Insurance Policy #: #001013511806
Insurance Program*: "TD INSURANCE MELOCHE MONNEX" (Alumni And Professional Program)*
Broker*: Meloche Monnex Financial Services Inc.*
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"**[1]

BETWEEN:

Kevin Alexander McLean

APPLICANT/APPELLANT

AND:

TD INSURANCE MELOCHE MONNEX[2] [3] [4] [5]**(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**")[6] 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 #6**

Appellant's Speaking Notes for NOM #6

APPLICANT/APPELLANT	RESPONDENT
Mr. Kevin A. McLean (B.A., J.D. CIM) 410-775 King Street West, Toronto, Ontario, M5V 2K3 **Telephone**: 647.513.1270	**Security National Insurance Company ("SNIC")** **Insurance License Number:** 910166[7] Security National Insurance Company, Securite Nationale Compagnie D'Assurance[8]

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[9] 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[10] at the premises situated at 101 Mcnabb St, **Markham**, Ontario, L3R 4H8 ("**TD Insurance Markham**" or "**SNIC Markham**")[11];

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**"[12](of the "**Purported SNIC Response**");

- AND -

On NOTICE TO (FOR COSTS PURPOSES)

NON-*SABS* INSURER in *NON-SABS INSURER*

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 AND The Impugned Individuals

VOLUME #1: Introduction

VOLUME #1(A): *Introduction; The OCF-1; and A simple statement in many of the letters from SNIC to the Appellant; and overlooked title of "Nurse and Persaud"*

1. These "Speaking Notes" may be read into the record "in full" for the NOM #6 hearing but more purposively for the "adjudicator" to review in advance, along with SNIC et al, and make use of "hearing time" via "telephone" with any guided or pointed questions from the Tribunal or any responses by relevant persons with standing. As such, they are comprehensive and lengthy to condense the "Joint Hearing Record" into one set of "Speaking Notes".

2. The **Appellant** respectfully serves **SNIC** (the "***SABS* Insurer**"), ***NON-SABS INSURER*** (formerly "CT Direct Insurance Inc.", defined as "**Non-*SABS* Insurer**"), and the **Impugned Individuals** (the "Non-*SABS* Insurer" and "Impugned Individuals" defined together as "**Impugned Persons**"), and submits to the License Appeal Tribunal (the "**Tribunal**"), division of "Accident Automobile Services" ("**AABS"**) these "*Speaking Notes*" for NOM #6. The **Appellant** does so in accordance with section 2 of the *SPPA* (see: Hearing Brief, Tab 3, page 9), and as a courtesy to the **Tribunal**, **SNIC** and the **Impugned Persons**.

3. As of April 29, 2024, the **Appellant** has learned that the "claims adjuster" has changed as it relates to **TD Claim #3** to a woman named "Bev Mitchkie" so the issues surrounding Ms. Persaud have become moot but for her past conduct.

4. The OCF-1 tendered by **SNIC** to the **Appellant** contained the pre-printed language of:

   > "Return this Form to Security National Insurance attention: Alisha Anne Nurse
   > Suite 200-101 McNabb Street, **Markham** Ontario, L3R 4H8
   > "**SNIC Markham Fax**" or "**SNIC 416 Fax Number**")"
   >
   > (see: **Affidavit #3, Exhibit "A", page 555 to 557**)

5. In any denial of benefits, or withholding of benefits by Security National Insurance Company (***SABS* Insurer**) (attention: Ms. Nurse at **SNIC Markham**) contained the following language [emphasis is mine with double underlines]:

   > "YOUR RIGHT TO DISPUTE THE INSURANCE COMPANY'S DETERMINATION OF YOUR CLAIM FOR STATUTORY ACCIDENT BENEFITS
   >
   > Under the *Insurance Act*, if your claim for statutory accident benefits has been reduced or denied by <u>your insurance company</u>, you have a right to dispute <u>your insurance company</u>'s determination.

If you do not agree with the insurance company's decision, you may file an application with LAT – AABS within 2 years of the date of reduction or denial.

Your insurance company may have an internal complaint review system. While you are encouraged to work with your insurance company to settle your complaint, be warned that it does not extent the two –year limit to make your claim.

HOW TO FILE AN APPLICATION TO LAT – AABS SERVICE

To file an application you must complete the following steps:

1. Complete an AABS application by an injured person (the "application")
2. Send a copy of the application to the insurance (this is called 'serving' the other party);
3. Complete an **AABS Certificate of Service** to explain how you have sent the copy of the application to the other party; and
4. Submit the complete application and the **COS** to AABS and pay the AABS application fee.

(see: **Hearing Brief**, Tab 29, page 330 for example)

VOLUME #1(A)(I): ***Application of the Facts to the Law as it relates to the above***

6. Simply put, the **Appellant**'s "insurer" or "insurance company" was and is **Security National Insurance Company** that operates under the *trade name* (see: Affidavit #19 of the **Appellant**) of "*TD INSURANCE MELOCHE MONNEX*" in relation to the "*Professional And Alumni Insurance Program*" (the "Alumni Program").

VOLUME #1(A)(I): NOT the Appellant's "insurer" or "insurance company": CT Direct Insurance Inc. – then TD General Insurance Company

7. "TD General Insurance Company" is the "Non-*SABS* Insurer" and it is NOT the **Appellant**'s insurance company. "***NON-SABS INSURER***" does not have the historical and goodwill presence of "**SNIC**" as "TD General Insurance Company" did not even exist by name until September 1, 2000 when "CT Direct Insurance Inc." changed its name to "TD General Insurance Company (see: **Hearing Brief, Tab 38, page 553**).

8. This **SNIC Proceeding** cannot be governed in accordance with *SABS*, which is a requirement upon the Tribunal (along with filings by the **Appellant** and **SNIC**), so long as ***NON-SABS INSURER*** continues to purport to be the "respondent party".

9. Had Nieuwland signed and filed a "Response" on behalf of **SNIC** on January 25, 2024, he would not have been required to file a DOR along with NOM #5 and NOM #7 likely would have been unnecessary. NOM #4 is being heard on May 2, 2024. Parenthetically, **SNIC** has not tendered any responsive submissions in relation to NOM #4 so it can be decided summarily on the pleadings.

<u>VOLUME #1</u>(A)(II): Steps the **Appellant** took in accordance with the above

<u>VOLUME #1</u>(A)(II)(a): **Appellant** stonewalled by **SNIC** – filed Appeal

10. The **Appellant** attempted to work with **SNIC** on a variety of its outstanding obligations under *SABS* but it was to no avail. After spending over a thousand dollars faxing **SNIC Markham** and **SNIC** Burlington to attempt resolve said outstanding benefits, the **Appellant** filed the "**Appeal**" or "**Application**" ("*Application Of Injured Person*") on December 24, 2023.

<u>VOLUME #1</u>(A)(II)(ab: ***Appellant** served Appeal on **SNIC** via fax to **SNIC Markham** Fax*

11. The **Appellant** served the **Appeal** via fax to **SNIC** via **SNIC Markham Fax**.

<u>VOLUME #1</u>(A)(II)(c): ***Appellant** served listed and attached documents to Nurse and Persaud (**SNIC**)*

12. As the **Appeal** listed a variety of affidavits, which appendix all of the documents he had sent and received, the **Appellant** served the remaining documents via email to Nurse (**SNIC Markham**) and Persaud (**SNIC** Burlington).

<u>VOLUME #1</u>(A)(II)(d): ***Appellant** filed COS's over a three day period*

13. The **Appellant** completed a litany of certificates of service for each and every service of the listed documents, filed with the Tribunal with courtesy copies to Nurse and Persaud.

***<u>VOLUME #2</u>**: Cross-References in the "Speaking Notes" and the Layout of these Speaking Notes; Timing of the Speaking Notes; service of the Speaking Notices on the SABS Insurer, **NON**-SABS Insurer and Impugned Individuals*

14. As a result of the **Appellant**'s disabilities and his memory not being what it once was as a result of the Impairments that he suffered from the MVA, the **Appellant** provides these "Speaking Notes" for the hearing of NOM #4 on May 2, 2024. Further, the **Appellant** provides these "**Speaking Notes**" as a courtesy to the Tribunal and the *SABS* Insurer in Security National Insurance Company (defined as "**SNIC**" or "***SABS* Insurer**") and the **NON-***SABS* Insurer and **Nieuwland**, the sole signatory of the Purported Responsive Motion Submissions (see: Ortiz[16] COS). As the **Appellant** has included the **Hearing Brief** index for NOM #7 ("**NOM #7 Index**"), the **Appellant** has cited certain legislation, regulations, and authorities therein (see: HB Index, NOM #7, Affidavit #19, Tab 38, pages 641 to 646).

VOLUME #2(A)*: Another Replacement Adjuster: Fresh Evidence for purposes of these Speaking Notes and the Tribunal*

15. There is another piece of "fresh evidence" as to why these "Speaking Notes" are provided in advance of the **COI Motion** Hearing. As of Friday, April 26, 2024, the **Appellant** learned circuitously and via hearsay that there is another replacement adjuster in "Bev Mitchki". The **Appellant** included the purportedly responsive submissions by a **NON-*SABS* Insurer** (***NON-SABS INSURER***), signed by **Nieuwland**, in the **Hearing Brief**, by way of courtesy, as those were the *only pages* that were consecutively numbered in accordance with part of Rule 9.4.5 of the *LAT Rules*. **Nieuwland** failed to include an index in accordance with the aforementioned LAT Rule.

16. The **Appellant** maintains his objection and position that ***NON-SABS INSURER***, as the **NON-*SABS* Insurer**, is not the "insurer", the "respondent", or the "party" in the: (i) **Insurance Policy** (or "Insurance Contract"); (ii) TD Claim Numbers; (iii) **SNIC Proceeding**.

17. Party is defined and interpreted under the SPPA and it does not include the "Non-*SABS* Insurer" as per the definition of insurer, insurance policy, contract of insurance, et al as that can only be in the *SABS* context, the liable person which is "SNIC".

18. Under the LAT Rules, respondent is defined under Rule 2.21:

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

19. The Appellant never identified "TDGIC' as the respondent in the appeal. Karat identified SNIC as the "insurance company" relevant to the Appeal, and the respondent can only be under the Insurance Act, Security National Insurance Company.

20. The importance of the "right to licence and insurer's name" is governed by section 53 of the Insurance Act. (see: HB, Tab 38, page 470).

21. The **Appellant** refers to the Joint Hearing Index (the "**Joint Hearing Index"** or "Hearing Index") for **NOM #6** by way of the Joint **Hearing Brief** (the "**Joint Hearing Brief**" or "**Hearing Brief**"). The **Hearing Brief** is 646 consecutively numbered pages separated by "38 tabs". The **Appellant** adopts the definitions from **Hearing Brief** and they have the same meaning herein as they do therein. The Joint Brief includes the **Appellant**'s written argument on April 8, 2024 (see: Tab 36, pages 428 to 448); the **NON-*SABS* Insurer** responsive submissions, signed

by **Nieuwland** for the **NON-*SABS* Insurer**, (see: Tab 37, pages 448 to 453 [slight correction]); and the **Appellant**'s reply **Hearing Brief** (the "Reply Brief") on April 25, 2024.

22. Pursuant to Rule 9.3, **Nieuwland**, on behalf of the **NON-*SABS*** Insurer, is required to seek leave of the Tribunal in the event that he wishes to rely on any documents or things that were filed in contravention of a LAT Order (specifically LAT Order of April 9, 2024).

<u>VOLUME #2(B)</u>: The *LSA* (see: **Hearing Brief**, Tab 4, pages 114 to 121)

23. Pursuant to the *Omnibus Bill* known as the "Access to Justice Act, 2006" ("*AJA*"), paralegals were authorized by the Legislature to provide "legal services" to persons and lawyers were licensed to "practise law". They were both defined as "Licensees" with the former being a "P1 holder" and the latter being either a "L1", "L2" or "L3" holder.

***<u>VOLUME #2(C)</u>**: Section 1(5) and (6) of the LSA*

24. A person provides legal services if the person engages in conduct that involves:

    a. The application of legal principles; and
    b. Legal judgment with regard to the circumstances or objectives of a person.
    (see: section 1(5) of the *LSA*)

25. A person provides legal services *if* a person gives "a Person" advice with respect to legal interests, rights or responsibilities or of another person; represents a person in a proceeding before an adjudicative body; or negotiates the legal interests of a person. (see: section 1(6) of the LSA).

***<u>VOLUME #2(D)</u>**: Section 1(7) of the LSA: representation in a proceeding*

26. Doing any of the following SHALL BE CONSIDERED to be representing "a person" in a proceeding:

    a. Determining what documents to serve or file in relation to the proceeding;
    b. Determining on or with whom to serve or file a document; or
    c. Determining when, where or how to serve or file a document.

    (the "**Section 1(7)(A) Determinations**")

27. Doing any of the following SHALL BE CONSIDERED to be representing "a person":

    a. Conducting an examination for discovery; or
    b. Engaging in any other conduct necessary to the conduct of a proceeding.

***<u>VOLUME #2(E)</u>**: **SNIC** is a different person than **NON-SABS INSURER**;*

*Nurse, Persaud and Mitcki were the claims adjuster for **SNIC**, regarding its requirements to pay certain benefits and expenses*

Karat** is an ADR representative (not an "officer") and has only provided legal services to **SNIC** herein and remains the unlicensed representative of **SNIC

Nieuwland** has only practiced law for the **NON**-SABS Insurer, and engaged in representation of **NON-SABS INSURER** in this **SNIC Proceeding

*[All documents were signed, filed and served on behalf of the **NON**-SABS Insurer by **Nieuwland**]*

***VOLUME #2(E)(I)**: The "Claims Adjusters"*

28. Nurse was the "Claims Advisor" (or "adjuster") from 2022 to Summer 2023. Persaud was the "Claims Advisor" from 2023 (Summer) to April 2024. Mitchi is now apparently "Claims Adjuster" from April 2024.

VOLUME #2(E)(II)**: The "ADR Representative" [not an "officer"]: Kart – conduct solely in relation to **SNIC

***VOLUME #2(E)(II)(a)**:* **Karat**: **NON-**Licensee and Unlicensed Individual

29. Kart is a **NON-**licensee and unlicensed representative of **SNIC** in this **SNIC** Proceeding before an adjudicative body (LAT/AABS) when measured against the LSA and its By-Laws. Pursuant to *LSO v. Collins*, citing *LSUC v. Crawford*, non-licensees (or former licensees) are uninsured and immune from the regulatory and disciplinary control of the Law. As Mr. Karat does not provide any fees to the LSO, despite his LinkedIn claiming he is affiliated with the LSUC since 2014, this presents an obvious and significant risk to the public in that there is no recourse within the LSO's regulatory structure and little recourse (but for section 26.1 of the LSA) against the non-licensee for negligent and fraudulent acts done in the course of unauthorized practice.

30. Where a licensee (which the **Appellant**'s uncontroverted evidence remains that the licensee (who is also deemed an "Officer" of SNIC by virtue of being a "manager" or "management" with SNIC) was the **Divorced Husband Conflicted Lawyer**) affiliates with a non-licensee, he remained exclusively liable for his professional practice when so affiliating.

31. The same would have applied to the **Divorced Husband Conflicted Lawyer** and Ms. Papadopoulos in the case of *Quinn v. SNIC*, and Mr. Dugas, when he affiliated with Mr. Karat, in Kopylets. There is no allegation herein against Ms. Papadopoulos or Mr. Dugas.

32. The Conflicted Lawyer has also acted for "TD Insurance Meloche Monnex" in *Mensah* (see: 2022 CanLII 452) and *18-00161 v. SNIC*, 2019 CanLII 9628.

33. Notably, the Conflicted Lawyer had never represented "TD General Insurance Company" and neither had Karat. It is notable that "TD Insurance Meloche Monnex" (Primmum and SNIC) has two underwriters for two distinct programs. The Alumni Program is the only relevant insurance program herein under the Insurance Contract herein.

34. It is notable because "Meloche Monnex Financial Services Inc." (the "**Broker**") has its registered records office at SNIC Markham.

VOLUME #2(E)(II)(b): **Karat** provided legal services to **SNIC**

35. **Karat** provided legal services to **SNIC** and, by operation of law, with his signing, filing and service of the **Purported SNIC Response** did far more than section 1(7)(a) and certainly conduct that fits section 1(7)(c) of the *LSA*, which "SHALL BE CONSIDERED" representation of a person [**SNIC**] in this **SNIC Proceeding**.

VOLUME #2(E)(II)(c): **Karat** NOT the "Claims Adjuster" in **TD Claim #3**

36. The "Response Form" references a "claims adjuster" or "legal representative" and Mr. **Karat** confirmed by his online filing that he was not a licensed representative or had an exemption under the **LSO** By-Laws. Mr. **Karat** was not the "claims adjuster" of **TD Claim #3**.

VOLUME #2(E)(II)(d): **Karat**'s actual "representations" versus **Nieuwland**'s misrepresentations

37. **Nieuwland** has signed and represented to the Tribunal in the "Motion Submissions" for a **NON-***SABS* Insurer, that **Karat** was "appointed" [sic] as the "ADR" 'officer' [sic] to handle this LAT Dispute for ***NON-SABS INSURER*** [sic: "Respondent"] which is contrary to **Karat**'s emails on January 23 and 25, 2024 and February 14, 2024 along with the attachments as follows:

a. **Purported SNIC Response**;
b. Cover letter attachment that referenced the **Purported SNIC Response**; and
c. **Karat** COS (served on the **Appellant** on February 14, 2024).

VOLUME #2(F): **Nieuwland** unfamiliar with the language

VOLUME #2(F)(I): *Assigned (not appointed) (nota bene: language matters as per* ***LSO*** *By-Laws)*

"Karat Assigned to be the ADR for this LAT Dispute while representing the interests, rights, and privileges of SNIC"

38. **Karat** represented to the **Appellant** on January 23, 2024 that he was "ASSIGNED" as the "ADR" to handle this LAT dispute [not "application"]. (see: **Affidavit #13, Exhibit "A", page 4**).

39. **Karat** represented to the **Appellant** that was the "ADR" [sic] and not an "ADR Officer".

40. **Karat** represented to the **Appellant** on January 23, 2024 that he was "representing the Security National Insurance Company" which was distinct from his auto-replies (see: **Affidavit #13, Exhibit "A", page 4**).

41. Therefore, **Nieuwland**'s representation in his signed motion submissions on behalf of ***NON-SABS INSURER*** were and remain false as **Karat** was assigned (not appointed) as the ADR by **SNIC** (not ***NON-SABS INSURER***).

***VOLUME #2(F)(II)**:* Importance of section 1(8)(2.) of the *LSA*

42. As **Karat** has not provided any evidence that he was an employee or officer of "a corporation" (**SNIC**), any selecting, drafting, completing or revising of the **Purported SNIC Response** for use of "the corporation" (**SNIC**) or which the corporation [**SNIC**] is a party may have provided an exemption to **Karat** under section 1(8) "Not Practising Law or Providing Legal Services" if that was all that **Karat** did.

***VOLUME #2(F)(III)**:* "Signed, Filed and Served"

43. However, By-Law 4, section 28(2.) ("Other Profession Or Occupation") of the **LSO**, has an exemption to the exemption and that is the "representation A PERSON in a proceeding before an adjudicative body" which means that when **Karat** signed (see: **HB, Tab 3, page 94**), filed and served the **Purported SNIC Response**, there was no exemption for him to rely upon under section 1(8) of the *LSA* or the By-Law #4 (Part IV, "Not Practising Law Or Providing Legal Services"), section 28(2.) (see: **HB, Tab 26, page 287**).

VOLUME #(F)(IV): **Appeal** involves CAT Impairment: **Karat** could not have relied on said By-Law #4, section 30 exemption (see: By-Law #4, Part V, "Providing Legal Services Without a License"; **Hearing Brief**, Tab 26, page 288)

Providing Class P1 Legal Services WITHOUT a license

In-house legal services provider

44. As the **Appeal** and **Purported SNIC Response** involve CAT Impairment, **Karat**, if he was an in-house legal services provided to one employer and did not provide legal services to any other person (see: By-Law #4, section 30), he may have been authorized to perform the rights and duties of a paralegal (i.e. providing legal services).

However, Mr. **Karat** has unequivocally denoted that he views **SNIC**, Primmum, TD Home And Auto, and ***NON-SABS INSURER*** as separate insurers and persons (which is correct in law) and he has provided services to **SNIC** and Primmum by reference to *Quinn* and *Kopylets*.

VOLUME #2(F)(V): If the **Appellant** is incorrect and **Karat** was legally allowed to sign, file and service the **Purported SNIC Response** on behalf of **SNIC**

45. While Vice Chair Lake, without any castigation of her per se, did not quote the full LAT Rule 20, it is trite that **SNIC** cannot be "self-represented" as it is not an "individual". If **SNIC** were to file a subsequent appeal against the **Appellant**, in another capacity as a respondent, in a **Future Related LAT Proceeding**, (related to **SNIC** and **Appellant** in relation to **TD Claim #3**), it would require representation by a licensee. It may be in a **Future Related LAT Proceeding** that the issues in that hypothetical appeal would not involve CAT Impairment which could be related to a mistaken payment made by **SNIC** and seeking the return of said payment.

46. It also important to note that Vice Chair Logan, in the Reconsideration Motion, did not find that Vice-Chair Lake was correct in her analysis but by virtue of the *LAT Rules* regarding "Reconsideration" that the Vice Chair Lake Order did not dispose of the appeal.

47. If the **Appellant** is incorrect in his legal analysis, which has not been refuted by **SNIC** or Mr. **Karat** with any evidence, then it remains that **Karat** is the sole representative of **SNIC** in this **SNIC Proceeding**.

48. The corollary is that **Nieuwland** remains the representative of the **NON-*SABS*** Insurer pursuant to the *LSA*, *Insurance Act*, the *SPPA*, and the *LAT Rules*.

49. The *LAT Rules* required **Nieuwland** to file a DOR for **SNIC** immediately upon becoming its representative. **Nieuwland** never did so he is not the representative of **SNIC**.

50. **Nieuwland** 's execution, filing and service of the Purported Response Motion Submissions (not a compliant **Hearing Brief**) have his signature (which is different from the signature in the DOR for the **NON-*SABS*** Insurer) as:

    a. **Name**: Matthew **Nieuwland**:
    b. **Employer**: TD Insurance Staff Legal
    c. **Lawyer for the Respondent** [sic]: TD General Insurance Company.

51. **Nieuwland**'s Motion Submissions (see: **Ortiz COS**) on behalf of the **NON-*SABS*** Insurer mean that ***NON-SABS INSURER*** is his client located at a different address than **SNIC Markham**.

VOLUME #2(F)(VI)*: Day to Day Handling – Persaud*

52. **Karat** also requested of the **Appellant**, as it relates to the "Accident Benefits Claim" (**TD Claim #3**), that he email with the adjuster in Ms. Persaud.

VOLUME #2(F)(VII)*:* Service of the **Purported SNIC Response**

53. **Nieuwland**, rather conveniently, did not include any references to the **Purported SNIC Response**.

54. While **Nieuwland** was not on the email of January 25, 2024, rather conveniently, **Karat** represented in the email to the **Appellant**, "Kindly see the attached correspondence with today's date along with the Response of **AN** INSURANCE COMPANY" [emphasis is the **Appellant**'s] (see: Affidavit #13, Exhibit "A", page 5).

55. It remains unclear whether Mr. **Karat** is an employee of **SNIC** or "an independent contractor" (or dependent contractor) to **SNIC**.

56. As of a recent auto-reply of **Karat**, he again confirmed by that auto-reply that is not authorized for **SNIC** (but for Primmum, TD Home & Auto, and ***NON-SABS INSURER***).

57. There remains a live issue in this **SNIC Proceeding** as to whether Mr. **Karat** could "sign" the **Purported SNIC Response** as a **NON-**licensee and whether he contravened By-Law 7.1, section 6(d) (and other sections of that By-Law or other By-Laws).

VOLUME #2(G)*: **Nieuwland**'s conduct solely in relation to the* **NON-***SABS Insurer*

58. **Nieuwland** is a lawyer licensee, with the LSO, who was employed by Simitrich Law and now as a lawyer licensee with "TD Insurance Staff Legal". There are some discrepancies between how Saeed (see: HB, Tab 3, page 17 and Nieuwland describe, on the LSO Directory, "TD Insurance Staff Legal" as the form describes it as "employed – practising law" whereas the latter describes himself being in "private practice".

59. On January 30, 2024, **Nieuwland** filed a DOR on behalf of ***NON-SABS INSURER*** ("**NON-***SABS* Insurer"). The **NON-**legal assistant to **Nieuwland** in Ms. Moraes (the "**Fictitious Legal Assistant**") served the **Appellant** with the DOR on behalf of the **NON-***SABS* Insurer. (see: **HB, Tab 3 page 11; Volume #5 therein of Affidavit #15, page 8 of the body**).

60. Moraes has experience, in her former capacity as "providing legal services" as P1 holder to her then clients of *H.O.(v. Aviva Insurance Company of Canada),* and *I.W. (v. Coachman Insurance Company)* in cases from 2019 and 2020) (see; HB, Tab 3, page 17). There is no castigation of Ms. Moraes in now acting as a legal assistant (not providing legal services) but those references are provided for context and her knowledge of requirements of conflicts of interest in the *SABS* insurance context.

61. From early February 2024 to April 10, 2024, the **Appellant** provided notice to **Nieuwland** that his DOR for a **NON-**
SABS Insurer was a nullity and had no legal effect, and urged him to file a DOR on behalf of **SNIC**. **Nieuwland** did not respond and then stated that his DOR was unambiguous.

62. The **Appellant** also urged Mr. **Nieuwland** provide an affidavit if Ms. Moraes was his legal assistant. **Nieuwland** did not respond to the request.

63. In April 2024, Ms. Ortiz suddenly and mysteriously appeared as Mr. **Nieuwland**'s legal assistant along with being a legal assistant to "Ashley Dunkley".

64. Ms. Moraes has been and remains the legal assistant to Klukowska and Saeed (see: January 30, 2024 email from Ms. Moraes; HB, Tab 3, page 83 and 84, referencing "our availability) – not to **Nieuwland** and **Dunkle**y.

VOLUME #2(H)*:* Definitions

65. While the **Appellant** had defined "***NON-SABS INSURER***" as the "**NON-**Respondent", the **Appellant** has updated said definition current to the signing, filings and service on behalf of ***NON-SABS INSURER*** by **Nieuwland** on April 11, 2024 to a "**NON-***SABS* Insurer". In referencing "a", all entities or persons not named as **SNIC** without **SNIC**'s insurance license number of **91066** (the "**SNIC Insurance License Number**" or "**SNIC License Number**") are defined as:

   a. "a" "**NON-***SABS* Insurer" and
   b. ***NON-SABS INSURER*** is a or the "**NON-***SABS* Insurer".

66. **SNIC** is defined herein as the "**Respondent Party**", "**Respondent**" or "***SABS* Insurer**".

67. For ease of reference and the penultimate distinction between **SNIC** and ***NON-SABS INSURER*** and as **Nieuwland** has defined ***NON-SABS INSURER*** as the "Respondent", the **Appellant** refers and defines:

   a. **SNIC** as "*SABS* Insurer"; and

b. ***NON-SABS INSURER*** as "**NON-***SABS* Insurer".

68. For ease of reference, the words of "sworn" or "unsworn" evidence are used even when the **Appellant**'s evidence was "affirmed".

69. "Claim" has the same meaning as in By-Law #4 which excludes a claim of an individual (this "**Appellant**") who has or appears to have a CAT Impairment within the meaning of the Statutory Accident Benefits ("*SABS*") *Schedule* (the "*Schedule*").

70. However, when referring to the "Claimant", the **Appellant** is referring to the "**Appellant**" by virtue of his "**Appeal**" that involves a claim seeking benefits within the limits of CAT Impairment.

71. "**Proceeding**" has the same meaning as in By-Law #4, section 6(1) ((see: **Hearing Brief**, Tab 26, page 285) and any intended proceeding was also vis-a-vis the Claimant (also defined as "Applicant" or "**Appellant**") and "*TD INSURANCE MELOCHE MONNEX*" (see: HB, Tab 38, page 561 for reference to "trade name") (Security National Insurance Company).

72. The *LAT Rules* refers to the *LAT Rules* effective on August 21, 2023 (the "*LAT Rules*" or "New *LAT Rules*").

***VOLUME #3*: Tribunal can take Judicial Notice of the Following Infra**

VOLUME #3(A): *Timing of* ***NOM #6****: The* ***COI Motion*** *(see: Affidavit #15, page 6; Hearing Brief, Tab 3, page 9)*

73. The **Appellant** provided notice to the *SABS* Insurer (and **NON-***SABS* Insurer and **Impugned Individuals**) in a prompt and expedient fashion which is indicative of "good faith" (see: **Hearing Brief**, Tab 5, *Talisman*, paragraph 35).

74. **SNIC** has been represented by a bevy of independent law firms and licensees which would not have a significant impact on its selection of "counsel" (in Ontario, referred to as "lawyer licensees" by the AJA[17]; see: consequential amendments to section 1 and 10 of the *SPPA*; see: *Caruso*) (see: **Hearing Brief**, Tab 5, paragraph 36). **SNIC**'s publicly issued financial statements denoted that its exorbitant amount of assets, goodwill, income et al (see: Affidavit #19, Exhibit "A", pages 8, 20;

75. There are 136 cases with TD General Insurance Company under the LAT.[18] Even by reference to the first decision therein (see: *Dinglasan v TD General Insurance Company*, 2024 CanLII 23465) counsel for "***NON-SABS INSURER***" is from an external law firm in Mr. Jonathan White of ZTGH LLP.

76. **SNIC** has not provided any evidence on its behalf that by it being required to retain outside independent counsel, it will not be able to defend the merits of this **SNIC Proceeding** as defined by the pleadings; namely, the **Appeal** and **Purported SNIC Response** (see: **HB Tab 5**, paragraph 36).

77. The timing of the **NOM #6** and the knowledge of the **Appellant** became overwhelming in April 2024 and was further crystalized on April 11, 2024, and reply on April 25, 2024 (see: *Yellow Cedar*, paragraph 37).

78. **Nieuwland** and ***NON-SABS INSURER*** are not permitted at law to have carriage of this **SNIC Proceeding** or any of the TD Claim Numbers as the **Appellant** never consented to the same and no "court order" has been produced in evidence by **SNIC** or the **NON-***SABS* Insurer.

VOLUME #3(*B*)*: Strong Inference: Licensees and* ***NON-****Licensees who have worked together or do work together share confidence even when confidentiality screens are in place*

79. There is a *strong inference* that licensees who work together share confidences especially where they work under a "group" *even if* internal confidentiality screens are in place (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct.). Where **Confidential Information** exchanged in a prior related matter sufficient related to a current retainer the "licensees" MUST rebut inference **Confidential Information** was exchange (see: *Mariangeli*, [2004] OJ 3082 (Ont Sup. Ct).

80. In this **NOM #6**, the **TD Claim #3** and **SNIC Proceeding** is a current and ongoing matter between the "Claimant" and **SNIC** under "**TD Claim #3**" and **Appellant** and **SNIC** (as the correct legal party and respondent) under this **SNIC Proceeding** (see: **23-015662/AABS**).

VOLUME #3(*C*)*: High Burden to Rebut – not met – where solicitor whose removal sought – argues motion himself*

81. **Nieuwland** cannot have met such burden as he responded to the motion himself albeit on behalf of a **NON-***SABS* Insurer (see: *Mariangeli*).

VOLUME #3(*D*)*: Counsel should swear affidavits and NOT just give assurances in argument*

82. **Nieuwland** was required, along with other lawyer licensees impugned herein by affirmed evidence, to swear affidavits and not have **Nieuwland** make *blanket statements* in the Motion Submissions that there was no conflict of interest.

83. What **Nieuwland** did not say is of import as well. **Nieuwland** did not represent to the Tribunal that "NO **CONFIDENTIAL INFORMATION**" was shared without the **Appellant**'s consent, and "no **Confidential Information**" was used for purposes that the **Appellant** did not consent. If there is misuse of **Confidential Information** (i.e. contrary to OCF documents; contrary to the conditions upon which the **Appellant** sent confidential faxes to **SNIC** with vast amounts of PHI, PI, SPI and CI; contrary to PIPEDA) where the **Appellant** is a "customer" or "client" of **SNIC** by virtue of being an Insured Person, then this disqualifies all of the **Impugned Individuals**.

<u>VOLUME #3</u>(*E*)*: Basinview Village Ltd. (see: 1995 CanLII 4247 of the NSCA)*

84. It is unethical for a licensee or group of licensees (see: *By-Law #7*, Part IV) to represent a client on a foreclosure where the lawyer (his partner, or anyone with whom the lawyer was associated) had represented the interests of the now opposing side to a dispute. In this **TD Claim #3**, **SNIC** had and has a fiduciary duty to the **Insured Person**. **Karat**, as the representative to **SNIC** in the **Purported SNIC Response**, must maintain that fiduciary duty as agent of **SNIC**, to the **Appellant**.

85. **Nieuwland** has now represented that **Karat** was appointed [sic] by ***NON-SABS INSURER*** [sic] as an administrative dispute resolution officer [sic].

<u>VOLUME #3</u>(*F*)*: Staff (**NON**-Licensees)*

86. A **NON-**licensee's change of "firms" or change of "insurers" that he or she is representing or acquiring information from both (Moraes) can give rise to a disqualifying conflict of interest (see: *Carroll* (2004), 2 RFL (6^{th}) 331 (Ont. CA).

87. In **Nieuwland**'s subjective state of mind, it as if **Karat** had transferred from **SNIC** to ***NON-SABS INSURER*** after filing the **Purported SNIC Response**, and all of the **Confidential Information** somehow comes with him as an "ADR Specialist".

<u>VOLUME #3</u>(*G*)*: Misuse of **Confidential Information**: normally not susceptible to proof (or disproof)*

88. In this **NOM #6**, it is a current and ongoing relationship between the **Appellant** and **SNIC** which is oddly sufficiently related to the retainer between **Nieuwland** (TDISL) with a **NON-***SABS* Insurer. While the presumption

and inference is that **Confidential Information** was imparted between a *SABS* Insurer and **NON-***SABS* Insurer, unless the "licensees" (formerly the language of solicitors) satisfies the Tribunal that NO information was imparted which could be relevant.

89. In a *SABS* matter, even one piece of **Confidential Information** disclosed by **SNIC** to a **NON-***SABS* Insurer which is used for any purposes outside of the permitted uses is a misuse. While "misuse" is not condonable, an **unauthorized disclosure** of **Confidential Information** by a **NON-***SABS* Insurer (as the *SABS* Insurer is entitled to disclose some of the **Confidential Information** for limited purposes and the subsequent recipient is bound by those conditions) is the most egregious of the breaches.

90. The **Appellant** cannot find any jurisprudence where the breaches have been this egregious.

91. While normally difficult to prove, it was not by the absence of any affidavits from the **Impugned Individual Licensees**, Ms. Moraes and Mr. **Karat**. It became unassailable after Mr. **Nieuwland**, signed the Motion Submissions, with the inclusion of documents from the AB File from **SNIC**.

VOLUME #3(H): *Knowledge of Associates, Affiliates et al must be deemed to be the knowledge of the licensees (see:* ***Hearing Brief****, Tab 30, page 348 citing Fisher v. Fisher)*

92. This is particularly the case when Mr. **Nieuwland** has represented, contrary to the affirmed evidence and Mr. **Karat**'s authored emails and the **Purported SNIC Response**, that was "appointed" [sic] by a different insurer (**NON-***SABS* Insurer) than he represented in signed, filed and served documents.

VOLUME #3(I)*: All those Associated with the Licensee in the "practice of law" (see:* ***Hearing Brief****, Tab 29, page 348)*

93. It is now established on a balance of probabilities that **Karat** derived his assignment to this LAT Dispute for **SNIC** from the **Conflicted Lawyer**. Therefore, all "conflict of interest rules" and "conflict of interest jurisprudence" has a thrust that relates to not only the lawyer acting personally (or covertly as it relates to section 1(7) of the *LSA*) but all those associated with him in his practice of law.

VOLUME #3(J)*:* The Tainting of Evidence
The Tainted Lawyer
The inability of the **Impugned Individuals** to disabuse their minds of his "instruction, advising, facilitating, managing, supervising, affiliating or otherwise"

94. The **Appellant**'s evidence remains uncontroverted that there has been, is and will be tainting of evidence if the **Impugned Individuals** are not disqualified and restrained from any future provision of legal services, practise of law or representation of **SNIC** (or any **NON-***SABS* Insurer) in any Future Related LAT Proceedings. Tainting of evidence is very high or inevitable as the evidence of the **Impugned Individuals** is unknown and none was adduced in response to **NOM #6** (see: HB, Tab 5, page 129, *Talisman*, paragraph 38).

VOLUME #3*(K):* No undertakings by any paralegals or lawyer licensees

95. As none of the **Impugned Individuals** who are licensees ("**Impugned Licensees**") provided any undertaking to the Tribunal, or sworn evidence, this factor tips strongly in favour of the orders being granted in **NOM #6**.

VOLUME #3*(L):* Financial stake in the **SNIC Proceeding**:

Judicial Notice: employees of TD Insurance or TD Bank (Klukowska)

96. The Tribunal can take judicial notice of the fact that many in-house lawyers of entities that are tied to public companies have a financial interest in the stake of a proceeding or action as any negative repute on any connected, affiliated or related entities can have a negative effect on their bottom line in the shares they hold in a "parent company".

97. As the "*SABS* Insurer" (**SNIC**) has duties of good faith and fiduciary duties to the **Appellant** (see: *Beasley*, paragraph 34; and *Transamerica*, citing *Dervisholli)* from the time of the DOL until the conclusion of this **SNIC Proceeding** or any **Future Related LAT Proceedings**, or a settlement agreement is reached between the **Appellant** and **SNIC** (see: Reg 664, s.9.1), any indirect financial interest in the stake of the outcome of this **SNIC** is not ad idem with its duties to the **Appellant**.

98. As found in *Jia* by the Ontario Divisional Court, which affirmed the findings of **Vice Chair Trojek** on reconsideration, it is not only the *SABS* Insurer but "ITS COUNSEL" that are entitled to receive a great deal of **Confidential Information** and required to keep that disclosed information by a "claimant" or "**Appellant**" , under the plain language of the OCF standard form insurance documents, confidential.

99. ***NON-SABS INSURER*** is NOT the *SABS* Insurer but the "**NON-***SABS* Insurer", so it (including representatives (**Nieuwland** and Moraes), by virtue of the **Nieuwland** Purported Responsive Submissions on behalf of the **NON-***SABS* Insurer with its unindexed, unnumbered and unsworn attachments, had to "go into" the "Accident Benefits

File" which was disclosed, under the duties of confidentiality, by the **Appellant** to **SNIC** (Nurse and Persaud) and correspondence by **SNIC** (see: HB, Tab 3, page 96) to the **Appellant** with return addresses of **SNIC Markham** and **SNIC** Burlington. This is not a possibility of "real mischief" but the proven "mischief".

100. As found in *Dervisholli*, quoted by Madam Justice Marlyss Edwards in Transamerica, once a **NON-***SABS* Insurer collects, accesses, uses or discloses "**Confidential Information**" from the "Accident Benefits file" of '*SABS* insurer', said "counsel or licensees" are place in an irreconcilable conflict of interest. The only remedy that must be granted is their permanent disqualification and removal from any and all files which they are involved in.

101. ***NON-SABS INSURER*** and **Nieuwland** did not present a scintilla of evidence where the **Appellant** consented to the unilateral substitution of "parties" (not adding of ***NON-SABS INSURER***) from **SNIC** to ***NON-SABS INSURER*** or any evidence of the **Appellant**'s consent to ***NON-SABS INSURER*** collecting, using, accessing or disclosing the **Confidential Information** for any **NON-**permitted access, uses or disclosures that were not listed in the OCF documents or his correspondence thereafter with enclosures. ***NON-SABS INSURER*** and **Nieuwland** have not presented any evidence of a "court order" that authorized them to do so.

102. From the time of December 24, 2023 to present, the "mischief" herein is overwhelming and unassailable which include but not limited to:

a. **Karat** represented that he was assigned to handle this LAT Dispute by **SNIC**;
    i. **Nieuwland** has represented different positions and language than the underlying documents already in evidence and served upon **SNIC** et al;
b. **Karat** signed, filed and served the **Purported SNIC Response**;
    i. **Nieuwland** is now engaged in taking positions on behalf of a **NON-***SABS* Insurer that are inconsistent with the pleadings;
c. **Nieuwland** filed a DOR on behalf of a **NON-***SABS* Insurer;
d. **Nieuwland** misrepresented who his legal assistant was;
e. Moraes was acting in her capacity as a legal assistant to two lawyers who did not file a DOR on behalf of **SNIC**;
f. Moraes sought to delay the case conference without following the *LAT Rules*;
g. Moraes is no longer involved in the **SNIC Proceeding**;
h. **Nieuwland** has sought costs in this motion to the amount of ten times the allowable limit assuming this motion took a full day; and
i. Other particulars in affidavit material in this NOM #6 and the "record of proceeding".

VOLUME #3*(M): What would a fair minded and reasonably informed member of the public perceive herein?*

103. *Has the **Appellant** in light of the filing and serving of the perfected Joint Hearing Record as of Friday, April 26, 2024 proven on a balance of probabilities that a fair minded and reasonably informed member of the public would conclude that the circumstances herein could be (a possibility) of perceived conflict of interest such that an order is required, for the proper **administration of justice**, regarding the disqualification and restraining for any further involvement, in **TD Claim #3**, this **SNIC Proceeding** and any **Future Related LAT Proceeding**s of the **Divorced Husband Conflicted Lawyer**, **Nieuwland**, **Karat**, **Moraes**, **Saeed**, and any other unknown individuals who are Associates, Affiliated, Affiliated Entities, Supervisees, Assignees, Joint Entity Affiliated Providers et al (who must receive a copy of a LAT Order)?*

   a. *Further, has there been such mischief and dishonest conduct by the "Non-SABS Insurer", licensees and non-licencees (or on their behalf) (collectively, the "Impugned Persons") that such breaches of integrity, which have a corrosive impact on public confidence in the legal profession and the administration of justice (see: Christie at paragraph 37, cited by Chung, 2021 ONLSTH 44), that they must be disqualified on those bases alone albeit consistently with the principles for a **Perceived Circumstantial COI**?*

104. In relation to subparagraph directly above, it is notable that none of the Impugned Persons provided any evidence of their own or on behalf of ***NON-SABS INSURER***. A reasonable person would presume that if such evidence, and evidence on belief was affirmed and directed at each, and they had no involvement in the "handling" of the **TD Claim #3** or this SNIC Proceeding, they would provide a brief affidavit denying any evidence on information and belief, and flatly stating the same.

105. An adverse inference must be drawn against all of those Impugned Persons. Clearly, ***NON-SABS INSURER*** has admitted to CUD of **Confidential Information** by the unindexed attachments to the **Purported Responsive Hearing Briefs**.

106. As there is no evidence of weigh between the **Appellant**'s affirmed evidence vs. on behalf of **SNIC** (or the **NON-***SABS* Insurer) and the **Impugned Individuals**, the **Appellant** has proven, objectively speaking, that on a balance of probabilities that there is an objectively perceived conflict of interest based on the circumstances ("**Perceived Circumstantial COI**"). The **Appellant** has proven the same beyond a reasonable doubt and with certainty.

107. Such an order is required by LAT considering that **SNIC** has a fiduciary duty to the **Appellant** which includes the duty to a*void* conflicts of interest.

108. Moreover, all persons, including representatives in the insurance industry of Ontario, are bound by the **UDAP Rule** of the FSRA.

VOLUME #3*(N):* A New Precedent in evolving times: mergers, amalgamations and affiliates under the LPA, by amendments by the AJA, and the **LSO** By-Laws

VOLUME #3*(N)(I): Inter-legislative analysis: LSA, Insurance Act, PIPEDA and SPPA*

109. While "affiliate" has a different meaning under the *LSA* versus "affiliate" under the *Insurance Act*, this in turn means that **NON-***SABS* Insurer must be disqualified from any further participation in this **SNIC Proceeding** by its overt and brazen usage of the unlisted documents in the correspondence file of **SNIC** (AB File) in filing (disclosing) to LAT in a public record.

110. Neither **SNIC** nor the **NON-***SABS* Insurer provided one single piece of evidence or authority that allowed them to engage in the conduct in which they did.

111. There was not even a submission as to any exemptions that **SNIC** or the **NON-***SABS* Insurer could rely upon under *PIPEDA* or any case law.

112. Pursuant to By-Law 7, section 31, the following definitions are now even more apropos and compelling:

   a. "affiliated entity" is one or more persons none of whom are licensed or otherwise authorized to practise law or provide legal services inside or outside of Ontario (nb: **SNIC**'s head office is in Montreal, Quebec);
   b. Licensee: includes a permitted group of licensees.

113. "A**ffiliation**", under section 32 of *By-Law #7* for Part IV, is interpreted to mean where a permitted group of licensees affiliates with an affiliated entity when the permitted group of licensees on a regular basis joints with the affiliated entity in the delivery of the services of the permitted group of licensees and the services of the affiliated entity.

114. The known, by written language in correspondence and emails, group of licensees are:

   a. Moraes (a P1 holder but not currently authorized to provide legal services in Ontario i.e. "employed – not providing legal services");
   b. Saeed;
   c. Klukowksa; and
   d. **Nieuwland**.

115. The "affiliated entity" would or may include: Nurse; Persaud; and **Karat**.

116. The Tribunal knows that the **Divorced Husband Conflicted Lawyer** has affiliated with **Karat** in relation to *Quinn v.* ***SNIC***. The **Conflicted Lawyer**, **Karat** and Nurse operate from the same premises being that of **SNIC Markham**.

117. Persaud has represented that her return address for OCF documents and correspondence, subsequent to the OCF-1 which had the pre-printed return address (along with the **Insurance Policy** and **TD Claim #3**), was and is **SNIC** Burlington.

118. Moraes, Saeed, Klukowska and **Nieuwland** operate from the same premises at 66 Wellington West, Toronto.

119. The **Conflicted Lawyer** does not own "TD Insurance" and it is a professional business through which he practises law.

120. Klukowska does not own "TD Bank" per se (although she may have shares in said public company) but it is not a professional business (for purposes of the *LSA* and **LSO**) through which she practises law.

121. Saeed and **Nieuwland** do not own "TD Insurance Staff Legal" per se and they would not own it for the purposes of a professional business through which said licensees practise law. The same can be said of Moraes in her current capacity as a "legal assistant".

122. As it relates to section 32 of *By-Law #7*, Part IV, subpart of section 32(a), this leaves Part III of *By-Law #7*.

VOLUME #3*(N)(II):*		
	By-Law #7:	
		Part III: MDP

123. As Mr. **Karat** and **Nieuwland** has different clients in **SNIC** and **NON-***SABS* Insurer respectively, **Karat** (if he meets the definition of a "Professional" with no dispute that **Karat** is experienced in providing services to licensees like the **Divorced Husband Conflicted Lawyer** and Ms. Francine Papadopoulos on behalf of their client in **SNIC** and Mr. Dugas, esteemed partner at McCague Borlack LLP on behalf of his client in Primmum Insurance Company), then Mr. **Nieuwland** (a licensee) may and shall NOT provide to ***NON-SABS INSURER*** the services of a person (**Karat**) who is not a licensee that support or supplements the licensed activity of **Nieuwland** on behalf of ***NON-SABS INSURER*** (see: *By-Law #7*, Part III, section 17).

124. As **Karat** solely signed, filed and served (as it is presumed) the **Purported SNIC Response**, with the cover letter on January 25, 2024 (see: HB, Tab 3, pages 85 to 88; email: enclosed response from "An Insurance Company" which was the **Appellant**'s Insurer by virtue of the Insurance Act and no reference to "***NON-SABS INSURER***"), which referenced "*TD INSURANCE MELOCHE MONNEX*" with the return address of **SNIC Markham**, along with his sole signature of the **Karat** COS, he did so without **Nieuwland** copied on that email. There is no reference to

Nieuwland in the **Purported SNIC Response**. Therefore, **Karat**'s sole conduct (which were his sole signing, sole filing and sole serving) therein were not to support or supplement **Nieuwland**'s client at the time or by way of retrospective analysis. Only a lawyer licensee was authorized under the LSA to SIGN the Purported SNIC Response as non-licensee is not authorized to even sign correspondence (except of a routine administrative nature) and a paralegal licensee is not authorized to sign a "responsive pleading" where an Appeal (not a "claim" under By-Law #4) involves even the *appearance* that an individual is CAT Impaired. (see: HB, Tab 3, page 27).

125. Kart was correct in the name of the "insurer" in that SNIC was the only insurer that undertook a "contract of insurance" with the **Appellant**'s Spouse and BMW Financial Services Inc. as the "primary listed insureds". By virtue of the **Appellant** being the "occupant" (driver) of the Insured Automobile when Pembridge's insured rear ended the Insured Automobile, from a stopped position, at high velocity in her [tortfeasor insured] above average weight SUV, the **Appellant** was an "Insured Person" under the Insurance Act. Pursuant to the Insurance Act, the **Appellant** became a "party" to the Insurance Policy, and was deemed to have given consideration thereunder as if he had given consideration at the time of the formation of the Insurance Contract and thereafter.

126. By **Nieuwland**'s filing of the DOR, **Nieuwland** unequivocally and unambiguously distanced himself from **Karat**'s client [**SNIC**] in the *SABS* Insurer.

127. By **Nieuwland**'s inaction and then filing of the Purported Responsive **Hearing Brief** on April 11, 2024 in relation to **NOM #6**, **Nieuwland** affirmed and reaffirmed that his client was ***NON-SABS INSURER*** (**NON-***SABS* Insurer). **Nieuwland** then made a succession of independent misrepresentations to the Tribunal about **Karat** and Moraes' roles herein and to him.

128. Therefore, **Nieuwland** did not comply with section 32(a) of *By-Law #7*. In relation to ss. 32(c), it is admitted by **Karat** (see: **Purported SNIC Response** and emails of **Karat** to **Appellant** along with cover letter referencing the **Purported SNIC Response**) that **Karat** operates from the premises at **SNIC Markham** and **Nieuwland** operates from the premises at 66 Wellington West, Toronto.

129. **Nieuwland** and **Karat** cannot now submit that they provide services jointly as they have different clients. **Nieuwland**'s Motion Submissions in relation to **NOM #6** are on behalf of a **NON-***SABS* Insurer. **Nieuwland**'s Motion Submissions do not somehow change the filed **Purported SNIC Response**, the cover letter enclosing the same and **Karat**'s representations on January 23, 2024.

130. **Nieuwland** also did not represent in the Motion Submissions that **Karat** was appointed [sic] by **Nieuwland** or TD Insurance Staff Legal but rather appointed [sic] by ***NON-SABS INSURER***. This is contrary to the explicit and express language in the January 23, 2024 email from **Karat** to the **Appellant** of which **Nieuwland** was copied.

131. Therefore, if **Nieuwland** and **Karat** did not meet the definition of "**affiliation**" under Part IV "Affiliations" under *By-Law #7*, then **Karat** had to be assigned as the ADR representative (not "officer") of this LAT dispute by the *SABS* Insurer (**SNIC**). As directors appoint officers and officers operate a company, namely **SNIC**, then it would have to be a de jure, de facto or deemed officer of **SNIC**.

132. <u>The **Divorced Husband Conflicted Lawyer** meets the definition of an "officer" under the Insurance Act by his title of "Consequence Management".</u>

133. As of January 2024, the **Divorced Husband Conflicted Lawyer** was not only a practising lawyer employed by TD Insurance (not TD Insurance Staff Legal) but a "Consequence Manager" located at **SNIC Markham**. **Karat** as of January 2024 and onwards was located at the premises of **SNIC Markham**. It is trite that a manager may be similar or tantamount to that of an officer of an insurer like **SNIC**. There is no dispute that the case of *Quinn v.* ***SNIC***, with a six day hearing, wherein the **Conflicted Lawyer** and **Karat** were joining would have met the definition of "regular basis".

134. While the Conflicted Lawyer could assign tasks and functions to a non-licensee in connection with THE licensee's practice of law in relation to the affairs of THE licensee's client, including "its staff" (of the affiliated entity), the Impugned Licensees (except the Conflicted Lawyer) are employed by TD Insurance Staff Legal are NOT the staff of Mr. Karat or any other non-licensee affiliated entity.

135. Simply put, the "consequences" were large and they had to be "managed" with assignments of tasks and functions to a non-licensee but the Conflicted Lawyer could not have his name (publicly associated) with this **TD Claim #3** and this SNIC Proceeding. He could not covertly have be involved in the "handling" of **TD Claim #3** and this SNIC Proceeding but that was harder to prove.

136. What was not difficult to prove was that Nieuwland was out of office from January 24, 2024 to January 30, 2024, and Ms. Moraes was not known to the Tribunal or the **Appellant**, in this SNIC Proceeding, until late January 2024. Therefore, the only supervising lawyer, and "manager", that could have authorized and assigned duties to Karat, in accordance with said licensee's practice of law, was the Conflicted Lawyer.

A Lawyer Licensee – must – have supervised, advised, oversaw – Karat's signing and filing of Purported SNIC Response: see: Dankha (cite

137. As noted in the case of Dankha, Vice Chair McGee disagreed with the submissions of Ms. Watson on behalf of the Applicant (Manweel Dankha) but also in relation to Mr. Grabar (a paralegal) filed and signed submissions when the issues related to CAT Impairment of the applicant therein.

138. Ms. Watson, a lawyer licensee in good standing with the LSO, made four arguments which were all rejected:

    a. Grabar submitted documents under the advisement of Faletta (a now suspended lawyer);

    b. Faletta oversaw Grabar's handling of the file;

    c. A new lawyer (Watson) had recently took carriage of the file;

139. The evidence is clear that Nieuwland only filed the DOR on January 30, 2024 for "Non-*SABS* Insurer" while he was away from the office from January 24, 2024 and he was not on the email that attached the Purported SNIC Response for service on the **Appellant** on January 25, 2024. The only reason Karat did not file a DOR was because he could under the LAT Rules that references the Law Society Act, LSO by-laws, policies and guidelines. Had Mr. Nieuwland filed a "DOR" for SNIC, the period from the time of Karat's assignment as the "ADR specialist" for SNIC to January 30, 2024 would have still rendered Mr. Karat's sole signing, filing and serving of the "Response" on behalf of SNIC to have been done without "direct supervision" of Nieuwland or "any supervision". However, Nieuwland has never filed a DOR for the *SABS* Insurer.

140. Karat remains as the "listed representative" for SNIC in the "Response".

141. Karat's name alone was listed in the Purported SNIC Response.

142. The correspondence from Karat on January 23 and 25, 2024 and February 14, 2024 listed or referenced Karat, SNIC Markham and his "representing the Security National Insurance Company".

143. For the purposes of this NOM #6, it is unassailable and uncontroverted by evidence that the **Divorced Husband Conflicted Lawyer** was involved in the "handling" of the "file" under **TD Claim #3** and this SNIC Proceeding. Nieuwland has now represented that Karat was appointed [sic] by ***NON-SABS INSURER*** [sic] as an ADR 'officer' [sic] which ties Karat to now handling the SNIC Proceeding on behalf of a Non-*SABS* Insurer when he has filed the "Response" for the *SABS* Insurer. Ergo, all of the Impugned Individuals must be forthwith disqualified and restrained from any further acting herein or in the future.

144. An interesting note is that Ms. Moraes unilaterally chimed in at one point, when the **Appellant** was confused by her written references to Saeed and Klukowska, but not Mr. Nieuwland, as a legal assistant to them, in late January or February 2024 when she misrepresented that Mr. Karat was the "claims adjuster" and she was the legal assistant to Mr. Nieuwland. Karat was not the "claims adjuster" at any point. Ms. Moraes never included Mr. Nieuwland in her signature block as being legal assistant to him.

145. Consistent with "managerial duties", there are no referenced cases involving the Conflicted Lawyer since the change of his title from "lawyer" to "Consequence Management" (see: HB, Tab 3, page 41), and Ms. Papadopoulos argued the remaining motion in Quinn v. SNIC on her own (without Karat and the Conflicted Lawyer).

VOLUME #3(*N*)(*III*):
By-Law #7.1: Operational Obligations
Nieuwland could not have had effective control over **Karat**'s provision of services

146. **Karat** would like meet the definition of a "**NON-**licensee" under section 1(1)(a, b and d) but the issue is whether he had expressly agreed with the licensee that the licensee shall have effective control over the individual's provision of services to the licensee. (see: HB, Tab 8, page 1520.

147. As **Nieuwland** and **Karat** have different clients, **Nieuwland** could not have had effective control over **Karat**'s provision of services to him at the time or in the future.

148. Since it is undisputed that **Karat** could not sign the **Purported SNIC Response**, although he bound **SNIC** by said filing and service of the **Purported SNIC Response**, and **Nieuwland** refused to seek leave of the Tribunal permit **SNIC** to refile (see: distinction between Old LAT Rule 9.3 and "*New LAT Rule* 9.3) and sign a "Response" on behalf of **SNIC**, then **Nieuwland** could not have had effective control over **Karat**'s provision of services, whilst not being to **Nieuwland**'s client (**NON-***SABS* Insurer), because he did not take any action necessary to ensure that he complied as a licensee with the *LSA*, the by-laws, the Society's rules of professional conduct and the Society's policies and guidelines (see: HB, Tab 8, page 153).

VOLUME #3(N)(III)(a):
Appointment vs. Assignment

149. For the purposes of this **COI Motion**, **Nieuwland** could not assign tasks and functions to **Karat** in connection with his practise of law herein as they did not relate to the affairs of **Nieuwland**'s client in ***NON-SABS INSURER*** (**NON-***SABS* Insurer) (see: HB, Tab 8, page 155).

150. It is also compelling that a *SABS* Insurer has no authority under *SABS* to 'assign' its rights and obligations to "another insurance company". ***NON-SABS INSURER*** has provided no authority of any legislative ability to do the same.

VOLUME #3(N)(III)(b): *By-Law #7.1*, section 3(2) (see: HB, Tab 8, page 155)
Assignment of tasks, functions: general

151. Again for the purposes of this **COI Motion**, **Nieuwland**, pursuant to section 3(2) of the *By-Law #7.1*, did not meet the definition or interpretation of a licensee who is (was) affiliated with an entity under *By-Law #7*, may and shall NOT assign to the entity [affiliated] or "its staff, tasks, and functions" in connection with the licensee's practise of law. Moreover, in relation to the remaining part of that subsection 3(2), any assignment of tasks and functions ("**ATF**") had to be in relation to the affairs of the licensee's CLIENT and *ONLY IF* the client consents to the licensee doing so.

VOLUME #3(N)(III)(c): *Nieuwland* ***Karat*** *have different clients*

152. **Nieuwland**'s client was and is ***NON-SABS INSURER***. **Karat**'s client was and is **SNIC**.

VOLUME #3(N)(III)(d): ***SNIC****'s Authority*

153. **SNIC** could not consent to **Karat** being assigned tasks and functions to a different insurance company under the *LSA By-Law #7*.1, section 3(2).

154. However, **SNIC** could consent to a licensee, who is affiliated with **Karat** (affiliated entity) under *By-Law #7*, assigning tasks and functions to the affiliated entity in connection with the practise of law of that licensee.

VOLUME #3(N)(III)(e): *Process of Elimination*

155. This leaves the **Divorced Husband Conflicted Lawyer**, Ms. Francine Papadopoulos, and Mr. Matthew Dugas as lawyer licensees who have publicly worked with Mr. **Karat**.

<u>VOLUME #3</u>(*N)(III)(e): Dugas Eliminated: external and Primmum only*

156. Mr. Dugas can be eliminated with ease as he has only acted for Primmum Insurance Company which is not the "*SABS* Insurer" herein. While Primmum is an underwriter under the trade name of "*TD INSURANCE MELOCHE MONNEX*" that is solely in relation to "Employer Group Insurance Plan" not the relevant insurance plan herein "Professional And Alumni Program" of the **Appellant**'s Spouse.

<u>VOLUME #3</u>(*N)(III)(e):* Francine Papadopoulos eliminated: no evidence of her involvement

157. It is also compelling that in *Quinn v.* ***SNIC*** that in the subsequent hearing by a separate reported decision that only Ms. Papadopoulos provided submission without Mr. **Karat** and the **Divorced Husband Conflicted Lawyer**. There is no allegation or evidence relating to Ms. Papadopoulos.

The Conflicted Lawyer and **Karat**

The Conflicted Lawyer

158. In his multi-purposed represented role, which is not a castigation against the **Conflicted Lawyer**, the **Conflicted Lawyer** occupies a variety of roles, titles and scopes of authority under various legislation:

a. **Lawyer licensee**: with the *LSA* under the **LSO** directory;
    i. "Employed – practising law"
b. **Employer**: TD Insurance;
c. **Clients since 2018**: **SNIC**;
d. **Title**: "consequence management"

<u>VOLUME #3</u>(*N)(III)(e):* ***Karat****: ADR Specialist*

159. As it relates to this **SNIC Proceeding**, **Karat** was more specific in the **Purported SNIC Response** and his emails in January and February 2024.

<u>VOLUME #3</u>(*N)(III)(e):* Nieuwland

160. **Nieuwland** does not list his "employer" as "TD Insurance" but "TDISL".

VOLUME #3(N)(III)(f): *Who was the "Officer" who assigned Karat as the "ADR" [representative or specialist]*

161. **SNIC** could only act through an individual, namely an authorized individual like an officer or one deemed to have the authority of an officer, particularly a senior officer (see: *Insurance Act*, "officer").

VOLUME #3(N)(III)(f)(i): *Definition of Officer*

162. The definition of "senior officer" only relates to "related party transactions" under **PART XVII.1** of the *Insurance Act*.

163. Therefore, the applicable and relevant definition is that of an "officer":

> "officer" includes a trustee, director, **manager**, treasurer, secretary or member of the board or committee of **management** of AN INSURER and a person appointed by the insurer to sue and be sued in its behalf; (see: section 1(1) of the *Insurance Act*).

164. While the **Divorced Husband Conflicted Lawyer** is not a "trustee" or "director" of **SNIC**, he does hold himself out as a "manager" and involved in "consequence management".

165. The **Divorced Husband Conflicted Lawyer** would meet the requirements of a licensee, officer and manager of **SNIC** at **SNIC Markham**.

166. None of the other Impugned Individual Licensees would meet any of those requirements.

VOLUME #3(N)(III)(f)(ii): *On a balance of probabilities – who assigned Mr. Karat his duties in the* ***SNIC*** *Proceeding?*

167. Therefore, on a balance of probabilities, the "officer" who ASSIGNED Mr. Karat with his duties and functions, to be the ADR specialist herein was the **Divorced Husband Conflicted Lawyer** for the particulars in affidavit evidence previously which are uncontroverted.

168. More importantly, it is notable that Mr. Nieuwland misrepresented that Mr. Karat was an "ADR" 'officer' when he was not and never represented himself as such.

169. Even more compelling was that Mr. Karat signed the Purported **SNIC** Response without any reference to Nieuwland, and then served the **Appellant** with the Purported **SNIC** Response and a cover letter referencing the Purported **SNIC** Response (filed on behalf of AN insurance company – namely **SNIC**) which had the address as the same as the **Purported SNIC Response** at **SNIC Markham**.

170. The author of the cover letter was "TD Insurance Meloche Monnex".

171. The cover letter was NOT signed by Karat – much like the "Andy Gera PIPEDA response" although Karat was the alleged author therein.

VOLUME #3(*N*)(*IV*):
Section 4 of By-Law 7.1: Direct Supervision Required: ATF
Section 4(1)

172. A licensee shall assume complete professional responsibility for his practise of law in relation to the affairs of the licensee's CLIENT (**SNIC**) AND shall directly supervise any **NON-**licensee (Nurse, Persaud and **Karat**) to whom are assigned (see: **Karat**'s January 23, 2024 email) particular tasks and functions (see: signing and filing of the **Purported SNIC Response**; and assignment of ADR to handle this LAT dispute) in connection with the licensee's practise of law in relation to the affairs of "EACH CLIENT" (**SNIC** different than ***NON-SABS INSURER***).

VOLUME #3(*N*)(*IV*):
Section 4(2)

173. Without limiting the generality of section 4(1) of By-Law 7.1, the following are of rudimentary application of the uncontroverted evidence, now where the **Appellant**'s beliefs on sourced information are also uncontroverted, as follows:

a. Any licensee was not permitted to allow **Karat** (**NON-**licensee) to accept **SNIC** on the licensee's behalf;
    i. If **SNIC** was the client of the **Conflicted Lawyer**, then this proves an Actual COI as **Nieuwland** represented in the Motion Submissions that the **Conflicted Lawyer** was never involved in "this matter";
b. Direct relationship and retainer: the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
    i. As **Nieuwland** cannot and could not maintain a relationship with **SNIC**, this only leaves the **Conflicted Lawyer** to do so;
c. Licensee must instruct: as **Karat** and **Nieuwland** have different clients, and **Nieuwland** was absent from January 24, 2024 to January 30, 2024, then it was only, by virtue of "direct supervision", that, not **Nieuwland**, but the **Divorced Husband Conflicted Lawyer** was required to ensure that the **NON-**licensee only acted with his instructions;
d. Assumption of responsibility: as the **Purported SNIC Response** as a document not only prepared by **Karat** (presumably) but one that he signed, filed and served, with his address and phone number as the sole contact information for **SNIC** in **SNIC Markham**, then a "licensee" has to assume responsibility for those tasks and functions. As Mr. **Nieuwland** was not copied to the email and attachments that served the **Appellant** with the **Purported SNIC Response**, then it could not have been **Nieuwland**.

VOLUME #3*(N)(V):*

Ms. Moraes – not the legal assistant to **Nieuwland**

Section 5 of By-Law 7.1

174. Pursuant to said section 5 of By Law #7.1, a licensee was required to give a **NON-**licensee express instruction and authorization prior to permitting the **NON-**licensee to act on behalf of the licensee in respect of a scheduling or admin matter before the Tribunal. Ms. Moraes did so, purportedly on behalf of a **NON-***SABS* Insurer in ***NON-SABS INSURER*** whilst representing in her email that she was the legal assistant to Saeed and Klukowska. Therefore, in order for Moraes to take instructions from the licensee's client (Klukowska having acted for **SNIC** (see: HB, Tab 3, page 16, Volume #18(A) therein referencing Baheeran v. SNIC, 2023 CanLII 84411) and Saeed for TD General Insurance Company: HB, Tab 3, page 16, Volume #18(B) citing P*aramasamy*, *Hazem* and *Ruchlemer* from 2023 and 2022)), she was perhaps doing "dual duties" by facilitating the receipt of **Confidential Information** from **SNIC** (Klukowska) and ***NON-SABS INSURER*** (Saeed).

VOLUME #3*(N)(VI):*

Moraes: the perfect Fictitious Legal Assistant (also a P1 Holder) for **Nieuwland** to, in unauthorized fashion, collect, accessed, and use the **Confidential Information** from the **SNIC**'s Accident Benefits File under **TD Claim #3**

175. It should come as no surprise to the Tribunal that Ms. Moraes on or around February or March 2024 when the **Appellant** was requesting information from **Nieuwland** and evidence (affidavit) regarding Ms. Moraes not being his legal assistant, which he failed to provide any evidence, that she publicly represented that she was looking for a different employer (i.e. "I am interested" in response to an open call for job applications).

176. **Nieuwland** again "doubled down" with his Motion Submissions on April 11, 2024 that Moraes was his legal assistant but without any sworn evidence.

177. **Nieuwland** now says (on April 11, 2024) that she was his legal assistant but no longer involved in "this matter". Of course not in relation to the latter as her job is done and that was "going into" the Accident Benefits file.

178. Of course, **Karat** did not want to be associated with such disclosures from **SNIC** to ***NON-SABS INSURER***. It is yet another reason why the **Purported SNIC Response** was **NON-**compliant with the requirement of listing and attaching documents.

VOLUME #3*(N)(VII):*

Follow the money and following the documents

179. As they say in an unlawful schemes, like a cryptocurrency or laundering of money, "you follow the money". Herein, you "follow the documents".

VOLUME #3_(N)(VIII):_

Section 5 of By-Law 7.1
CAT Impairment appearance of a claimant

180. Since we are led to believe by Mr. **Nieuwland**, with no admission by the **Appellant** that he is being honest, Moraes is no longer involved with "this matter", which does not absolve her of any positive obligations to return the **Confidential Information** to **SNIC** and for her supervising lawyers in Klukowska and Saeed (as known to them), then there are no P1 license holders that could even participate in mediation of the ancillary issues relating to the claim of this **Appellant** wo has CAT Impairment.

181. Perhaps, **Nieuwland** was attempting to utilize Moraes as a P1 holder as they are both employed by TD Insurance Staff Legal of which **Nieuwland** is a member.

182. While **SNIC** has failed to provide a determination in accordance with *SABS* relating to the **Appellant**'s OCF-19, it is a determination and not a benefit per se which is not governed by section 36(4)(a) wherein the *SABS* Insurer (**SNIC**) is required to pay the benefits if it does not issue a section 33(1) or (2) notice within ten business days, and the only way it [**SNIC**] can have said benefits put on hold is by providing medical reasons and any other reasons why **SNIC** believed he was not entitled to the Specified Benefit. Put another way, there is no deeming provision under section 45 of *SABS* in the event the *SABS* Insurer fails to make a determination.

183. The issue of Moraes appearing is now apparently moot.

VOLUME #3_(N)(IX):_
Section 6 of By-Law 7.1

NON-Assignable Tasks and Functions by Licensees to **NON-**licensees

(see: page 156 of Tab 8 of the **Hearing Brief**)

184. A licensee shall not permit a **NON-**licensee to sign correspondence other than correspondence of a routine administrative nature (see: section 6(1)(e) of By-Law 7.1). The **Purported SNIC Response** was, prima facie, solely signed by **Karat**.

185. Pursuant to section 1(7)(a) and (c), **Karat**, at the very least, engaged in conduct that was necessary for the conduct of this **SNIC Proceeding** as a "response" was required to be filed and served. It is likely that the **Divorced Husband Conflicted Lawyer** engaged in some of the section 1(7)(a) determinations. Therefore, **Karat** and the **Conflicted Lawyer** were jointly acting but **Karat** could not do so, prima facie, on his own. **Karat** was not authorized to solely act on behalf of a person in a proceeding before an adjudicative body (LAT/AABS), other than mere participation in mediation of ancillary issues relating to a CAT Impairment claim, which he did by his signing, filing and serving of the **Purported SNIC Response**. **Karat**'s online signing and filing of the **Purported SNIC Response** was a "double edged sword" in that it did not require the "penned signature" per se but it was a "signature" under the ECA (Ontario)[19] which he certified the filing was "true and complete". A filed "Response", with the signature of a **NON-**licensee, is not equivalent to participation in mediation of ancillary issues relating to CAT Impairment. Herein, **Karat** admitted, by reference to the "double edged sword" analogy, that he was NOT licensed under the **LSO** and did not have any exemptions available to him under the By-Laws.

186. **Nieuwland** now says **Karat** was appointed by a **NON-***SABS* Insurer which was inconsistent with the **Karat** emails and **Purported SNIC Response**. By deduction, **Nieuwland** did not assign **Karat** his duties as the ADR representative for **SNIC**.

VOLUME #4: Legal Principles: General

VOLUME #4(A): It does not matter that the Divorced **Conflicted Lawyer**:

not tribunal advocate

Examples of using "licensees" and "non-licensees" using other individuals as "conduit"

"Consequence Manager"

187. While the **Divorced Husband Conflicted Lawyer** is NOT the declared tribunal advocate for **SNIC**, his public denoted address with the **LSO** is **SNIC Markham** which was and is at material times in the **TD Claim #3** the same address as Nurse (from DOL to Spring/Summer of 2023) and **Karat** (January 23, 2024 and onwards).

VOLUME #4(B): Possibility of Real Mischief

188. As stated in *Kaiser*, "there must be a possibility of real mischief should a removal order be refused (see: paragraph 21 therein)

<u>VOLUME #4</u>(C): *Burden of Proof in a **COI Motions***

189. The **Appellant** respectfully submits that the burden of proof herein, a balance of probabilities, that a reasonably informed person, would find that there is the possibility of a perceived conflict of interest based on the circumstances ("**Perceived COI**").

<u>VOLUME #4</u>(D): *Submissions are NOT evidence*

190. It is trite that submissions are not evidence.

<u>VOLUME #4</u>(E): *SABS Insurer: duty of good faith and fiduciary duties owed to their*

191. In Ontario, a *SABS* insurer owes a duty of good faith and fiduciary duty to its insured persons (see: *Beasley*, 2010 ONSC 2905 at paragraph 34, per: The Honourable Justice Moore).

<u>VOLUME #4</u>(F): *Irreconcilable Conflicts Of Interest: insurance context*

<u>VOLUME #4</u>(F)(I): *SABS Insurer placing the **NON-SABS Insurer** in an Irreconcilable COI*

192. If a *SABS* insurer or *SABS* insurance department does NOT seek consent of the **Insured Person** or obtain a court order to disclose PII, PHI, **Confidential Information** et al from the "Accident Benefits file" for use, and certainly disclose to other persons, including LAT, the **NON-*SABS* Insurer** is placed in an irreconcilable COI.

193. The same is applicable if the **NON-*SABS* Insurer** goes into the "Accident Benefits file" (*SABS*) and then uses it for purposes that were not expressly consented to by the **Insured Person**.

194. In both or either of those situations, the only appropriate remedy is to remove the **NON-*SABS* Insurer** and all so associated, affiliated or connected to the **NON-*SABS* Insurer** (see: *Transamerica Life Canada*, 2016 ONSC 1777; see: Joint Index, Tab 38, page 642; Affidavit #19, Exhibit "A", page 97).

<u>VOLUME #4</u>(G):: *When did the COI come to pass?*

Circumstances

195. In this **Appeal** herein, the COI came to pass, not when **Nieuwland** filed a DOR for the **NON-*SABS*** Insuer as that could have been viewed as merely a mistake when compared against the correct name of the "insurer" in the **Purported SNIC Response**.

196. **Nieuwland** was provided with the opportunity to file a DOR that was consistent with the **Insurance Policy**, **TD Claim #3** and the **Purported SNIC Response**. He refused to do so.

197. **Nieuwland** was provided with the opportunity, by the **Appellant**, to seek leave to refile the **Purported SNIC Response** in a manner that was not inconsistent with it but in his name with his signature. He failed or neglected to do so.

198. In February and March 2024, **Nieuwland** was provided with the opportunity to provide unsworn evidence or sworn evidence that Moraes was his legal assistant as that was contrary to her signature block. **Nieuwland** failed or neglected to do so. Thereafter, **Nieuwland** finally provided the name of his legal assistant in Ms. Ortiz who is also legal assistant with Ms. Ashley Dunkley.

199. The **Appellant** continued to alert **Nieuwland** to the issues surrounding his representation of a person who was the "correct party" and not the "correct insurer" as it related to the **Insurance Policy**, **TD Claim #3** and **SNIC Proceeding**. **Nieuwland** did not respond for some time and then represented to the **Appellant** that the DOR was unambiguous. There was no dispute to the language in the **Nieuwland** DOR **NON-***SABS* Insurer but ***NON-SABS INSURER*** is not the "insurer" in the **Insurance Policy**, named in any correspondence including the OCF documents, **TD Claim #3** et al.

200. There could not be any exchange of documents by **SNIC** as **Karat** was the sole representative of **SNIC** and he did not provide any documents to the **Appellant** after the filing of the **Appeal** along with not listing and attaching documents to the **Purported SNIC Response**. **Karat** merely referenced "all correspondence on file" which was the file of "**SNIC**".

201. After LAT issued its order in relation to **NOM #6** on April 9, 2024, **Nieuwland** then filed "Motion Submissions" in relation to **NOM #6** on April 11, 2024. It was therein that he included unsworn documents, some unknown to the **Appellant**, without an index or consecutive pagination in contravention of *LAT Rules*.

202. Ortiz then served the **Appellant** with her COS that checked the box of "motion" and input "Motion Submissions" (not "**Hearing Brief**" which is understandable).

203. The **Appellant** encouraged **Nieuwland** to file a complaint, with *LAT Rules*, "**Hearing Brief**" in accordance with the *LAT Rules* as he had until April 18, 2024. April 18, 2024 came and went, and the **Appellant** perfected his **Hearing Brief** for NOM #7 which the NOM #7 hearing index is appended to Affidavit #19, Exhibit "A".

204. **Nieuwland**, on behalf of the **NON-***SABS* Insurer, and **Karat**, on behalf of the *SABS* Insurer (**SNIC**), did not file any evidence on their behalf, and the **Impugned Individuals** did not file any evidence to refute or contradict the sworn evidence of the **Appellant**.

205. The **Appellant**'s evidence remains uncontroverted.

<u>VOLUME #5</u>: *The Purported Responsive Motion Submissions from the **NON-SABS Insurer** (see: Tab 37, page 449 to 453)*

*Re: By **Nieuwland** referring to the "Respondent" [sic] as "**NON-SABS INSURER**" [sic] – he has proven that the **NON-SABS Insurer** [**NON-SABS INSURER**] collected, used, and accessed, and then disclosed the **Appellant**'s **Confidential Information** without his consent or without court order*

*Re #2: by representing that **Karat** was assigned to handle the LAT Application for the **NON-SABS Insurer**, inconsistently with the **Karat** Emails (defined infra) and **Purported SNIC Response**, **Nieuwland**, while copying **Karat** via emails, has admitted that a breach of confidence and COI has occurred*

*Re #3: While the **Appellant**'s uncontroverted evidence was not refuted and there is no ability for sur-reply – **Nieuwland** has admitted on behalf of **NON-SABS INSURER** that each and all individuals who have acted for the **NON-SABS Insurer** and SABS Insurer are in irreconcilable COIs and an order must disqualify and restrain them from any further "handling" of the TD Claim Numbers, this **SNIC Proceeding** and any potential future proceedings*

Overview: Two different insurance companies and two different persons

206. **SNIC** is a different person from ***NON-SABS INSURER*** and ***NON-SABS INSURER*** is a different person from **SNIC**. They have different head offices in different provinces. They have different insurance license numbers.

207. **SNIC** was organized under the laws of Canada in 1934 and ***NON-SABS INSURER*** took over the name of "CT Direct Insurance Inc." in September 2000.

208. Even in this **SNIC Proceeding**, without admitting that ***NON-SABS INSURER*** has any standing, **SNIC**'s address in the **Purported SNIC Response** is **SNIC Markham** and ***NON-SABS INSURER*** is apparently located at an address on Victoria Park Avenue in Toronto, Ontario.

209. The address of ***NON-SABS INSURER*** whilst using the "TDIADR email" (see: HB, Tab 3, page 11)was unknown to the **Appellant** until nearly a month after the commencement of the LAT Proceeding.

210. The response from the TDIADR email represented to the **Appellant** to not provide any expense claims to it. This was consistent with **Karat**'s representation on January 23, 2024 that Ms. Persaud would remain the adjuster of the

TD Claim #3 and for day to day matters. Persaud's address for delivery was the 905 Fax Number and **SNIC** Burlington.

***<u>VOLUME #5</u>**(A): Paragraph 1 of **Nieuwland** Motion Submissions: What is "this matter"?*

211. It is unclear what **Nieuwland** means by "this matter".

212. The pertinent order is Order #6 which is defined as the "**Disqualification Order**" (see: **Hearing Brief**, Tab 2, page 3(B), Order #6). The **Disqualification** Order seeks relief not only relief in relation to this **SNIC Proceeding** but also any future LAT Proceedings involving the **Appellant** and **SNIC**, and now to the extent any "**NON-***SABS* insurance companies' attempt to be a future **Appellant** or future respondent, and **TD Claim #3**.

213. Disqualification Order does not merely seek any further handling of "this matter" (whatever that means in fact or law to **Nieuwland** subjectively) but it seeks a restraining order (current and future) in relation to the **Impugned Individuals** from: practising law; providing legal services; representation of a person generally or in relation to this proceeding (see: *SPPA* in relation to "witnesses"; see: Summons); facilitating the practise of law or provision of legal services of other licensees or **NON-**licensees; failing to prevent unauthorized practise of law of **NON-**licensees in TD Claim Numbers, this LAT Proceeding (**SNIC Proceeding**) and any future LAT proceeding in relation to the TD Claim Numbers or in this **SNIC Proceeding** (collectively, the "**Related Future LAT Proceedings**").

214. The **Appellant** is also seeking an order in relation to "unknown individuals" as he cannot prove or disprove which unknown individuals, who may be Associates, Affiliated Entities, Supervisees, Advisees, Joint Affiliated Entity Providers, with (directly or indirectly; expressly or impliedly) connected with the **Divorced Husband Conflicted Lawyer**.

***<u>VOLUME #5</u>**(A)(I):* **Divorced Husband Conflicted Lawyer** and Nurse

215. The **Conflicted Lawyer** and Nurse work from the same premises at **SNIC Markham**.

216. **Nieuwland**'s signed allegedly responsive submissions on behalf of a **NON-***SABS* Insurer and his employer (TD Staff Legal) admitted, at least tacitly, that having the **Divorced Husband Conflicted Lawyer** involved in "this matter" [sic] was, is and will be a "conflict of interest".

217. Nurse's email has been "bouncing back" as "invalid recipient" from the **Appellant**'s email of mclean**SNIC**lat@gmail.com since April 2024 but it does not bounce back when sent from other emails of the **Appellant**.

218. The correspondence, along with inclusion of OCF forms to be returned to **SNIC Markham** to attention of Alisha Anne Nurse with the **SNIC** 416 Fax Number, were included in the **Appeal** and subsequent affidavits that are in the "record of proceeding". It appears that Ms. Nurse's email was bouncing back since the **Appellant**'s references to the "False Documents", "Forged Documents" and "Uttering False Documents" in his written argument for **NOM #6**.

219. Timing is often everything.

220. The **Conflicted Lawyer** represented on his LinkedIn profile that he was a lawyer with TD Insurance from 2018 to March 2023. However, at the same time, the **Conflicted Lawyer** lists an additional role from January 2023 as "Consequence Management".

221. The **Conflicted Lawyer**'s address is **SNIC Markham** without reference to a "Unit Number" therein much like the **Purported SNIC Response**.

<u>VOLUME #5</u>*(A)(II):* **Conflicted Lawyer** and Persaud

222. As the **Appellant** has never seen any documents involving a "Katherine Belitsky" (apparently based out of **SNIC** Burlington), Persaud is only referenced.

223. As it relates to the "false documents", "forged signature" and "uttering false document" allegation, the "Ki W" reference is still not that of initials of "KB". Therefore, it remains unclear who signed the "As per A. Nurse" in the signature area for the "claims adjuster" of "Alisha Anne-Nurse". The timing of Persaud's onset to the **TD Claim #3** was only known to the **Appellant** in July 2023 by reference to communications between Rehab Mechanics and **SNIC** (Persaud).

<u>VOLUME #5</u>*(A)(III): **Divorced Husband Conflicted Lawyer** and **Karat***

224. The Tribunal can take judicial notice of the fact that the **Conflicted Lawyer** and **Karat** work from the same premises at **SNIC Markham** and have affiliated or partnered in previous LAT proceedings for a length matter in *Quinn v.* ***SNIC***.

<u>VOLUME #5</u> *(A)(IV):* ***Karat*** *and* ***Nieuwland***

225. **Nieuwland** was copied on January 23, 2024 email, sent by **Karat** to the **Appellant**, wherein Mr. **Karat** represented to the **Appellant** that he was the ADR assigned to handle this LAT dispute. **Karat**'s assignment was naturally from **SNIC** as per his signature block that represented that he was representing "Security National Insurance Company". **Karat** represented that he had copied "counsel" along with the division of communications protocol.

226. The **Appellant** extended the return courtesy to both of them that he looked forward to working with them in relation to the **SNIC Proceeding** and continuing to work with Ms. Persaud (the "Replacement Adjuster").

227. As the **Appellant** had delivered the relevant "denial letters" to his **Appeal** to the Tribunal on or around January 11, 2024 for the processing of the **Appeal** (see: LAT Rules), "*TD INSURANCE MELOCHE MONNEX*" (**SNIC**) had 14 days to provide its "Response" in accordance with *LAT Rules* which was on or around January 25, 2024.

228. On January 25, 2024, **Karat** emailed the **Appellant** with the **Purported SNIC Response** and a cover letter on behalf of *TD INSURANCE MELOCHE MONNEX* with return address of **SNIC Markham**. **Karat** signed the **Purported SNIC Response** but he did not sign the cover letter which had the author of "*TD INSURANCE MELOCHE MONNEX*" but provided his phone number and extension which was consistent with the **Purported SNIC Response**.

229. As of late April 2024, **Nieuwland** has not filed a DOR for **SNIC** but he relies on his DOR filed on January 30, 2024 for "TD General Insurance Company". It is notable that whether "TD Insurance", "*TD INSURANCE MELOCHE MONNEX*" or "Security National Insurance Company", it is the "**Insurance Policy**", a "contract of insurance" (Insurance Contract) was denoted by both **Appellant** and **Karat**.

230. **Karat** represented in the **Purported SNIC Response** that "he was the insurance company". While that is difficult to follow in law as **Karat** is an individual and **SNIC** (Insurance License denoted above), **Karat** never represented that he was representing ***NON-SABS INSURER*** in any emails or the responsive pleading to the **Appellant** and the Tribunal.

231. Kara affirmed and re-affirmed that **SNIC** was the "respondent", which is correct in law, by the filing and serving of the **Purported SNIC Response** and the **Karat** COS.

***VOLUME #5**(A)(V): Who assigned* **Karat** *the duties of handing the "LAT Dispute" as the "ADR"*

232. As a matter of fact, the only reference by **Karat** is to "Security National Insurance Company".

233. As a matter of law, **SNIC** is the *SABS* Insurer, and only **SNIC** could grant an assignment of authority to **Karat** to engage in the conduct that he did.

234. **SNIC** is not an "individual" but a "person" and a "company" being a "federally incorporated insurance company" and continued under the *Insurance Companies Act* (Federal) in 1991. **SNIC**'s head office is in Montreal, Quebec (see: Motor Vehicle Liability Card in Affidavit #13).

235. Therefore, an individual with authority for **SNIC** would have had to grant the authority to **Karat** as the ADR representative (not a "Claims Adjuster") to handle this "LAT dispute".

***VOLUME #5**(A)(VI):* Corporate Structure: General

236. It is trite that shareholders are the owners of a company and they, depending on the classes of shares, vote for the elections of directors of a company. Directors then appoint officers of the company to handle the day-to-day operations.

237. TD Bank, a *Schedule* 1 Bank, represents in its recent financial statements that is directly or indirectly owns all of the entities listed in the "Intercorporate Relationships" page of "Appendix A" to its recently audited and published financial statements (see: **Affidavit #19, Exhibit "A**").

***VOLUME #5**(A)(VII):* Meloche Monnex Holding Company: address same as **SNIC**

238. It appears that Meloche Monnex Inc. (not to be confused with MMFS Inc. (the "Broker" herein)) is the "holding company" for **SNIC**. Therefore, **SNIC** likely has a "corporate shareholder" which votes for the directors of **SNIC**. The directors then appoint various officers for the operations of **SNIC** as the "Underwriter" and "Insurer" herein.

239. As Meloche Monnex Inc., incorporated under the *CBCA*, is not an individual, its directors were as of Affidavit #13 (see: Exhibit "A", pages 20 to 21):

***VOLUME #5**(A)(VIII):* The Broker:

Meloche Monnex Financial Services Inc.

Address: **SNIC Markham** (3rd Floor)

240. Meloche Monnex Financial Services Inc., was incorporated under the CBCA (1979), and its registered office address if **SNIC Markham** (3rd Floor). Its directors were: (i) James Russell; (ii) Kroes; and (iii) Menon.

VOLUME #5(A)(IX): **Karat**'s email is not TDIADR email

241. **Karat**'s email is david.karat@tdinsurance.com and not the email of "TDIADR". "ADR" relates to "Alternative Dispute Resolution" but Karat's email font was different than the same.

VOLUME #5(A)(X): **Nieuwland** and Moraes: a fictitious or misrepresented licensee and **NON-**licensee relationship (the "Fictitious Licensee Relationship")

242. The Tribunal can take judicial notice of the fact that Moraes, as of January 2024 to February 2024, took active steps with the Tribunal to engage in the routine scheduling of matters regarding the case conference with her signature block representing that she was (and remains) the legal assistant to two licensees: (i) Klukowska; and (ii) Saeed.

243. There are four distinct periods and "matters": (i) the time from April 2018 to the August 31, 2024; (ii) the time from the **TD Claim Numbers** were issued involving **SNIC** (August 31, 2022) to the time the **Appellant** filed the **Appeal** (December 23, 2023); (iii) the time from the **Appeal** Filing Date to the time Mr. **Karat** signed, filed and served the **Purported SNIC Response** (January 25, 2024); (iv) the time from when **Nieuwland** filed the DOR for the **NON-*SABS* Insurer** (January 30, 2024) to April 10, 2024; and (v) the time from Mr. **Nieuwland**'s filing of the Purported Response **Hearing Brief**s for NOM #4 and #6.

244. Moreover, ***NON-SABS INSURER*** is the "**NON-*SABS* Insurer**" so the order that the **Appellant** sought is that those named individuals are disqualified from any further representation of **SNIC** (**Karat**, **Divorced Husband Conflicted Lawyer** and others) and from ***NON-SABS INSURER*** being involved in any manner in this **SNIC Proceeding**, TD Claim Numbers, or any future proceedings. Since ***NON-SABS INSURER*** does not have standing as a "party" herein, any representation of the **NON-*SABS* Insurer** as a "party" or "respondent", when it cannot be one, without being added as a "party" is not permitted.

VOLUME #5(B): *Paragraph 2:* ***Nieuwland*** *requesting an unlawful amount of costs on behalf of a* ***NON-SABS Insurer***

245. A **NON-*SABS* Insurer** cannot request costs unless it is properly added as a party, and certainly not costs awarded to it. There is no "lis" between the **Appellant** and the **NON-*SABS* Insurer** in this **SNIC Proceeding**. Further, LAT Rule 19 limits costs to the amount of a motion for a full day of attendance to the maximum amount of $1,000.

> ***VOLUME #5**(C): Paragraph 3: **Nieuwland** is not the lawyer for the "Respondent" as **NON-SABS INSURER** is not the "SABS Insurer"; a DOR was filed on January 30, 2024 on behalf of **NON-SABS INSURER** (not the "**SNIC** Underwriter")*

246. **Nieuwland** is the representative (a lawyer licensee) for the **NON-*SABS* Insurer**. Respondent is defined under the LAT Rule as: Respondent" means the party identified as the respondent in an appeal or the party who is identified as the respondent under the applicable legislation.

247. The **Appellant** identified the **Appellant** as "TD Insurance – **SNIC**" or "TD **SNIC**".

248. The applicable legislation is the *Insurance Act*, and **SNIC** is the "Insurer" thereunder. Mr. **Karat** was correct in only including the name "Security National Insurance Company".

249. **Nieuwland** filed a DOR for the **NON-*SABS* Insurer** AFTER **Karat** signed, filed and served the **Purported SNIC Response** on behalf of the *SABS* Insurer in Security National Insurance Company.

250. Even more compelling was that **Nieuwland** was on the email on January 23, 2024 wherein Mr. **Karat** represented to the **Appellant** that he was the ADR [Alternate Dispute Resolution] assigned to handle this LAT dispute with the language at the bottom of his email, "**Representing Security National Insurance Company**". **Karat** represented that he had copied counsel in **Nieuwland**.

> ***VOLUME #5**(D):* Paragraph 4 : Ms. Ortiz is now the disclosed legal assistant of Mr. **Nieuwland** after Mr. **Nieuwland** misrepresented whom his legal assistant was

251. Contrary to **Nieuwland**'s representation on April 11, 2024, Mr. **Nieuwland**, from February to April 2024, repeatedly represented to the **Appellant** and urged him to include "his legal assistant in Ms. Moraes" without reference to Ms. Ortiz.

252. In January and February 2024, Ms. Moraes communicated with the **Appellant**, with the Tribunal copied, regarding dates for the case conference and her signature block represented that was legal assistant to "Ms. Arfa Saeed and Ms. Adrianna Klukowska".

> ***VOLUME #5**(E):* Paragraph 5:

Karat has never represented that he is an "officer" but he has represented he was the "ADR" appointed by **SNIC** (not ***NON-SABS INSURER***) to handle the LAT "dispute"
(see: Affidavit #13, Exhibit "A")

253. Mr. **Karat** represented on January 23, 2024 that he was the "ADR" (without reference to "officer") for Security National Insurance Company, and he was assigned to handle the LAT Dispute [did not use the word "application" but it is of no consequence]. Mr. **Karat** did not represent that he was assigned by this **NON-*SABS* Insurer**. On January 25, 2024, Mr. **Karat** represented to the Tribunal by his signed and filed "Response" for **SNIC** that **SNIC** was the Respondent in this **SNIC Proceeding**.

254. On February 14, 2024, Mr. **Karat**, to his credit, provided the **Appellant** with a copy of his COS on behalf of **SNIC** which confirmed by his signature therein that he served the **Appellant** with his solely signed **Purported SNIC Response**.

***<u>VOLUME #5</u>**(F):* Paragraph 6: Moraes

255. Contrary to **Nieuwland**'s signed representations, Ms. Moraes never represented in her signature block that she was also, in addition to Ms. Saeed and Ms. Klukowska, the legal assistant to Mr. **Nieuwland**.

256. The **Appellant** is not comforted by **Nieuwland**'s representation that she is no longer involved in this matter. Affidavit evidence was required from Ms. Moraes.

257. There is no evidence of the return of the **Confidential Information** that Ms. Moraes has possessed and controlled being returned to the *SABS* Insurer [**SNIC**]. There is no evidence form Ms. Moraes, including her Supervising Lawyers who were required to have "effective control" over her provision of services to THEM as licensees (see: Joint Hearing Index, Tab 8, page 152 and 153; *By-Law #7.1*, section 1(2), Interpretation: "effective control": a licensee has effective control over an individual's provision of services to THE LICENSEE when THE LICENSEE may, without the agreement of the individual (Moraes), take any action necessary to ensure that the licensee (Moraes) complies with the *LSA*, the by-laws, the Society's ROPC and the Society's policies and guidelines).

***<u>VOLUME #5</u>**(F)(I):* **Direct Supervision Was Required**

258. A licensee shall assume professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any **NON-**licensee to whom are assigned particulars tasks and functions in connection with the licensee' practice of law in relation to the affairs of each client.

VOLUME #5*(F)(II): The Client:*

259. Ms. Klukowska has only acted for **SNIC**. Ms. Saeed has only acted for ***NON-SABS INSURER***. Therefore, Ms. Moraes was purporting to act in relation to the "client" of ***NON-SABS INSURER*** and not **SNIC**. Therefore, either Ms. Saeed or Ms. Klukowska, or both, were required to have effective control over Ms. Moraes' provision of services to them in relation to the **NON-***SABS* Insurer.

VOLUME #5*(F)(III): Hypothetical Example*

260. A car accident may occur where the tortfeasor is insured by Primmum[20], under the "*TD INSURANCE MELOCHE MONNEX*" trade name, and the victim of the car accident is insured by **SNIC**[21] under "*TD INSURANCE MELOCHE MONNEX*". It could not be that a legal assistant could assist for both Primmum and **SNIC** to two separate licensees in the "tort" and "*SABS*" matters. For example, assuming that Ms. Moraes, acting in her capacity as legal assistant to Ms. Klukowska, was providing **NON-**licensee services to Ms. Klukowska in relation to **SNIC** regarding a "*SABS* Claim" involving **SNIC**. However, another lawyer with "TD Insurance Staff Legal" wished for Ms. Moraes to masquerade or "moonlight" as his [for purposes of distinction] client Primmum with respect to defending the "tort claim" of the same individual who sued the tortfeasor and Primmum Insurance Company for damages. If said victim of a car accident learned that Ms. Moraes was providing legal services to Ms. Klukowska in relation to **SNIC** in relation to a *SABS* claim but also providing **NON-**licensee services to a TD Insurance Staff Lawyer on behalf of his client in Primmum, would it be acceptable for either Ms. Klukowska or the male lawyer (tort side) to state that Ms. Moraes is no longer involved in the *SABS* or "tort matter"? Of course not. Ms. Moraes would have to provide evidence as to what documents, **Confidential Information** et al that she obtained, whether she had misused them, to the extent of the misuse and whether they had been returned to the SAS Insurer without copying or retaining the same.

VOLUME #5*(G):* Paragraph 7: All other parties [sic] never involved in "handling of this matter"

261. **Nieuwland** has mistakenly referred to the **Divorced Husband Conflicted Lawyer**, Ms. Klukowska, and Ms. Saeed as "parties". None of those **Impugned Individuals**, including Ms. Moraes and Mr. **Nieuwland**, have provided any evidence that they were never involved in the TD Claim Numbers or this **SNIC Proceeding**. **Nieuwland**'s representation stems from the false premise that if Ms. Moraes was involved in this **SNIC Proceeding** but is no longer involved in "this matter" that Ms. Klukowska and Ms. Saeed were never involved in the handling of this **SNIC Proceeding**. As Ms. Moraes' signature block only referenced Ms. Saeed and Ms. Klukowska (not Mr. **Nieuwland**), then as a **NON-**licensee (P1 license holder with the current status of "employed not providing legal services"), both Ms. Klukowska and Ms. Saeed were required to have effective control over Ms. Moraes **NON-**licensee services to them or their client.

***VOLUME #5**(H):* Paragraph 8: the Applicant has provide no evidence of their involvement in this matter

262. To the contrary, the **Appellant** provided affirmed evidence in affidavit #15 and #16, and the **Divorced Husband Conflicted Lawyer** did not deny any of the evidence despite being duly served. Ms. Klukowska and Ms. Saeed did not provide any evidence to rebut the evidence of the **Appellant**. If Mr. **Nieuwland** is referencing his representation of the **NON-***SABS* Insurer in ***NON-SABS INSURER***, then this still leaves 17 months from August 31, 2022 to January 30, 2024. Moreover, by **Nieuwland** including attachments where the name on each document was TD Insurance Meloche Monnex with **SNIC** (not "**TD General Insurance Company**") he demonstrated unequivocally that the *SABS* Insurer was **SNIC**.

***VOLUME #5**(I):* Paragraph 9: regarding a potential conflict of interest

263. The **Appellant** never received such letter and it has been authenticated by any sworn evidence. The **Appellant** expressly denies any of the **NON-**evidence submissions by **Nieuwland**.

***VOLUME #5**(J):* Paragraph 10: Misstatement of Law by **Nieuwland**

264. **Nieuwland** has misstated the legal test or, alternatively, it is a general statement without reference any authorities. The **Appellant** will deconstruct the same.

265. The legal burden is a balance of probabilities (the civil standard). The only requirement for the Tribunal to disqualify the **Impugned Individuals** is as follows.

<u>VOLUME #5</u>(J)(I): Not when a COI occurs – but could be perceived

266. It is not only when a conflict of interest occurs but whether a conflict of interest *could be* reasonably perceived in all of the circumstances (see: *Puhl* at paragraph 18; *Talisman*, *Yellow Cedar*). In short, whether a circumstantial perceived conflict of interest could be perceived ("**Circumstantial Perceived COI**"). "Could" is consistent with reasonable suspicion and NOT "reasonable grounds" (see: R. v. Kang).

267. The legal test is not when an individual's personal interests could compromise judgment or actions in discharging job duties but the legal test is whether the **Appellant** has established on a balance of probabilities that a fair-minded and reasonably informed member of the public would conclude the removal of the **Impugned Individuals**, ***NON-SABS INSURER***, TDISL, et al is necessary for the proper administration of justice (see: *MacDonald Estate v. Martin*, 1990 CanLII 32 at paragraph 47).

<u>VOLUME #5</u>(J)(II): ROPC, section 3.4-1 (see: also **Hearing Brief**, Tab 23, *Sherman*)

268. The expression "substantial risk" in the definition of "conflict of interest" describes the *likelihood* of impairment as opposed to nature and severity (see: Tab 9, page 164).

<u>VOLUME #5</u>(J)(III): Significant and plausible

269. A substantial risk is one that is significant and plausible EVEN IF it is NOT certain or even probably that it will occur.

270. There must be more than a "mere possibility" that impairment will occur. Ergo, not a "mere possibility" but a "possibility".

<u>VOLUME #5</u>(J)(III): The Client (not the lawyer to decide the risk) (unless lawyer will be a witness)

271. As **Nieuwland**'s client is ***NON-SABS INSURER*** and not **SNIC**, it is only **SNIC** as the *SABS* Insurer that can decide the risk for **SNIC** to have engaged in allowing and/or remaining silent (when it was not an option to do so) in the conduct that it did.

<u>VOLUME #5</u>(J)(IV): ROPC, section 3.4

Conflicted Lawyer

272. Moreover, the ROPC, section 3.4 does not solely relate to whether the **Conflicted Lawyer** is able to discharge his job duties (whatever that means in fact or law) but whether there is a substantial risk that a lawyer's loyalty to or representation of a client (**SNIC** – not ***NON-SABS INSURER***)) would be materially or adversely affected by the lawyer's duties to a "third person".

<u>VOLUME #5</u>*(J)(V): Lawyer's Duties to Another Client*

273. Herein, **Nieuwland**'s duties are to ***NON-SABS INSURER*** whereas **Karat** (a **NON-**licensee) duties are to **SNIC**.

274. By **Nieuwland**'s admission, he must not be acting for **SNIC** and ***NON-SABS INSURER***.

<u>VOLUME #5</u>*(J)(VI): Agents no longer allowed under section 10 of the SPPA*

275. While "agents" are no longer allowed under section 10 and 23 of the *SPPA*, the lawyer-client relationship is one of where the lawyer can only act on instructions from the client (i.e. agent-principal relationship).

<u>VOLUME #5</u>*(J)(VII): Lawyer as a Witness*

276. The law of COI also distinguishes when a lawyer may be a witness. Even when a lawyer is not the advocate for a client but works for the same company or law firm, it can be a disqualifying conflict (see: *Talisman*).

277. Where a lawyer has a financial stake in the outcome of a proceeding or action, this can also be a disqualifying condition (see: *Talisman*).A client cannot waive a COI where the lawyer may be a witness (see: *Wheeler v. Taylor* 2024 ONSC 818).

278. If a *SABS* Insurer or a *SABS* insurance department does not seek consent of the Insurer Person to disclose any information in an AB File of **Insured Person** to a **NON-***SABS* Insurer and it is received by unauthorized **NON-***SABS* insurer then it places the **NON-***SABS* insurer and its counsel and all associated in an irreconcilable conflict of interest.

<u>VOLUME #5</u>*(J)(VIII): The Increasingly Stricter Standards regarding the appearance of a conflict of interest in Canada*

279. In *Bose*, The Honourable Mr. Justice Perrell on the Ontario Superior Court of Justice found that Canada has taken on an increasingly stricter approach to the law of COI by way of reference to cases involving *Martin* to *Neil*. (see: NOM #7, HB Index, Tab 9 therein).

VOLUME #5*(J)(IX): Whose client is it anyway?*

280. When a lawyer license may appear as a witness, the client cannot waive conflicts of interest because the conflict is between the licensee and the "tribunal/court" (see: Affidavit #19, Exhibit "A", page 97; **NOM #6**, HB Index, page 642*; Wheeler v. Taylor*, 2024 ONSC 818, citing Urquhart v. Allen).

VOLUME #5*(J)(X): The Question of Use of* ***Confidential Information****: The* ***Appellant*** *cannot prove or disprove No Use of* ***Confidential Information***

281. As Justice Sopinka found in *MacDonald Estate v. Martin*: "In dealing with the question of the use of **Confidential Information** we are dealing with a matter that is usually not susceptible of proof. As pointed out by Fletcher Moulton L.J. in *Rakusen*, "that is a thing which you cannot prove" (p. 841). I would add "or disprove". Justice Laskin went further when he found, "Since, however, it is not susceptible of proof, the test must be such that the public represented by the reasonably informed person would be satisfied that **no use** of **Confidential Information** would occur.

VOLUME #5*(J)(XI): Mischief: Two Approaches*

282. Justice Laskin found in *Martin*, "The term "mischief" refers to the misuse of **Confidential Information** by a lawyer against a former client. The first approach requires proof that the lawyer was actually possessed of **Confidential Information** and that there is a probability of its disclosure to the detriment of the client. The second is based on the precept that justice must not only be done but must manifestly be seen to be done. If, therefore, it reasonably appears that disclosure might occur, this test for determining the presence of a disqualifying conflict of interest is satisfied."

283. In this NOM #6, the **Appellant** as an Insured Person, after being determined by *SABS* Insurer to be an Insured Person by his spousal status to the Individual Policyholder, is deemed, by the *Insurance Act*, to be a party to the **Insurance Policy** (Contract) and have given consideration therefor.

284. The **Appellant** has standing herein but the Non-*SABS* Insurer does not.

VOLUME #5*(J)(XII): Ongoing obligations arising from a "family dispute" between the* ***Divorced Husband Conflicted Lawyer*** *and the Individual Policyholder*

285. Justin Laskin found: "Of more importance, however, is the fact that the principles involved herein are designed not only to protect the interests of the individual clients but they also protect the **public confidence** in the administration of justice. This is particularly so when the litigation involves a family dispute. Furthermore, when the public interest is involved, the *appearance* of impropriety overrides any private interest claimed by waiver.

***VOLUME #5**(J)(XIII):* No Firewall, No Chinese Walls and No Cones of Silence, and **Confidential Information** not merely "bleeding through" (see: Tab 31, page 362)

286. While severity of the breaches of privacy, breaches of confidentiality, breaches of OCF standardized documents, and breaches of legislation are not particularly the issue herein as the severity of the conflict is not the measure of a Circumstantial Perceived COI,

VOLUME #6: Specific Legal Principles and Authorities of COI in Insurance Matters in Ontario

VOLUME #6:(A) Unlike State Farm in *Dervisholli*

287. Where an insurance company like State Farm in *Dervisholli* had a dual responsibility to provide both third party liability tort coverage as well as pay [see: **SNIC** being the "Single Payor Benefits" to date and remaining as such] statutory accident benefits (see: **Hearing Brief**, Tab 31, page 363) to a "plaintiff", such a situation triggers privacy concerns on part of the claimant seeking the "payment of statutory accident benefits". In such a situation, consistent with the Insurance Bulletin, the insurer with dual responsibilities has an OBLIGATION to set up a firewall that prevent, without the consent of the insured/plaintiff, ANY dialogue or any TRANSFER of the plaintiff/claimant's accident benefit file to the tort adjuster (see: paragraph 56 of *Dervisholli*).

VOLUME #6:(B) *Whether Added as a Third Party or not – does not matter – whether it will come in the future*

288. The ONSC found, nearly a decade ago, that it does not matter if State Farm, with a third party responsibility to provide party coverage and/or having added itself as a statutory third party, will *ultimately* come into possession of much of what is contained in the plaintiff's accident benefit file because of the disclosure obligations under the *Rules of Ontario Civil Procedure* (see: Tab 31, page 363, paragraph 57 therein).

289. It is an issue of asking permission and not begging for forgiveness.

290. The only issue is whether it comes into the possession of an "insurer" with the consent of the plaintiff/claimant. Like State Farm in *Dervisholli*, albeit in a worse context as ***NON-SABS INSURER*** is neither the "*SABS* Insurer" nor the "Tort Insurance Company" which is Pembridge Insurance Company, ***NON-SABS INSURER*** would never ultimately come into possession of the Accident Benefits file of the Claimant that was to reside with **SNIC** (**Markham** and Burlington).

VOLUME #6:(C) *Capacity Matters*

291. Like the plaintiff in *Dervisholli*, this Claimant has a privacy interest in the confidential health information supplied to **SNIC**, and it is ONLY with the consent of the Claimant (**Appellant**) or by order of the court, that such information can be communicated to ***NON-SABS INSURER*** in its masquerading capacity as the "*SABS* Insurer".

VOLUME #6:(D) *State Farm Mutual Automobile Insurance Company*[22]*: one district corporate entity and under "one roof"*

292. Unlike State Farm, which was a "mutual insurance company", **SNIC** and ***NON-SABS INSURER*** have different head offices, different license numbers, different corporate histories, different financial statements, different stated capitals, and a plethora of other distinctions.

293. The failure to implement a firewall after the filing of the **Purported SNIC Response** by **SNIC**, solely signed by **Karat**, and then **SNIC** disclosing or some individual on behalf of ***NON-SABS INSURER*** going into the "accident benefits file" allegedly on behalf of ***NON-SABS INSURER***, then disclosing it to the Tribunal, whilst seeking costs in the amount of $10,000 payable to a **NON-***SABS* Insurer is the most egregious conflict of interest in the history of this Tribunal. It is unclear whether ***NON-SABS INSURER*** had or has unfettered access to the Claimant's Accident Benefits file with **SNIC** but that is not for this **NOM #6** but NOM #7 (see: for example, *Dervisholli*, at paragraph 363).

294. This type of unauthorized intrusion and subsequent unauthorized access, and, then unauthorized disclosure by ***NON-SABS INSURER*** are contrary to the duty of good faith and fiduciary duties owed by **SNIC** to the **Appellant**. It was ***NON-SABS INSURER*** that was required to seek the consent of the Claimant/**Appellant** (along with **SNIC** with its disclosure unless it was an unauthorized intrusion with any knowledge of **SNIC** at the times it occurred)

and it never did. Instead, it filed its "Responsive Motion Submissions" by a **NON-***SABS* Insurer without any evidence of seeking consent while attempting to rewrite history albeit in the face of affirmed evidence with the very documents appended to the same (see: **Karat** emails et al)

Volume #7: The Tribunal cannot admit any of the filed and signed documents by Nieuwland

Volume #7(A): ***NON-SABS INSURER*** *cannot rely on the documents or things under section 15 of the SPPA Even if* ***Nieuwland*** *sought leave, after contravention of a LAT Rule and LAT Order, then the Tribunal would not have any discretion as it is prohibited by Legislation (see:* ***Hearing Brief****, Tab 27, page 291) – as interpreted in Jia*

295. As **Nieuwland**'s client is not the "*SABS* Insurer" but the "**NON-***SABS* Insurer" , ***NON-SABS INSURER*** cannot rely on any documents or things that it received (albeit no admission that they are authentic or ever sent), then disclosed to LAT in the Motion Submissions while masquerading as the "*SABS* Insurer" in a *SABS* dispute (or "this LAT Dispute" of which Mr. **Karat** was assigned in representing **SNIC**). As Vice Chair Trojek found in *Jia* (albeit in a priority dispute between PIC and CAA, and PIC responding to the *SABS* dispute of two individuals, seeking death benefits, who had lost the matriarch of their family), the requirements under *SABS Schedule* CANNOT be circumvented by reliance on confidentially disclosed information during another dispute not related to the *SABS* dispute. Herein, it is far worse because it is a **NON-***SABS* Insurer, acting in a highly combative and unlawful manner in the face of objections through an emotionally undisciplined legal representative, using, absent consent or a court order, **Confidential Information** of the **Appellant** as a "club" to seek unlawful amounts of costs.

296. It is as if **Nieuwland** is not only acting for the **NON-***SABS* Insurer but using **Confidential Information** of the **Appellant**, never disclosed to ***NON-SABS INSURER***, from **SNIC**, albeit with a Fictitious Legal Assistant who is now "no longer involved", but he obviously takes issue with the language and monetary cap under Rule 19 of the *LAT Rules*.

297. Mr. **Nieuwland** clearly takes issue, as it is too much of a burden upon him, to comply with LAT Rule 9.4. to provide an index and consecutively number pages.

298. At the same time Mr. **Nieuwland** wishes to reference, on behalf of ***NON-SABS INSURER***, the **Appellant** having to attend an "independent examination" of a request allegedly made by **SNIC** (albeit the **Appellant** asking for copies of the same for months and never receiving the same) for August 2023 (whilst he was away for MRI's

examinations and assessments) but **Nieuwland** acts for ***NON-SABS INSURER***. It raises questions about "standing" for ***NON-SABS INSURER*** and Mr. **Nieuwland**'s retainer with ***NON-SABS INSURER*** – certainly not **SNIC** – but also unequivocally demonstrates an actual COI.

Volume #8(B): *The* ***NON****-SABS Insurer is a "Successor Insurance Company" with different legal representatives than* ***SNIC***

299. **SNIC**'s assignment of legal duties to **Karat** is one contract or one "retainer" whereas **Nieuwland**'s retainer with ***NON-SABS INSURER*** (likely including a group of licensees and **NON-**licensees) is a different retainer.

300. As the **Divorced Husband Conflicted Lawyer** did not deny a retainer with **SNIC**, then **Karat**'s assignment of a duties by him is the **Divorced Husband Conflicted Lawyer**'s retainer with **SNIC** – like he has had in the past with **SNIC** (see: Quinn and other denoted above; albeit not publicly representing **SNIC** per se).

Volume #8(C): *Undertaking and Conclusory Statements in affidavits without more (as to screening walls) insufficient*

301. As there are no undertakings provided by the **Impugned Individual Licensees** to the Tribunal, then they failed in this regard.

302. As there is no affidavit evidence, there are no conclusory statements to be even be tested.

303. Of course, none of the **Impugned Individuals** could swear evidence as to how they would implement "Chinese Walls", "cones of silence" or "firewalls" as the **NON-**permitted uses had already occurred.

304. While the references to "undertakings" and "conclusory statements in affidavits" being insufficient, without particulars as to steps that were taken, being taken and will be taken, was in the context of *MacDonald Estate v. Martin*, which related to a junior lawyer actively engaged with the client joining another firm in litigation adverse to the former client, there are some eerily similar parallels and contextual factors when considering the timing of the "switch" from **SNIC** to ***NON-SABS INSURER*** (which was after the filing of a responsive pleading by **SNIC**) and the duties of a *SABS* Insurer to its "insured person".

305. In the context of an "insured person" with his or her "insurer" (*SABS* Insurer herein in **SNIC**), the *SABS* Insurer owes a fiduciary duty and duty of good faith to the insured person. Herein, it is the "*SABS* Insurer" (see: definition of "insurer" under *Insurance Act*) that owes fiduciary duties to its insured (customer or consumer). In the context

of Martin, it was the junior lawyer, who had acquired **Confidential Information** from his experience at his former law firm, that owed duties to his former client when he joined the new law firm.

306. While it is astonishing to read the **Nieuwland** Motion Submissions, and then consider that he has now misrepresented that **Karat** was "appointed" [sic] by ***NON-SABS INSURER*** which is directly contrary to Mr. **Karat**'s emails and filed responsive pleading and the **Karat** COS. It is as if Mr. **Karat** has leapfrogged the Chinese Walls, circumvented any firewalls and driven a "Mack Truck" over the "cones of silence". It is unclear if Mr. **Karat** endorses these misstatements of fact by **Nieuwland** but they are nonetheless before the Tribunal for **NOM #6**.

307. Therefore, when considering the nature of licensees, P1 holders (not acting as one), MDP's, @tdinsurance.com domain emails, affiliated entities, associates, partnership with **NON-**licensees, the technologically driven era, and amorphous business structures all measured against **SNIC** and ***NON-SABS INSURER*** being entirely distinct companies with reference to the requirements of *SABS* insurers to their insured persons, a modified test (considering the amendments to the *LSA* by the AJA) from Martin becomes applicable:

   a. *Whether a reasonably informed person would be satisfied that NO USE of **Confidential Information** would occur?*

      i. *Did the **Impugned Individual Licensees** representing, pursuant to section 1(7) of the LSA, receive **Confidential Information** attributable to a contractual relationship between the **Appellant** (**Insured Person**) and **SNIC** (SABS Insurer) relevant to the matter at hand?*

      ii. *Is there a risk that the **Confidential Information** will be used to the **Insured Person**'s (Customer or Client) of the SABS Insurer?*

308. While the **Appellant** could not prove any "misuse of **Confidential Information**" by the **Nieuwland** DOR, he affirmed his evidence on information and belief by early April 2024, and then, ironically, **Nieuwland**'s Motion Submissions, with the noncompliant attachments proved the misuse of **Confidential Information**.

309. It is not a matter of applying the above test herein but an admission by conduct by **Nieuwland** *on behalf of* a **NON-***SABS* Insurer. It must be remembered that *SABS* is "consumer protection laws" by virtue of the *Insurance Act* and *SABS* (see: Peel).

Volume #8(D): *Ironically – similarities to McKercher LLP*

310. There was a “sudden disappearance” or ‘dropping’ of **SNIC** (albeit not permissible under the *Insurance Act*, the *SPPA* et al) to circumvent the conflict of rules and “purge the paper trail” (subject to the **Appellant**’s second *PIPEDA* request of 2024).

Volume #8(E): *Mobility Not at Issue (see: Yellow Cedar, Tab 6, page 134)*

311. This is not an issue of licensees transferring from one law group or as in-house counsel for an insurer to another law firm.

Volume #8(F): *De Rosa* (see: Hearing Brief, Tab 32, pages 354 to 365)

312. In *De Rosa*, Arbitrator Anschell under the FSCO, in her decision on a motion by Ms. De Rosa, ordered that the law firm of Blouin Dunn was order to keep the information of Ms. De Rose and the non-party, Mr. De Rosa SEPARATE.

313. Herein, the Non-*SABS* Insurer is NOT a party pursuant to section 5 of the SPPA and the *Insurance Act*. However, that is an issue for NOM #7.

314. At no time did ***NON-SABS INSURER*** bring a motion to access the **Appellant**’s accident benefits file for the purposes of this **SNIC** Proceeding.

315. To the contrary, **SNIC** filed a “Response” herein and Mr. Nieuwland filed a DOR on behalf of a different “insurer” that was not the “*SABS* Insurer”.

316. By the filings on April 11, 2024 and the non-compliant attachments by Nieuwland on behalf of ***NON-SABS INSURER***, ***NON-SABS INSURER*** and TDISL made no pretense of erecting a firewall or maintaining a code of silence between **SNIC** and ***NON-SABS INSURER*** for purposes other than the limited purposes under PIPEDA and/or the OCF standardized documents.

317. As a non-party to this **SNIC** Proceeding (irrespective of any early “misnomers” by Vice Chair Lake), the “pleading” filed by **SNIC** is determinative of the parties and the scope of this **SNIC** Proceeding.

318. The **Appellant** did sign any documents that permitted the use of his **Confidential Information** for ***NON-SABS INSURER*** to defend his Appeal for “accident benefits” (see: page 373 of the Hearing Brief for example).

319. The authorization of the OCF-1 speaks to the following:

    a. Investigation of the **Appellant**’s claims;

b. Obtaining information relating to his claim;

c. Recovering payment from "Other Insurers" for amounts paid in connection with his claim (see: **SNIC** has been the only "Payor" of benefits to the **Appellant**);

d. Identifying and analyzing goods and services provided by health care providers;

e. Preventing fraud;

f. Compiling statistics; and

g. Assessing risks.

(collectively, the "**Limited Purposes**"; see also: **Affidavit #15**)

320. The Limited Purposes in the OCF-1 do NOT extend to the uses and disclosures by Nieuwland on behalf of "Another Insurer".

321. The **Appellant** had repeatedly (which Mr. Nieuwland appears to be somewhat sensitive about – which is ironic considering the majority of the "personal information" is SPI) put **SNIC** and ***NON-SABS INSURER*** on notice about the Limited Purposes and obligations under PIPEDA. The **Appellant** did not consent to the access, use and DISCLOSURE of his **Confidential Information** for any purpose OTHER THAN the purpose for which it was collected.

322. The **Appellant**, by virtue of the *Insurance Act*, is a "customer" or "client" of **SNIC** – not ***NON-SABS INSURER***.

323. The requirement of a "firewall", in erecting one and following it until the **Appellant** and the **SNIC** have resolved all claims and disputes under *SABS*, and the **Appellant** and Pembridge have resolved the tort dispute by agreement or court action (subject to a court order authorizing the disclosure by **SNIC** to Pembridge). The **Appellant** provides this notice herein yet again – out of an abundance of caution.

Volume #8(G): Post 2018 – amendments to PIPEDA with: BSS; Unauthorized Access and Unauthorized Disclosure (see: HB, Tab 33; Tab 34)

324. The Digital Privacy Act amended PIPEDA in 2015 and became effective in 2018 which was unambiguous in its language with respect to unauthorized access and unauthorized disclosures by an Organization which could lead to a real risk of significant harm ("RROSH") test. While that is not an issue for the Tribunal to determine, the timing

of this Appeal in 2023 is compelling considering unauthorized access and unauthorized disclosure are both met by the Nieuwland filings on April 11, 2024.

325. **SNIC** disclosed the **Appellant**'s **Confidential Information** to ***NON-SABS INSURER*** and/or ***NON-SABS INSURER***, through agents of it, surreptitiously went into the accident benefits file of the **Appellant** for ***NON-SABS INSURER***'s own use and access, and disclosure (to a person other than the **Appellant**).

326. This is not a factual situation where ***NON-SABS INSURER*** has merely processed the **Confidential Information** but an intentional access and disclosure for purposes other than the Limited Purposes.

Volume #8(H): *Seminal Point: Only **SNIC** disclose*

327. Moreover, when using the OCF-1, it only states that **SNIC** may disclose to other persons or organizations without the consent or knowledge of the **Appellant** (Claimant at the time) but it does NOT state that other organizations may then collect, use and disclose the **Confidential Information** without the consent of the **Appellant**.

328. As noted in the affidavit material of the **Appellant**, there were no exemptions under PIPEDA for ***NON-SABS INSURER*** to collect, use or disclose WITHOUT the consent or knowledge of the **Appellant**.

Volume #8(I): *Purpose of Consent Requirement*

329. The purpose of the consent requirement under PIPEDA is to enable the "data subject" (the "**Appellant**" herein and Claimant under **TD Claim #3**) to determine whether he accepted the change of control and possession to the "second organization" (third party organization) in the "Non-*SABS* Insurer" (***NON-SABS INSURER***).

330. ***NON-SABS INSURER*** was required to seek and obtain the consent of the **Appellant** to collect the **Confidential Information** DIRECTLY from him (or indirectly from **SNIC**) through the "disclosing organization" (**SNIC**). **SNIC** did not have the consent of the **Appellant** to disclose his **Confidential Information** (PII, SPI and PHI) to ***NON-SABS INSURER*** for any other purposes than the Limited Purposes.

331. ***NON-SABS INSURER*** became a "co-controller" (presumably if **SNIC** still has some control of the **Confidential Information**) and now the only "disclosor" of the "**Confidential Information**" to the Tribunal while now claiming that it [***NON-SABS INSURER***] is owed costs.

332. ***NON-SABS INSURER*** (as the "Receiving Organization" or "Seizing Organization") became subject to all of the PIPEDA rules on access, use and disclosure of that information (which remains unknown) as well as the accountability principle.

Volume #8(J): *Transfer is merely a "form of agency"*

Not Merely an "Agency Relationship" (see: Tab 34, page 391)

333. By Nieuwland's DOR and particularly his "Purported Filings' solely and exclusively on behalf of ***NON-SABS INSURER***, this was not an "agency relationship" between **SNIC** and ***NON-SABS INSURER*** as he unequivocally represented to the Tribunal that Karat was appointed [sic] by ***NON-SABS INSURER*** [sic] to be the ADR officer [sic]. While it was a misrepresentation, Nieuwland cannot now change his representation regarding the same.

334. An agency relationship is where the agent does NOT acquire ownership or control but is simply authorized to perform certain services for the "Organization" – in this **TD Claim #3** and Appeal – that is exclusively "Security National Insurance Company". **SNIC** is the sole entity that has filed a pleading herein in the form of a "Response".

335. Put another way, by the "Purported Filings" on April 11, 2024, "***NON-SABS INSURER***" as the "NON-*SABS* Insurer" was not merely a "third party processor".

Volume #8(K): *Transfer is different from a "Disclosure" (see: page 392 of Hearing Brief tab 34)*

336. Disclosure implied the transfer of control, possession and responsibility.

Volume #8(L): *Ontario Information Privacy Commissioner: outsourcing (see: page 393 of Hearing Brief Tab 34)*

337. As found and recognized by our Ontario Information And Privacy Commissioner, "you can outsource services but you cannot outsource accountability" (see: **Reviewing the Licensing Automation System of the Ministry of Natural Resources: A Special Investigation Report, June 27, 2012 at 6**).

Volume #8(M): *Processing and Handling by agents or service provider*

338. Under PHI acts, the processing and handling of PHI by agents or service provider is NOT considered "disclosure PROVIDED certain conditions are met, principally RESTRICTIONS on USE and ACCESS". While the **Appellant** cannot prove whether **SNIC** disclosed **Confidential Information** without putting those restrictions on use, access

and disclosure by ***NON-SABS INSURER*** or whether ***NON-SABS INSURER*** had authority, by absence of firewalls, cones of silences and "walls", it matters not for this NOM #6.

339. A breach of confidence is sufficient for the disqualification of the Impugned Individuals – whether it was by **SNIC** and ***NON-SABS INSURER*** or ***NON-SABS INSURER*** on its own because the obligations of **SNIC** still remain to "recover and regain exclusive control of the **Confidential Information**" by demanding its returns where ***NON-SABS INSURER*** has failed to follow conditions and restrictions.

Volume #8(N): Different Commercial Activities for **SNIC** and ***NON-SABS INSURER***; different financial statements on OSFI; different "reported claims and premiums"

340. As the uncontroverted evidence in Affidavit #19 relating to the OSFI documents for **SNIC** and ***NON-SABS INSURER*** (including the other "insurance companies" within TDI which also includes "agents" and "brokers" which are NOT insurance companies) demonstrates that the "commercial activities" of **SNIC** and ***NON-SABS INSURER*** are vastly distinct.

341. Hence, **SNIC** and ***NON-SABS INSURER*** are different organizations under PIPEDA.

342. Under the *Insurance Act*, **SNIC** is the "*SABS* Insurer" and ***NON-SABS INSURER*** does NOT meet the definition of "insurer" as it relates to the **Insurance Policy** herein.

Volume #8(O):The Irony of the word "processing" in this **SNIC** Proceeding

343. The irony of the word "processing" is that the Purported **SNIC** Response, as Karat was likely unable to "sign" the Purported **SNIC** Response but there is no dispute that he bound **SNIC** by said filing and service of the same, is that "Response" on behalf of "**SNIC**" was "processed" immediately.

Volume #8(P):*Transfer becomes a disclosure – when third party received – permanently and indefinitely*

344. The transfer of **Confidential Information** becomes a disclosure when the third party (***NON-SABS INSURER***) receives the CI:

a. Permanently;

b. Use indefinitely;

i. For its own purposes.

345. By Nieuwland's filings on April 11, 2024, this is exactly what has transpired which is sufficient to have met the standard, on a balance of probabilities, for an objective person to view these circumstances as there could be a perceived COI.

Volume #8(Q):The Utility and Effectiveness of a Disqualification Order and restraining ***NON-SABS INSURER*** and the Impugned Individuals

346. By disqualifying the Impugned Individuals by order of LAT, this simply means that **SNIC** is required to retained a lawyer licensee to represent it the future. It does not act as a stay as **SNIC** still has the obligations, by virtue of its adjusters, to adjust the file in accordance with *SABS* and its binding decisions under **TD Claim #3**, and to face any outstanding obligations in this **SNIC** Proceeding.

Volume #8(R): Receipt is itself is not unlawful by ***NON-SABS INSURER*** per se but unauthorized use, unauthorized access and unauthorized disclosure as it relates to the OCF -1; each OCF must be analyzed separately; each piece of correspondence from the **Appellant** to **SNIC** and its potential subsequent disclosure by **SNIC** and collection, use and access and then disclosure must be analyzed separately; and others

347. In relation to the OCF-1, the limited purposes therein do not state, as an inducement and precondition for the **Appellant** to have applied for accident benefits under *SABS* that **SNIC** was authorized to disclose **Confidential Information** therein for the purposes of a potential unilateral substitution of itself as a *SABS* Insurer to another "insurance company" absent consent and knowledge of the **Appellant**.

348. As Ms. Ortiz's COS was for the two Purported Responsive Hearing Briefs and the Motion on behalf of ***NON-SABS INSURER***, they can be considered together for context herein.

Volume #8(S): This is about a change of "control" – not merely a "transfer"

349. As denoted in CBA Article, Privacy and Access (see; HB, Tab 34), this is not about **SNIC** disclosing **Confidential Information** (including SPI) to another "insurance company" for processing for the limited purposes in, by way of example, the OCF-1. This NOM #6 is about an unauthorized and non-consensual change of control between **SNIC** to ***NON-SABS INSURER*** for "Non-Permitted Uses" and "Non-Permitted Disclosures" to the detriment of the **Appellant** (the "Detrimental Misuses").

Volume #9: Orders Sought

350. Misnomers happen from time to time even by the most experienced tribunal decision makers (see: *FC v. Wawanesa* where the adjudicator mistakenly had Aviva as the respondent). It is unclear how "***NON-SABS INSURER***" was even referenced in any decision or by the Tribunal but the **Appellant** can only speculate. However, it is the duty of the licensees representing **SNIC** to ensure that the *SABS* Insuer was named thereafter and to only act in accordance with the *Insurance Act*, the **Insurance Policy**, *SABS* et al. **SNIC** failed to do so.

351. It is a privilege to be an "insurer" under the Insurance Act (Ontario) and operate an automobile insurance business. TD Insurance Meloche Monnex does so through two different insurance programs with two different underwriters (neither are ***NON-SABS INSURER***). The Alumni Program is the only relevant Insurance Program herein under the Insurance Policy which was and is a "contract of insurance".

352. There are no lawful reasons for the **NON-**compliance by **SNIC** (by inaction) and by ***NON-SABS INSURER*** by commission.

353. The **Appellant** has firmly and consistently notified **SNIC** and **Nieuwland** that it will oppose the admission of any evidence that is not in accordance with the legislation, regulations and *LAT Rules*. The **Appellant** opposes ***NON-SABS INSURER*** obtaining any form of leave and any late attempt by **SNIC** to have a representative, and file materials in opposition to **NOM #6**. Such prejudice would be extreme and cannot be mitigated by another order of LAT.

354. The evidence tendered, albeit in unsworn, unnumbered and unindexed form has not been authenticated and not within the knowledge of the **Appellant** and need not be dignified as ***NON-SABS INSURER*** is the "**NON-***SABS* Insurer".

355. The Tribunal (AABS) cannot condone violation s of the *LSA*, the **LSO** and its By-Laws, the ROPC for lawyers and paralegals along with the **LSO**'s policies and guidelines (see: Dankha, **Hearing Brief**, Tab 18).

356. The only bases upon which ***NON-SABS INSURER*** (**NON-***SABS* Insurer) was entitled to even access (with disclosure being far worse), was with the consent

357. This is not a mere disclosure to some other named individual by the *SABS* Insurer but a "disclosure" by the **NON-***SABS* Insurer to the Tribunal where it [unauthorized] has sought costs in an unlawful amount. This is the type of conduct that is in bad faith, deserving of punishment and rebuke. There was but one licensee that "signed" the "Motion Submissions" and that was Mr. **Nieuwland**. He had the duty to NOT sign the Motion Submissions as part of the privilege of being a lawyer licensee. He had a further duty to not receive on behalf of ***NON-SABS INSURER*** any confidential documents, **Confidential Information**, PHI, PII and SPI[23] from **SNIC**, and send it back promptly and/or delete the same. He did neither. He instead used it on behalf of ***NON-SABS INSURER*** in not only an unlawful manner but in a manner that was contrary to the duty of good faith and fiduciary duties of **SNIC**, which filed a responsive pleading herein by the sole signature of **Karat** for **SNIC**.

358. **Nieuwland** now submits, without reference to **Purported SNIC Response** as if pleadings do not matter, that **Karat** was appointed [sic] as an ADR officer [sic] by the **NON-***SABS* Insurer [sic]. Certainly, Mr. **Karat** knew who assigned him the duties of being an "ADR representative" in this **SNIC Proceeding** as it was in his email signature on January 23, 2024, named in the **Purported SNIC Response** on January 25, 2024 and then again in the **Karat** COS which he provided to the **Appellant**, with thanks, on February 14, 2024.

359. These "Speaking Notes" are being tendered to **SNIC** (**Karat** and "claims adjusters"), along with ***NON-SABS INSURER*** (**Nieuwland**) in advance of the May 2, 2024 hearings component on that date to confirm that **SNIC** has no representative to speak to any portion of the motion. Further, the **Appellant** is putting the *SABS* Insurer on further notice, along with the **NON-***SABS* Insurer, that because this **NOM #6** requires legal argument, **SNIC** is required to retain a licensed representative if it is wishes to speak to the motion albeit without any filed materials. If **SNIC** fails to do so forthwith and ***NON-SABS INSURER*** confirms in writing that it has returned all of the **Confidential Information** to **SNIC** without retaining any copies of the same and not be disclosed in contravention of *PIPEDA* and the OCF documents, along with confirming it will no longer file any further documents or make submissions in this **SNIC Proceeding**, and by no later than the end of the business day on Monday, April 29, 2024, then the **Appellant**, consistent with having this **SNIC Proceeding** determined on its merits in the most expeditious, cost-effective and just manner will ask that that an order shall follow summarily on May 2, 2024.

360. To the extent that **Karat** attempts to make submissions on behalf of **SNIC**, the **Appellant** provides this preliminary objection that he is to be excluded like was the case in Mosa (see: **Hearing Brief**, Tab 19).

361. Under this approach, this will leave ample time for the NOM #4 to be granted, and ancillary relief in relation to NOM #7.

362. With respect to NOM #4, **SNIC** has been the "sole payor of benefits" and the **Appellant** has only consented to **SNIC** being the "payor" of outstanding expenses and benefits, and future expenses and benefits, and that will remain in perpetuity.

363. Until **SNIC** retains a lawyer licensee to act on its behalf, the **Appellant** cannot take any meaningful steps herein (see: **Hearing Brief**, Tab 21, *Raizman*; see also: HB, Tab 3, page 16).) with respect to "settlement offers", "exchange of documents", "narrowing of issues" and cannot risk, even the appearance, that he has somehow has consented to the "conflict of interest" herein.

364. The **Appellant** can continue to advance his interests by way of motion and "written hearings" with notice to the sole representative of **SNIC** herein which is Mr. David Karat.

365. The **Appellant** forcefully confirms that he has never consent, is not consent and will never consent to the same in the **TD Claim #3**, the **SNIC Proceeding** and any Future Related LAT Proceedings.

366. To state that the high standards of the legal profession and integrity of the justice system are not being maintained by this conduct the **Impugned Individuals** would obviously be an understatement.

367. The balancing herein only requires the integrity of the legal profession and high standards of the justice system versus SNIC's right to choose its lawyer licensee(s) and mobility in the legal profession (see: HB, Tab 3, page 60). There is no issue about "mobility in the legal profession" per se and SNIC has regularly selected external counsel. Primacy is given to "safeguarding the administration of justice", integrity and high standards of the justice system. This does not mean that the **Appellant** is estopped from advancing his Appeal but rather SNIC has a choice to respond at future dates if it wishes to do so and if it is able to retain independent outside lawyer licensees. The **Appellant** will not speculate on whether it can or will do so as the SPPA requires the Tribunal to determine this Appeal, governed by the pleadings between the **Appellant** and SNIC, in the most expeditious, just and cost-effective manner.

368. All of which is respectfully submitted.

Appendices

ENDNOTES

[1]"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
[2]TD Insurance Meloche Monnex
[3]"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"),it has an address for service of 12th-50 Place Cremazie, Montreal, QC H2P 1B6 (see: Affidavit #12).

[4]as it relates to the "Alumni and Professionals insurance program underwritten by **SNIC**)
[5]Affidavit #3, Exhibit "A", page 247
[6]Please see: New LAT Rules or "LAT Rules", R. 2.1 and 2.2 for interchangeability between **Appellant** and Applicant
[7]https://fcaa.gov.sk.ca/public/CKeditorUpload/Insurance/insurers_current_licensees_-_march_1,_2018.pdf
[8]https://fcaa.gov.sk.ca/public/CKeditorUpload/Insurance/insurers_current_licensees_-_march_1,_2018.pdf
[9]See: Appendices and **Affidavit #15**;
[10](previously authorized for **SNIC** but not at the time of NOM #6)
[11]See: **HR INDEX**, Tab 3, page 99;
[12]See: Hearing Brief, tab 14, *Barnett*
[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]See: Appellant's reference to Ms. Ortiz in April 2024 (HB, Tab 3, page 78)
[17]See: Hearing Brief, Tab 15, Caruso;
[18]https://www.canlii.org/en/on/#search/type=decision&jId=on,unspecified&ccId=onlat&sort=decisionDateDesc&id=TD%20General%20Insurance%20Company&searchId=2024-04-29T13%3A41%3A30%3A970%2Ff3d3d345acad4fd68f4559bb5e838979&origJId=on
[19]See: Hearing Brief, Tab 16, ECA and Hearing Brief, Tab 17, Felton Brushes
[20]There are 34 cases involving "Primmum Insurance Company" in Ontario under the LAT (see: https://www.canlii.org/en/on/onlat/#search/type=decision&ccId=onlat&sort=decisionDateDesc&id=Primmum%20Insurance%20Company&resultIndex=1&searchId=2024-04-27T19%3A21%3A42%3A407%2Fd3125371edea4d52a63b1f08a115de91&origType=decision&origCcId=onlat ; in reverse chronological order:
(1) Scandlan v Primmum Insurance Company, 2024 CanLII 28823 (ON LAT) (counsel to Primmum: Jennifer Kiss (counsel) (see: 70346R) with Peggy Moore as "Claims Rep"; (2) Perrigard v Primmum Insurance Company, 2024 CanLII 2665 (see: Allison Webster: 41405C; external Harrison Pensa); (3): McLean v Primmum Insurance Company, 2023 CanLII 84386 (external counsel in Clement); (4): Kopylets v Primmum Insurance Company, 2023 (Karat and Dugas); (5) Sandralingam v Primmum Insurance Company [Monpara: AMR LLP]
[21]71 cases involving SNIC: (11) Quinn v Security National Insurance Company, 2023 CanLII 122946 (FP: Francine Papadopoulos: 72298L
(12): (Nian v Security National Insurance Company, 2023 CanLII 113716 (Cawley for SNIC and he is TD Insurance) https://lso.ca/public-resources/finding-a-lawyer-or-paralegal/directory-search/member?MemberNumber=77590W (TD Insurance Staff Legal:77590W); and Kevin Temple: 62397V (TD Insurance Staff Legal); (13) Security National Insurance Company v Bradbury, 2023 CanLII 107287 (Peter Durant: Zarek Taylor Grossman Hanrahan LLP: 53171M
[22]Later acquired by Desjardins
[23]See also: Hearing Brief, Tab 25, OPCC Bulletin