC** Response, after his confirmation of his **SNIC** LAT Dispute Assignment, then Nieuwland's submissions, on behalf of *TDGIC* and payable to *TDGIC*, on "costs" were impermissible as a matter of governing legislation. Put another way, the Appellant never named *TDGIC* and neither did Karat in the **SNIC** Response so there could be no costs consequences for a "non-party", who only received "courtesy copies" of **NOM #4** materials in the hearing brief record.

184. The Appellant shall make his request for costs orally at the hearing on May 2, 2024 depending on how much time it takes of the day.

185. Pursuant to Rule 19.6, costs are capped at $1,000 for each FULL DAY of ATTENDANCE at a motion, case conference or hearing (which can be a "written hearing", "oral hearing" or "electronic hearing" or combination).

186. Mr. Nieuwland may have forgot, albeit acting for a "**NON-SABS Insurance Company**", "Non-Party", "Non-Respondent", "Non-Party" to the "Insurance Policy"; "Non-Recipient" of documents directly from the Appellant since the DOL; and a "Non-Sender" of documents (application forms) in the TD Claim Numbers including TD Claim #3) that he never attended a motion or hearing (let alone a full day).

Rule 20: AABS Claims (see: *Insurance Act*, ss. 224 and onwards)

187. Rule 20 applies to AABS claims pursuant to *Insurance Act* only (see: Rule 20.1).

Rule 20.2: Response to AABS Claim

188. A response (see: Rule 2) to an AABS Claim (the "Appeal" herein) SHALL be provided by 'a' respondent in the form specified by the Tribunal, within 14 days after having been served with the AABS Claim.

189. The Tribunal determined that it was filed, by the deeming provisions under the LAT Rules on December 27, 2023, and therefore **SNIC** (**SNIC** Markham) was served on December 27, 2023. 14 days from said date was on or around

January 11, 2024. The Tribunal required the Appellant to extract the denial letters from **SNIC** in his attached and listed documents, which were filed as part of the requirement with his Appeal and his certification and signature that all was "true and complete" in the Appeal (or "Application"), and file them as standalone documents in order for the final processing of the Appeal between himself and "TD Insurance Meloche Monnex" (**SNIC**) which was defined as "TD **SNIC**" in the listed and attached documents to the Appeal.

190. 14 days from January 11, 2024 was January 25, 2024.

191. The Appellant only served the Appeal on **SNIC** so it was only **SNIC** that could be a respondent herein, and file a Response. **SNIC** filed and served its "**SNIC** Response" on January 25, 2024.

192. As it was only **SNIC** that was identified by the Appeal and service of the listed and attached documents in the Appeal on **SNIC**, the definition of "Response" is important:

> "Response" means the response a respondent is required to provide in relation to an appeal.

193. As Nieuwland was included on the January 23, 2024 email by Karat, and referred to as "counsel", whilst Karat unequivocally represented his **SNIC** LAT Dispute Assignment, then if Nieuwland truly believed that *TDGIC* was the "respondent", he was at liberty (after being referred to as "counsel" by Mr. Karat who he now says, inconsistently with January 23, 2024 email, as of April 11, 2024 was "appointed" [sic] by "*TDGIC*" [sic] as the ADR "officer" [sic]) to sign and file a "Response" on behalf of *TDGIC*. Nieuwland did not.

194. Moreover, if Nieuwland believed that *TDGIC* should also be "a respondent", then Nieuwland, on its behalf, was required to file a response in relation to the "Appeal". However, the language is "a respondent" and not "the respondents".

195. Ergo, Nieuwland's submission that *TDGIC* is "the respondent" is false in fact and at law, and particularly by conduct. If Nieuwland held the honest belief in his submissions that *TDGIC* was the "Respondent", or a "Respondent", then he would have signed, filed and served a "Response".

196. If *TDGIC* is not the "Respondent" and has not filed a "Response" herein, then it is not "Respondent Party" herein. Therefore, *TDGIC* has no right to participate in this **SNIC Proceeding** until it obtains an order to be added as a party and provides affidavit evidence as to why it [*TDGIC*] has a significant interest in this **SNIC Proceeding**.

Rule 20.3: Response to AABS Claim MUST detail jurisdictional issues

197. The only jurisdictional issue detailed by the Purported **SNIC** Response was the "Medical and Rehab Benefits" issues regarding a "section 44 examination".

198. It cannot be understated that this is the specific reason why the Appellant submitted that some of the documents, filed by Nieuwland by a Non-Party and **NON-SABS Insurance Company**, were "suspicious" as **SNIC** did not raise THAT specific jurisdictional issue in the **SNIC** Response. The Appellant again submits that the documents are fabricated, backdated or were never sent with particular reference to an unknown adjuster, unknown accounting firm (herein) and other material facts in evidence.

199. The sole jurisdictional issue in this **SNIC Proceeding** from **SNIC** is that the Appellant is precluded from arguing the "Medical and Rehab Benefits" issue without attending a section 44 examination (albeit that is an issue for another day and whether this alleged "notice" complied with sufficient medical reasons pursuant to MB v. Aviva and Peel Mutual). Again, any exchange of documents must be between **SNIC** and the Appellant.

200. To reinforce for this **NOM #4**, it is only **SNIC** that is a "respondent" as it [not *TDGIC*] filed a Response.

Rule 24: Representation

201. If Vice Chair Lake's statement of law (without having decided said NOM #5) that a "party may be self-represented" and **SNIC** can be "self-represented", then **SNIC** is represented by Karat. It seems to run counter to the *Legislation Act*, the LSA, *Insurance Act* et al but in any event for the purposes of **NOM #4**, Karat is an unlicensed representative and by defending this **NOM #4**, he would likely be engaging in the practise of law and/or providing legal services to **SNIC**.

202. If **SNIC** wanted to have a different representative, then it was required to have a different representative than Karat file a DOR. No DOR has been filed on behalf of **SNIC**.

Volume 3(D): Jurisprudence

Volume 3(D)(I): Insurers must honour past obligations (see: Tab 13)

203. Insurers must honour past obligations pursuant to SABS considering the consumer protection nature of SABS. (see: Han, per Vice Chair Flude; Hearing Brief, Tab 13).

Volume 3(D)(II): Insurers should not have to incur the costs (TEF) associated with engaging with tribunal to obtain entitlements; and partial compliance with SABS is not sufficient

204. Pursuant to *Peel Mutual* and Vila, insureds are not required to engage with the Tribunal, and must not suffer the temporal, emotional and financial costs associated with the same.

VOLUME #3(D)(III): **SNIC** – history of delays

205. In *LC v. **SNIC***, the Divorced Husband Conflicted Lawyer was chastised and admonished for delaying case conferences with bad tactics to delay the same (see: HB, Tab 15).

VOLUME #3(D)(IV): Response by "ambush"; integrity of tribunal process and fairness

206. Pursuant to Orne and other cases, the Appellant was entitled to proceed on the basis

VOLUME #3(D)(V) Submissions are not "evidence"

207. Submissions are not evidence, and there is no evidence on behalf of **SNIC** and any unsworn evidence on behalf of *TDGIC* is the **NON-SABS Insurance Company**'s behalf – not on behalf of the SABS Insurer.

VOLUME #3(D)(VI): Compelling evidence on BOP for a Reg 664 award

208. Unlike CM, this is not an issue of determining the accuracy of the calculations per se as **SNIC** will be at liberty to provide any accounting of the amount of admitted IRB Weekly Quantum per week, as required to be paid every second week pursuant to section 36(9) of SABS,

209. The Appellant is claiming a Reg 664 award for the period from September 8, 2022 to present for **SNIC**'s unreasonable withholding or delaying of making any IRB payments since the IRB Delivered Application Date. There can be nothing more unreasonable than having the SABS Insurer admit the IRB Weekly Amount, IRB Application Delivery Date, the IRB Historical Quantum Period, and then not make payments for historical obligations after filing a responsive pleading in a LAT Proceeding.

210. Moreover, **SNIC** having a right to participate in the **SNIC Proceeding** did so by the **SNIC** Response but then failed to provide any submissions, evidence, or authorities in response to the February 14, 2024 LAT Order by the deadlines imposed therein.

VOLUME #4: Formula for Reg 664: Coachman

211. The formula for a Reg 664 award was denoted in Coachman and applied in the Appellant's IRB Schedule/Appendix. **SNIC** has not challenged the mathematical precision of those calculations (see: HB, Tab 21).

VOLUME #5: When May Becomes a Must

212. Pursuant to the decision of Julius v. Oxford (Bishop of) by one of the founders of the common law in Lord Cairns, which has been cited countless times by the SCC, a "may" becomes a "must", in this context after the Appellant's filing of the **NOM #4** on the Unwithdrawn Admissions in the pleadings herein.

VOLUME #6: Conclusion

213. Whether the Appellant is entitled to IRB after the IRB Denial Date is not an issue to be decided in this **NOM #4** (see: *Rio Tinto*, SCC; only issues in a motion are to be decided).

214. Whether *TDGIC* could be added as a "party" herein is a matter of discretion for tribunals (see: M.W. and D.W. v. Tarion Warranty Corporation, 2018 CanLII 43768). However as a matter of administrative fairness, integrity of the tribunal process and consistency with the governing legislation, the Appellant would be entitled to motion materials from *TDGIC*. It would of course be opposed by the Appellant but that is neither here nor there for this NOM #6.

215. What is not discretionary is that *TDGIC* is not, as a matter of legislation, the SABS Insurer as that is **SNIC**. It is not the "insurer" in this **SNIC Proceeding**, and it was and is not the "insurer" in TD Claim #3 between the Appellant (in his capacity as a "Claimant", without referencing the definition of "Claim" under the LSO By-Laws as that excludes CAT Impairment, with **SNIC** as the "Insurer").

216. As found by the ONCA in Chiarelli, which is binding upon the LAT in this NOM #6, the parties to the a proceeding SHALL be the persons specified as parties:
    a. By; or
    b. Under
        i. The statute.

217. 'The statute' herein is the *Insurance Act* as the "Application" or "Appeal" was made under the statutory authority of section 280(2) of the *Insurance Act*.

218. While neither the Appellant (self-represented) or Mr. Karat on behalf of **SNIC** referenced "*TDGIC*", the Appellant notes that even where other "applicants" and "respondents" misnamed "insurance companies" or where a decision maker of the Tribunal misnamed "Aviva" for "Wawanesa" (see: FC v. Wawanesa), it does not make those misnamed insurance companies somehow "insurers" for the purposes of payment of benefits. Whether some individual misinformed the Tribunal or not, the duty remains on the "sophisticated party" (as found in *Mosa* by the Vice Chair therein), which is a positive duty, to inform the Tribunal of the correct name of the "insurer" as it relates to SABS benefits. It is, of course, a positive duty for not only the insurance company but any licensee who is authorized to act for an insurance company because in SABS matters, the insurer which a person has recourse "is liable" to pay the benefits under SABS. Moreover, is only SABS insurers that duties of good faith and fiduciary duties to "insured persons". If 'non-SABS insurance companies are entitled to be substituted in, at will, like what has happened here, or continued stubbornness and imprudence by Nieuwland for *TDGIC*,

219. It is also important to note that in Nieuwland continuing to purport to represent the "Non-SABS Insurance Company" as it would be a barrier to effective enforcement of orders in a decision under **NOM #4** 9 (see: Black Swan, 2017 HRTO 676, paragraph 12).

220. Ironically (when reviewing *Black Swan*), the respondent [**SNIC**], which is *TDGIC* cannot be as it never filed a "Response" herein, participated in this **SNIC Proceeding** through its "ADR Specialist" being the sole representative therein.

221. An Insurer [**SNIC**] against whom a person (individual being the Appellant) has recourse for the payment of the SABS IS LIABLE to pay the benefits (see Tab 20, paragraph 3 of the Written Argument for **NOM #4**). In this **NOM #4**, the Appellant only has recourse for payment of benefits from **SNIC**.

222. As **SNIC** (and *TDGIC*) are regulated in part by FSRA, their representatives are bound by the UDAP Rule which became effective prior to the filing of the Appeal and then was amended on February 14, 2024. Ironically, this was that date that Mr. Karat

223. Within ten business days from the IRB Delivered Application Date Admission (October 13, 2022), **SNIC**, having the Appellant's Beneficiary Bank Account details and particulars, was required to send an ETF to said Beneficiary Bank Account unless it provided a Medical Reasons Notice or a request for "reasonably required information in order to determine the quantum of the Specified Benefit". **SNIC** did neither within ten business days.

224. Pursuant to section 36(6) of SABS, as all disputes whether submitted by the Appellant or **SNIC** (as the sole Respondent herein as only it filed a "Response" in the form of the "**SNIC** Response") herein or in a Future Related LAT Proceeding (if applicable), the only way that an Insurer [**SNIC**] can have its obligations put on hold in the future (not historical) was to have sent the Appellant a "Medical Reasons Notice" with "medical reasons and other reasons" in relation to the Specified Benefit (not "Med/Rehab Benefit"). As **SNIC** did not list or attach documents to its Purported **SNIC** Response, it is then obligation was to exchange documents with the Appellant from that time and it failed to do so. **SNIC** then failed to oppose this **NOM #4**.

225. The Legislature did not grant the Tribunal any discretion to not decide this **NOM #4** in accordance with SABS. As such, the only liable insurer and payor of benefits has been and is **SNIC**. Ergo, only an order regarding **NOM #4** can be against **SNIC** in relation to the required payment of IRB.

226. **SNIC**'s Unwithdrawn Admissions in the "pleading" was that it "suspended" the IRB on the IRB Denial Date. SNIC had an ample opportunity to seek leave to amend its pleadings if it wished or file an amended pleading (if allowed) but it did not do so.

227. SNIC had ample time to prepare and file responsive submissions to this NOM #4 but it chose not to. As such, this NOM #4 is not consented to but it is not opposed. As such, without any resistance from SNIC, the Appellant submits that this NOM #4 can be decided prior to NOM #6 in the time frame of 15 minutes. The Appellant will go over these "Speaking Notes" and seek the relief herein and any costs orders depending on the time required on May 2, 2024.

228. All of which is respectfully submitted on behalf of the Appellant and Moving Party on May 1, 2024

ENDNOTES

[1]See: Tab 23, page 658
[2]"Automobile Accident Benefits Service (AABS) Claim" means an application to the LAT pursuant to s. 280(2) of the *Insurance Act* seeking resolution of a dispute involving statutory accident benefits
[3]TD Insurance Meloche Monnex
[4]"TD Insurance Meloche Monnex" refers to the home and auto insurance program for two different underwriters: **SNIC** (Quebec); and Primmum (Ontario). In this **SNIC** Proceeding, the relevant auto insurance program is for "Professionals And Alumni" which is underwritten by **SNIC** and distributed by MMISF Inc. in Quebec and TD Direct Insurance Agency Inc. in the rest of Canada (see: Affidavit #12). Meloche Monnex Inc. is the holding company for the shares in **SNIC**, TDGIC, TD Home & Auto Insurance Company ("TDHAIC"), and it has an address for service of 12th-50 Place Cremazie, Montreal, QC H2P 1B6 (see: Affidavit #12).

[5]as it relates to the "Alumni and Professionals insurance program underwritten by **SNIC**)
[6]Affidavit #3, Exhibit "A", page 247
[7]Please see: New LAT Rules or "LAT Rules", R. 2.1 and 2.2 for interchangeability between **Appellant** and Applicant
[8]https://fcaa.gov.sk.ca/public/CKeditorUpload/Insurance/insurers_current_licensees_-_march_1,_2018.pdf
[9]https://fcaa.gov.sk.ca/public/CKeditorUpload/Insurance/insurers_current_licensees_-_march_1,_2018.pdf
[10]See: Appendices and **Affidavit #15**;
[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]Insurance Act, RSO 1990, c I.8, s 224, <https://canlii.ca/t/2g6#sec224>, retrieved on 2024-04-30
[17]TDGIC has not produced, in evidence, a certified copy of a court order or any evidence where the Appellant consented to the same.